

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

Portillo's Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

5812
(Primary Standard Industrial
Classification Code Number)

87-1104304
(I.R.S. Employer
Identification Number)

2001 Spring Road, Suite 400
Oak Brook, IL 60523
(630) 954-3773
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act. in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
Non-accelerated filer Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price (1)(2)	Amount of Registration Fee
Class A common stock, \$0.01 par value per share	\$100,000,000	\$10,910.00

(1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) promulgated under the Securities Act of 1933, as amended.

(2) Includes shares of Class A common stock that may be issuable upon exercise of an option to purchase additional shares granted to the underwriters.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion, Dated September 27, 2021

PRELIMINARY PROSPECTUS

Shares



Portillo's Inc.

Class A Common Stock

This is an initial public offering of Class A common stock by Portillo's Inc. We are offering _____ shares of our Class A common stock. Prior to this offering, there has been no public market for our Class A common stock. It is currently estimated that the initial public offering price per share will be between \$ _____ and \$ _____.

We intend to apply to have our Class A common stock listed on Nasdaq Global Select Market ("Nasdaq") under the symbol "PTLO."

Following this offering, we will have two classes of common stock: Class A common stock and Class B common stock. Each share of Class A common stock and Class B common stock entitles its holder to one vote on all matters presented to our stockholders generally. All of our Class B common stock will be held by the Continuing Pre-IPO LLC Members (as defined herein) on a one-to-one basis with the number of LLC Units (as defined herein) they own. See "Description of Capital Stock." Immediately following this offering, the holders of our Class A common stock issued in this offering collectively will hold _____ % of the economic interests in the Company and _____ % of the voting power in the Company, the Reorganization Parties (as defined herein), through their ownership of our Class A common stock, collectively will hold _____ % of the economic interests in the Company and _____ % of the voting power in the Company, and the Continuing Pre-IPO LLC Members, through their ownership of all of our outstanding Class B common stock, collectively will hold no economic interest in the Company and the remaining _____ % of the voting power in the Company. See "Organizational Structure—Holding Company Structure and the Tax Receivables Agreements." As a result, the Reorganization Parties and Continuing Pre-IPO LLC Members will, together, be able to control any action requiring the general approval of our stockholders, including the election of our Board of Directors (the "Board"), the adoption of amendments to our certificate of incorporation and bylaws and the approval of any merger or sale of the Company or substantially all of our assets. See "Management."

We intend to use all of the net proceeds from this offering (including from any exercise by the underwriters of their option to purchase additional shares of Class A common stock) to purchase newly issued LLC Units from Portillo's OpCo (as defined herein). The foregoing purchases of LLC Units will be at a price per unit equal to the public offering price per share of Class A common stock in this offering, less the underwriting discount. Portillo's OpCo currently intends to use the proceeds it receives from this offering to first repay the redeemable preferred LLC units in full and then, if any proceeds remain, repay a portion of the borrowings outstanding under the Credit Facilities (as defined herein). See "Use of Proceeds" and "Certain Relationships and Related Party Transactions."

We are an "emerging growth company" as defined under the federal securities laws and, as such, will be subject to reduced public company reporting requirements. See "Prospectus Summary—Implications of Being an Emerging Growth Company." After the completion of this offering, we expect to be a "controlled company" within the meaning of the corporate governance standards of the Nasdaq.

Investing in our Class A common stock involves a high degree of risk. See "[Risk Factors](#)" on page 29.

	Per Share	Total
Initial public offering price	\$ _____	\$ _____
Underwriting discount(1)	\$ _____	\$ _____
Proceeds, before expenses, to us	\$ _____	\$ _____

(1) See "Underwriting" for additional information regarding underwriter compensation.

We have granted the underwriters an option to purchase up to an additional _____ shares from us at the initial public offering price less the underwriting discount at any time within 30 days from the date of this prospectus. If the underwriters exercise the option in full, the total underwriting discounts and commissions payable by us will be \$ _____, and the total proceeds to us, before expenses, will be \$ _____.

Neither the Securities and Exchange Commission (the "SEC") nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares against payment in New York, New York on _____, 2021.

**Jefferies
Baird**

**Morgan Stanley
UBS Investment Bank**

BofA Securities

**Piper Sandler
William Blair**

Co-Managers

**Guggenheim Securities
Loop Capital Markets**

**Stifel
Ramirez & Co. Inc.**

The date of this prospectus is _____, 2021.



VALUES-DRIVEN, PEOPLE-CENTERED CULTURE



FAMILY



GREATNESS



ENERGY



FUN





ICONIC, CRAVEABLE STREET FOOD





RESTAURANTS DESIGNED TO ENGAGE THE SENSES





HIGH-ENERGY, MULTICHANNEL FORMAT



Sterling
Heights, MI
Opened Mar 2021



GROWING NATIONAL FOOTPRINT

Fort Wayne, IN
Opened Nov 2019

Orlando, FL
Opened May 2021



Glendale AZ
Opened Apr 2021





Portillo's
GET OBSESSED™

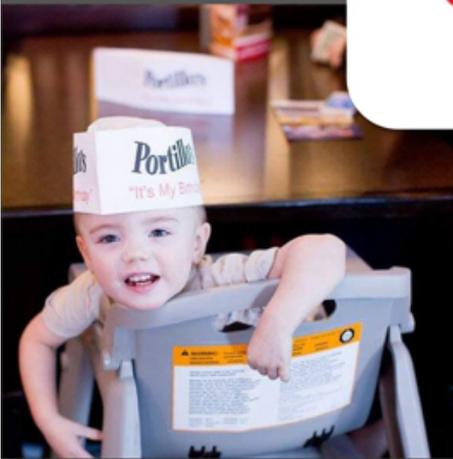


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You should rely only on the information contained in this prospectus or in any free writing prospectus we may specifically authorize to be delivered or made available to you. Neither we nor the underwriters (or any of our or their respective affiliates) have authorized anyone to provide any information other than that contained in this prospectus or in any free writing prospectus prepared by or on behalf of us or to which we have referred you. Neither we nor the underwriters (or any of our or their respective affiliates) take any responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. We and the underwriters (or any of our or their respective affiliates) are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus or any free writing prospectus is accurate only as of its date, regardless of its time of delivery or the time of any sale of shares of our Class A common stock. Our business, financial condition, results of operations and prospects may have changed since that date.

For investors outside the United States: We and the underwriters have not done anything that would permit this offering or the possession or distribution of this prospectus or any free writing prospectus we may provide to you in connection with this offering in any jurisdiction where action for purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of Class A common stock and the distribution of this prospectus outside the United States. See “Underwriting.”

Basis of Presentation

We use a 52- or 53-week fiscal year ending on the Sunday prior to December 31, effective beginning with the first quarter of 2019. In a 52-week fiscal year, each quarterly period is comprised of 13 weeks. The additional week in a 53-week fiscal year is added to the fourth quarter. We believe the difference in reporting periods does not have a material impact on comparability. Fiscal 2020, 2019 and 2018 each consisted of 52 weeks.

Trademarks and Trade Names

We own or have the rights to use various trademarks, trade names and service marks, including “Portillo’s” and various logos used in association with our name. Solely for convenience, any trademarks, trade names, service marks or copyrights referred to or used herein are listed without the applicable ©, ® or ™ symbol, but such references or uses are not intended to indicate, in any way, that we, or the applicable owner, will not assert, to the fullest extent under applicable law, our or their, as applicable, rights to these trademarks, trade names, service marks and copyrights. Other trademarks, trade names, service marks or copyrights of any other company appearing in this prospectus are, to our knowledge, the property of their respective owners.

Market and Industry Information

Unless otherwise indicated, market data and industry information used throughout this prospectus is based on management’s knowledge of the industry and the good faith estimates of management. We also relied, to the extent available, upon management’s review of independent industry surveys and publications and other publicly available information prepared by a number of sources, including Service Management Group (“SMG”), Technomic, The NPD Group, Inc. (“The NPD Group”), and Socialinsider. All of the market data and industry information used in this prospectus involves a number of assumptions and limitations and you are cautioned not to give undue weight to such estimates. Although we believe that these sources are reliable, neither we nor the underwriters can guarantee the accuracy or completeness of this information and neither we nor the underwriters have independently verified this information. Additionally, from time to time, these sources may change their input information or methodologies, which may change the related results. While we believe the estimated market position, market opportunity and market size information included in this prospectus is generally reliable, such information, which is derived in part from management’s estimates and beliefs, is inherently uncertain and imprecise. Projections, assumptions and estimates of our future performance and the future performance of the industry in which we operate are necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described in “Risk Factors,” “Cautionary Note Regarding Forward-Looking Statements” and elsewhere in this prospectus. These and other factors could cause results to differ materially from those expressed in our estimates and beliefs and in the estimates prepared by independent parties. In addition, certain market and industry data has been derived from research and “whitespace” modeling prepared for us in 2020 by Forum Analytics, a leading real estate analytics firm (“Forum Analytics”). We engaged Forum Analytics to prepare a “whitespace” analysis to identify the Company’s potential new unit expansion opportunity in the United States. Additionally, certain information included herein is derived from a consumer survey of NPS scores powered by Dynata LLC (“Dynata”), a global online market research firm, which we commissioned in 2021.

Certain Definitions

As used in this prospectus, unless otherwise noted or the context requires otherwise:

- “Amended LLC Agreement” refers to the limited liability company agreement of Portillo’s OpCo, as in effect at the time of this offering.
- “Berkshire” refers to Berkshire Partners LLC, a private equity firm.

- “Blocker Companies” refers to entities treated as corporations for U.S. tax purposes that hold LLC Units prior to the Reorganization Transactions (as defined herein) (individually, each a “Blocker Company”).
- “Continuing Pre-IPO LLC Members” refers to the Pre-IPO LLC Members who will retain their equity ownership in Portillo’s OpCo in the form of LLC Units immediately following the consummation of the Reorganization Transactions.
- “LLC Units” has the meaning given in “Prospectus Summary—Organizational Structure.”
- “Mergers” has the meaning given in “Prospectus Summary—Organizational Structure.”
- “Pre-IPO LLC Members” refers to the pre-IPO owners that directly (or indirectly through a Blocker Company) hold LLC Units immediately prior to the consummation of the Reorganization Transactions.
- “Portillo’s,” the “Company,” “our company,” “we,” “us” and “our” refer (i) prior to the consummation of the Reorganization Transactions described under “Organizational Structure—The Reorganization Transactions,” to Portillo’s OpCo and its subsidiaries and (ii) after the Reorganization Transactions described under “Organizational Structure—The Reorganization Transactions,” to Portillo’s Inc., Portillo’s OpCo and their subsidiaries.
- “Portillo’s OpCo” refers to PHD Group Holdings LLC, a Delaware limited liability company, and, following the Reorganization Transactions, a subsidiary of Portillo’s Inc.
- “Reorganization Parties” has the meaning given in “Prospectus Summary—Organizational Structure.”
- “Reorganization Transactions” has the meaning given in “Prospectus Summary—Organizational Structure.”
- “Sponsor” refers to Berkshire.
- “Tax Receivable Agreement” refers to the tax receivable agreement entered into with the TRA Parties.
- “TRA Parties” refers to, collectively, the Continuing Pre-IPO LLC Members, the Reorganization Parties, and any future party to the Tax Receivable Agreement.

Non-GAAP Financial Measures

We prepare our consolidated financial statements in accordance with accounting principles generally accepted in the United States of America (“GAAP”). We also supplement our consolidated financial statements with the following non-GAAP financial measures in this prospectus: Adjusted EBITDA, Adjusted EBITDA Margin, Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin. See “Prospectus Summary—Summary Historical and Pro Forma Consolidated Financial and Other Data.”

Key Metrics

Same-Restaurant Sales

Same-restaurant sales is the percentage change in year-over-year revenue (excluding gift card breakage) for the comparable restaurant base, which is defined as the number of restaurants open for at least 24 full fiscal months (the “Comparable Restaurant Base”). At the end of fiscal 2020, there were 57 restaurants in the Comparable Restaurant Base.

An increase or decrease in same-restaurant sales is the result of changes in restaurant traffic and average guest check. We gather daily sales data and regularly analyze the restaurant traffic counts and the mix of menu items sold to aid in developing menu pricing, product offerings and promotional strategies designed to produce sustainable same-restaurant sales.

New Restaurant Openings

New restaurant openings are central to growing our footprint and executing our growth strategy. We have never closed a restaurant in our 58-year history.

Potential new restaurant sites are typically identified and evaluated at least 18 months prior to opening. New restaurant opening dates trigger advance staff recruiting and training, in addition to the relocation of experienced general managers from existing restaurants and other pre-opening expenses.

The total number of new restaurants per year and the timing of new restaurant openings has, and will continue to have, an impact on our results of operations.

Average Unit Volume (“AUV”)

AUV is the total revenue (excluding gift card breakage) recognized in the Comparable Restaurant Base, divided by the number of restaurants in the Comparable Restaurant Base during the period.

An increase or decrease in AUV is the result of changes in restaurant traffic and average guest check. We gather daily sales data and regularly analyze the restaurant traffic counts and the mix of menu items sold to aid in developing menu pricing, product offerings and promotional strategies designed to produce sustainable AUV. Historically, when opening restaurants in new markets outside of Chicagoland, we experience higher revenues in the first year of operation with a decline in revenues in the second year. After the second year, we have experienced growth in revenues in the third year and beyond as the restaurant and brand continue to grow awareness in those markets.

Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin

Restaurant-Level Adjusted EBITDA is defined as revenue, less restaurant operating expenses, which include cost of goods sold, excluding depreciation and amortization, labor expenses, occupancy expenses and other operating expenses. Restaurant-Level Adjusted EBITDA excludes corporate level expenses, pre-opening expenses and depreciation and amortization on restaurant property and equipment. Restaurant-Level Adjusted EBITDA Margin represents Restaurant-Level Adjusted EBITDA as a percentage of revenue. Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin are not required by, nor presented in accordance with GAAP. Rather, Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin are supplemental measures of operating performance of our restaurants. You should be aware that Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin are not indicative of overall results for the Company, and Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin do not accrue directly to the benefit of stockholders because of corporate-level expenses excluded from such measures. In addition, our calculations thereof may not be comparable to similar measures reported by other companies. We believe that Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin are important measures to evaluate the performance and profitability of our restaurants, individually and in the aggregate. Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin have limitations as analytical tools and should not be considered as a substitute for analysis of our results as reported under GAAP. For a reconciliation of operating income, the most directly comparable GAAP measure, to Restaurant-Level Adjusted EBITDA, see “Prospectus Summary—Summary Historical and Pro Forma Consolidated Financial and Other Data.”

Adjusted EBITDA and Adjusted EBITDA Margin

Adjusted EBITDA represents net income (loss) before depreciation and amortization, interest expense and income taxes, adjusted for the impact of certain non-cash and other items that we do not consider in our evaluation of ongoing core operating performance as identified in the reconciliation of net income (loss), the

most directly comparable GAAP measure, to Adjusted EBITDA, included in “Prospectus Summary—Summary Historical and Pro Forma Consolidated Financial and Other Data.” Adjusted EBITDA Margin represents Adjusted EBITDA as a percentage of total revenues. We use Adjusted EBITDA and Adjusted EBITDA Margin (i) to evaluate our operating results and the effectiveness of our business strategies, (ii) internally as benchmarks to compare our performance to that of our competitors and (iii) as factors in evaluating management’s performance when determining incentive compensation.

We believe that Adjusted EBITDA and Adjusted EBITDA Margin are important measures of operating performance because they eliminate the impact of expenses that do not relate to our core operating performance. Adjusted EBITDA and Adjusted EBITDA Margin are supplemental measures of operating performance and our calculations thereof may not be comparable to similar measures reported by other companies. Adjusted EBITDA and Adjusted EBITDA Margin have important limitations as analytical tools and should not be considered in isolation as substitutes for analysis of our results as reported under GAAP.

PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus and may not contain all of the information you should consider before investing in our Class A common stock. Before making an investment decision, you should read this entire prospectus, including our consolidated financial statements and the related notes included elsewhere herein. You should also carefully consider the information set forth under “Risk Factors” beginning on page 29. In addition, certain statements in this prospectus include forward-looking information that is subject to risks and uncertainties. See “Cautionary Note Regarding Forward-Looking Statements.”



Portillo's: Prepare to Get Obsessed

Portillo's serves iconic Chicago street food through high-energy, multichannel restaurants designed to ignite the senses and create a memorable dining experience. Since our founding in 1963 in a small trailer which Dick Portillo called “The Dog House,” Portillo's has grown to become a treasured brand with a passionate (some might say obsessed) nationwide following. Our diverse menu features all-American favorites such as Chicago-style hot dogs and sausages, Italian beef sandwiches, chopped salads, burgers, crinkle-cut french fries, homemade chocolate cake and milkshakes. We create a consumer experience like no other by combining the best attributes of fast casual and quick service concepts with an exciting energy-filled atmosphere and restaurant model capable of generating tremendous volumes. Nearly all of our restaurants were built with double lane drive-thrus and have been thoughtfully designed with a layout that accommodates a variety of access modes including dine-in, carryout / curbside, delivery and catering in order to quickly and efficiently serve our guests. As of June 27, 2021, we owned and operated 67 Portillo's restaurants across nine states. According to data gathered by The NPD Group, our restaurants generated higher AUVs and Restaurant-Level Adjusted EBITDA Margins than any other fast casual restaurant concept of \$7.7 million and 26.8% in 2020, respectively. For the twelve months ended June 27, 2021, our restaurants generated AUVs of \$7.9 million and Restaurant-Level Adjusted EBITDA Margins of 28.6%.

No matter how our guests order from us, our highly productive kitchens and team members consistently serve high-quality food and deliver a memorable guest experience. We believe the combination of our craveable food, multichannel sales model, dedication to operational excellence, and a distinctive culture driven by our team members gives us a competitive advantage and allows us to generate the highest AUVs and traffic per restaurant among fast casual and quick service restaurants. In 2019, 2020 and for the twelve months ended June 27, 2021, the average Portillo's restaurant generated:

- Drive-thru sales of \$3.4 million in 2019, \$4.6 million in 2020 and \$4.9 million in the twelve months ended June 27, 2021, more than double the throughput of McDonald's 2019 average drive thru and more than triple their 2020 and twelve months ended second quarter of 2021 average drive thru;
- Dine-in sales of \$4.4 million in 2019, \$1.9 million in 2020 and \$1.9 million in the twelve months ended June 27, 2021, greater than Chipotle's 2019 total AUV of \$2.2 million, approximately 90% of their 2020 total AUV and approximately 75% of their twelve months ended second quarter of 2021 total AUV; and

- Delivery sales of approximately \$500,000 in 2019, nearly \$800,000 in 2020 and approximately \$850,000 in the twelve months ended June 27, 2021, which is approximately 80% of Domino's 2019 average delivery volume, approximately equal to their 2020 average delivery volume and higher than their twelve months ended second quarter of 2021 delivery volume.

Each Portillo's location on average served approximately 800,000 guests in 2020 and approximately 825,000 guests in the twelve months ended June 27, 2021, based on our average per-guest spend of approximately \$9.60 and our AUVs of approximately \$7.7 million in 2020 and \$7.9 million in the twelve months ended June 27, 2021. Our restaurants are buzzing with the energy and excitement of our team members and guests that bring everyone together, from single diners to large groups, around great food, drinks and fun. Our restaurants have attracted a growing cult-like following that has enabled us to thrive across a variety of suburban and urban trade areas around the country. All of our restaurants are profitable, and we are proud to have never closed a restaurant in our 58-year history.

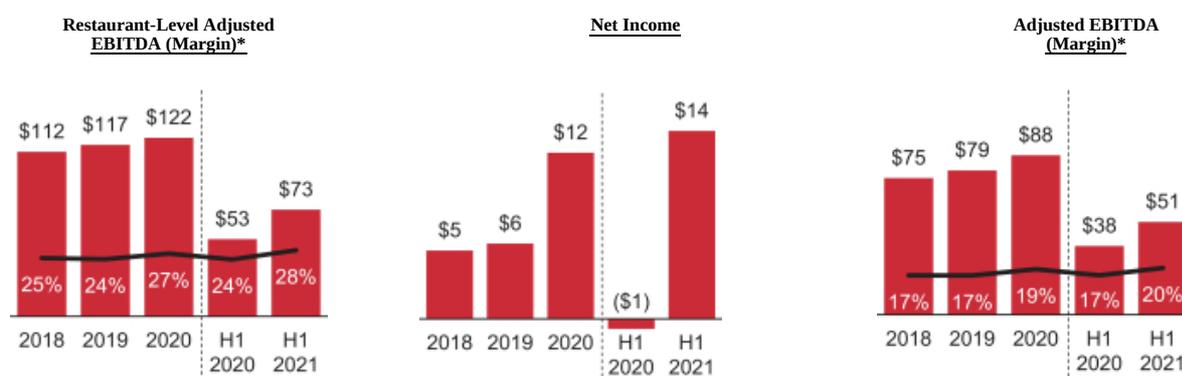


We believe our unique brand experience, passionate following, and compelling everyday value proposition drive strong operating results, as illustrated by the following:

- Opened 15 new restaurants across 8 states from January 1, 2018 through June 27, 2021
- Grew our industry-leading Restaurant-Level Adjusted EBITDA Margin by 190 basis points from 24.9% in fiscal 2018 to 26.8% in fiscal 2020 (our Restaurant-Level Adjusted EBITDA Margin was 28.2% for the two quarters ended June 27, 2021 compared to 24.3% for two quarters ended June 28, 2020)
- Grew net income from \$5 million in fiscal 2018 to \$12 million in fiscal 2020 (net income for the two quarters ended June 27, 2021 was \$14 million as compared to a net loss of \$733 thousand for the two quarters ended June 28, 2020)
- Grew Adjusted EBITDA from \$75 million in fiscal 2018 to \$88 million in fiscal 2020 (our Adjusted EBITDA was \$51 million for the two quarters ended June 27, 2021 compared to \$38 million for the two quarters ended June 28, 2020)

(\$ in Millions)





(*) Please see “—Summary Historical and Pro Forma Consolidated Financial and Other Data” for a reconciliation of the above non-GAAP financial measures to their most directly comparable GAAP measure.

Our Competitive Strengths

We believe the following strengths separate us from our competitors and serve as the foundation for our continued growth:

Values-Driven, People-Centered Culture. People are the heart of Portillo’s. We hire and train great people who can turn their obsession into a profession. Our team members are passionate about our food, love our guests, and call their teammates “family.” Our people-centric culture is about working together to deliver an exceptional experience for our guests, while operating with the fun-loving energy that drives the exciting atmosphere within our busy restaurants. Our Portillo’s team members bring our brand to life through their commitment to our values:

“*Family*” – We work together to make everyone feel at home, and we step up when someone needs help

“*Greatness*” – We are obsessed with being the best and work hard to continuously improve. Our greatness is rooted in Quality, Service, Attitude and Cleanliness (“QSAC”)

“*Energy*” – We move with urgency and passion, while maintaining attention to detail

“*Fun*” – We entertain our guests, we connect authentically, and we make each other smile

During the COVID-19 pandemic, we prioritized the health and safety of our team members who in turn helped our business not only survive but thrive. We chose to not lay off or furlough any team members, and instead invested in them with a focus on cross-training additional skills, which enabled us to increase capacity in our off-premises channels and drive operating efficiencies. We acted quickly to provide paid leave, personal protective equipment and setup a “Wellness Team” to advise on and monitor the well-being of our teams. Additionally, we provided 100% meal discounts and gift cards to every team member throughout the COVID-19 pandemic and funded bonuses to field managers. We also launched a Company foundation called “The Heart of Portillo’s Fund” to support team members facing challenging personal situations.

We work with each team member to build a personal development plan and a corresponding training plan to support their professional development at Portillo’s. We view this investment as a fundamental aspect of our company and key to our growth as it enables us to deliver a consistently memorable experience for our guests and build a pipeline of leaders to drive the success of our future restaurant openings.

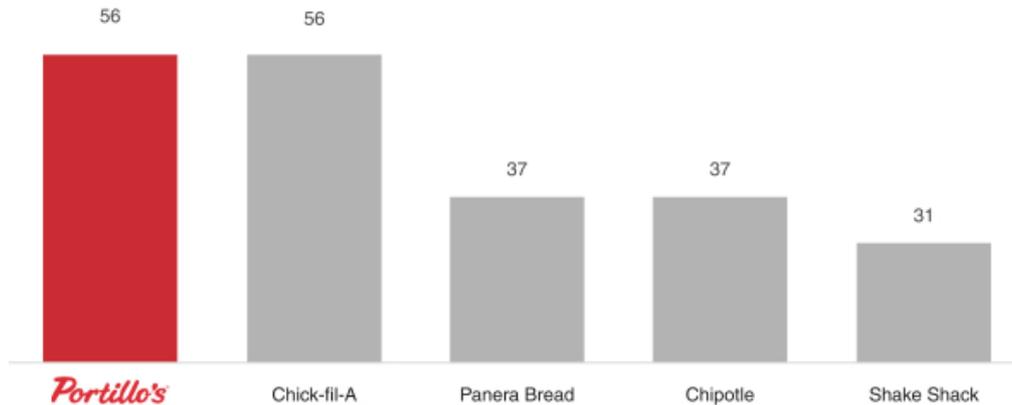
We are proud that Portillo's was recently ranked the #1 restaurant company on America's 2021 Best Mid-sized Employers by Forbes magazine and #99 out of the 500 companies surveyed.



An Iconic and Beloved Brand with Obsessed, Lifelong Fans. Portillo's captures the hearts, minds and stomachs of its guests with every meal. In the 58 years since Dick Portillo opened his first hot dog stand, Portillo's has grown to become an iconic restaurant brand with a national following. Our menu features something for everyone and appeals to a broad demographic that enables our restaurants to thrive across diverse trade areas and generate strong and balanced volumes across multiple dayparts, weekdays and occasions. Our new restaurant openings draw massive crowds of passionate fans who line up overnight with lines stretching around the block. Additionally, we have received numerous accolades, including recognition as the "#1 Fast Casual Restaurant in the U.S." by *Trip Advisor*.

We have a very engaged and passionate following on social media. As of June 8, 2021, our average Facebook post generates 10x more engagement than the average restaurant brand post, while our average Twitter post generates 40x more engagement than the average restaurant brand post based on a social media industry benchmarks study conducted by Socialinsider in 2021. Many of our fans beg us through social media to bring a Portillo's restaurant to their city (and we have received similar pleas from mayors), which we believe is indicative of the passion of our guests and the demand for more Portillo's locations across the country. In a similar vein, we have operated a direct shipping business for over 20 years, shipping a select menu of our most popular offerings to all 50 states, which provides us with an additional channel to build our national brand presence. In the past five years we have shipped 2.7 million sandwiches (Italian beef, sausages and hot dogs) via our own direct-to-consumer direct shipping channel across all 50 states, creating fans all over the country. Based on a recent national survey powered by Dynata, our nationwide net promoter score exceeded that of many notable fast casual competitors.

National Net Promoter Score⁽¹⁾



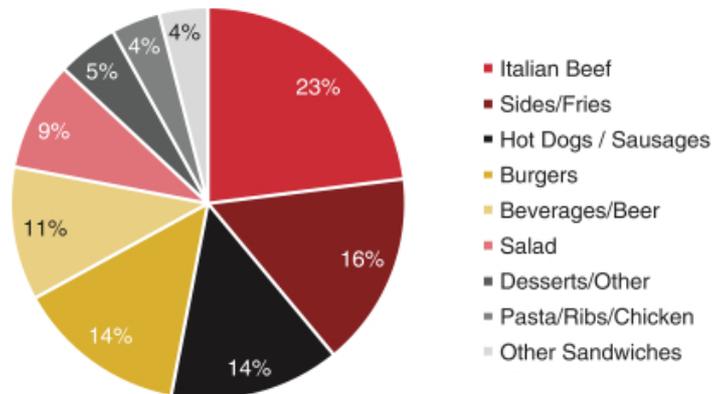
(1) National consumer survey powered by Dynata in July 2021.

Distinctive, Diverse High-Quality Menu. Our menu offers something for everyone. We obsess over each and every ingredient and curate our menu to ensure that each item receives high marks from our guests and meets our rigorous quality standards. Our Italian beef sandwiches feature high-quality beef slow roasted for four hours, thinly sliced, served on freshly baked Turano French bread and dipped in hot gravy with a proprietary blend of spices perfected over 50 years and designed to deliver an amazing flavor. Our Chicago-style hot dogs feature mustard, relish, freshly chopped onion, sliced red ripe tomatoes, a kosher pickle and sport peppers piled high onto a perfectly steamed poppy seed bun, all finished with a few shakes of savory celery salt. Guests also love our craveable crinkle-cut french fries that are cooked in beef tallow resulting in a perfectly salted, crispy outside with a soft inside. Lastly, for those craving something sweet, our famous homemade fluffy chocolate cakes are baked with love each morning in every restaurant and generously iced with rich chocolate frosting.

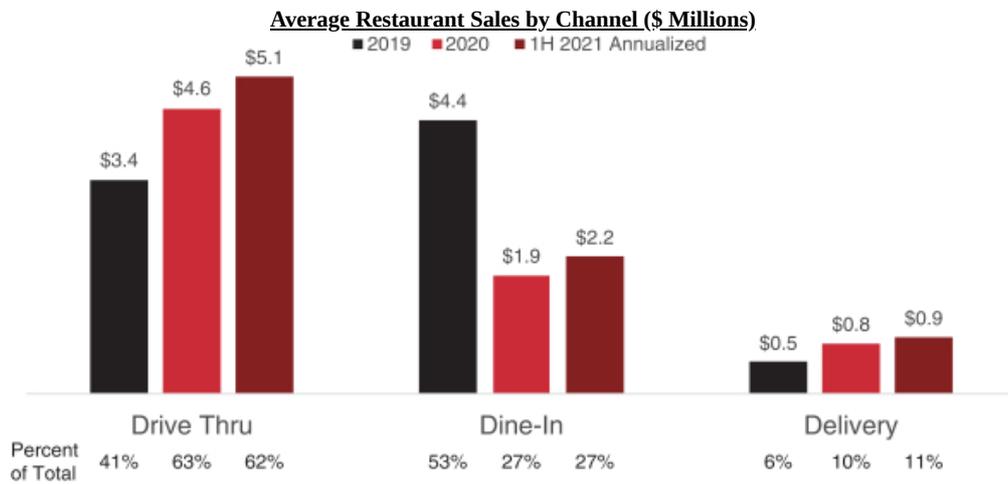


Everyone can be satisfied with a visit to one of our restaurants as demonstrated by our sales mix with no single menu category accounting for more than 23% of sales in 2020. As an example of how our guests order across our menu, we sold on average more than \$600,000 worth of salad per restaurant in 2020. Menu variety is a major motivator for guests and the difference with Portillo's is, no matter what someone is craving, we have something for them.

2020 Sales Mix



Robust Multichannel Sales Capabilities. Our restaurants are designed to provide speed and convenience across multiple sales channels including drive-thru, dine-in, carryout/curbside, delivery and catering. We also serve guests outside our footprint through our website for direct shipping. In each restaurant, our high-energy, passionate team members deliver exceptional customer service to our guests whether they dine in one of our restaurants or order through the drive-thru where team members personally take and deliver orders car-side. At the onset of the COVID-19 pandemic, we quickly adapted to sales shifts and cross-trained our team members to allow us to significantly increase our drive-thru sales from \$3.4 million per restaurant in 2019 to \$4.6 million in 2020 and \$4.9 million in the twelve months ended June 27, 2021 and enhance our third-party delivery and self-delivery channels and capabilities. Our app and website, combined with our third-party delivery partnerships, resulted in over 20% of our sales being placed digitally during fiscal 2020 and the twelve months ended June 27, 2021. Since nearly all of our restaurants were purpose built with a double lane drive-thru and sizable parking areas to handle our large volumes, we were able to quickly respond to sales shifts without structural changes to our sites. Our ability to execute high sales volumes through our double drive-thrus combined with our robust digital capabilities enabled us to generate over 80% of our revenue through these order methods in fiscal 2020 and the first two quarters of 2021. In a world where customers increasingly value convenience and optionality, our longstanding multichannel expertise positions Portillo's to continue to succeed and grow market share.



Note: Excludes direct shipping sales.

Energetic Restaurant Atmosphere that Engages the Senses. While our operating model is focused on getting delicious, made-to-order food to our guests quickly, the Portillo’s atmosphere makes the experience even more than a delicious meal. When guests walk into a Portillo’s, they get an experience completely different than a typical chain restaurant visit. Our restaurants engage all the senses to create a fun, relaxed and memorable occasion.

Our dining areas evoke nostalgia and local influences. No two Portillo’s are alike. Each of our restaurants has its own themed décor ranging from a 1930’s prohibition motif to a 1950’s jukebox, to a 1970’s hippie bus. The period music ties to the theme, from ragtime to doo wop to disco. No detail is too small, be it lighting, signage or even the stars subtly sparkling on the ceiling. Each restaurant also draws design elements from the community. The layouts create spaces comfortable for individual diners, families, large groups, and even wedding parties.

Beyond the space itself, the energy of a Portillo’s is unique. Our guests can see into our huge, open kitchens, where their meals are prepared right before their eyes. The smells of burgers broiling, french fries frying, and beef simmering emanate from the kitchen. Each completed meal is announced with a fun rhyme (“Number two, we got you”; “Number seven, welcome to Portillo’s heaven”). But the most important element of the energy is the enthusiasm of the scores of other guests who are all excited to be there and enjoying their Portillo’s. We want every guest that visits Portillo’s to leave with a memorable experience, a satiated appetite and a desire to return.



Mishawaka, IN
Theme: 30's Prohibition



Sterling Heights, MI
Theme: Garage Style



Orlando, FL
Theme: Diner/Entertainment



Glendale, AZ
Theme: Diner/Music



Springfield, IL
Theme: Diner - Route 66

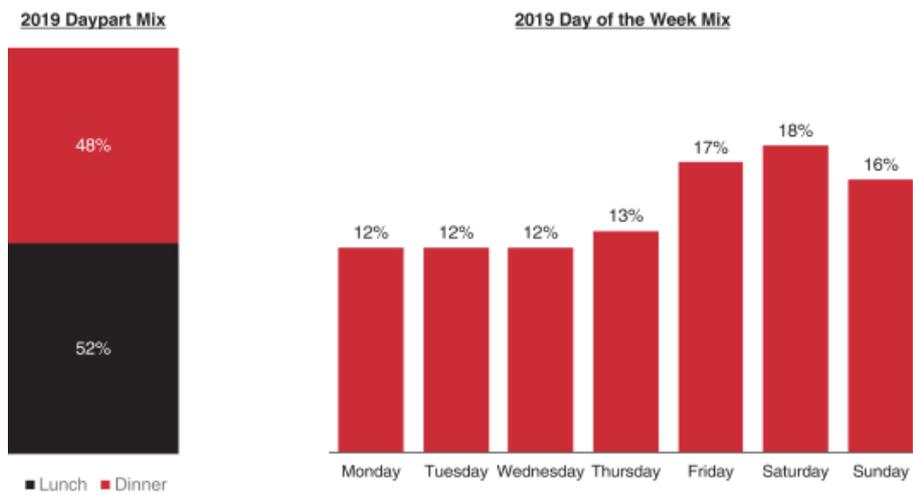


Villa Park, IL
Theme: '50s-'60s

An Incredible, Everyday Value Proposition. Portillo's redefined the fast casual and quick service value propositions by combining high-quality, craveable food served at incredible speed with multichannel convenience all inside a differentiated, energy-filled atmosphere. We do not discount and rarely engage in price promotion of our products. Instead, we provide an exceptional value to our guests every day. We believe the combination of our craveable food made with high-quality ingredients, served fast however you want it, in an engaging atmosphere by our passionate team members—all at an affordable per-person spend of approximately \$9.60—will continue to sustain and grow our volumes.



Proven Portability and Strong Unit Economics. Our concept is successful across diverse markets throughout the United States. As of June 27, 2021, we had 67 restaurants open across nine states including Illinois, Arizona, Indiana, Florida, Iowa, Minnesota, Wisconsin, Michigan and California in a variety of urban and suburban trade areas. Our broadly appealing menu and everyday value caters to a variety of customers and occasions as evidenced by our balanced daypart mix with nearly equal lunch and dinner revenues, as well as a balanced weekday sales mix.



As we increase our brand awareness and guest following outside Chicagoland, we believe our restaurants will be even better positioned to consistently grow volumes over time, as evidenced by the performance of our Chicagoland restaurants.

Our team members' focus on operational excellence enables our restaurants to drive exceptional throughput, creating substantial volumes and profitability. Restaurants in our Chicagoland market had AUVs of approximately \$9.6 million in 2019, \$8.7 million in 2020 and \$9.1 million in the twelve months ended June 27, 2021 and Restaurant-Level Adjusted EBITDA Margins of 28% in 2019, 31% in 2020 and 32% in the twelve months ended June 27, 2021. Restaurants outside of Chicagoland had AUVs of approximately \$6.3 million in 2019, \$5.6 million in 2020 and \$5.8 million in the twelve months ended June 27, 2021 and Restaurant-Level Adjusted EBITDA Margins of 22% in 2019, 25% in 2020 and 26% in the twelve months ended June 27, 2021. When considering new restaurant locations each year as part of our growth strategy, we target AUVs of approximately \$5.8 million and average Restaurant-Level Adjusted EBITDA Margins of approximately 22%, each in the third year of operation, with targeted cash-on-cash returns of approximately 25%, which we calculate by dividing our Restaurant-Level Adjusted EBITDA in the third year of operation by our initial investment costs (net of tenant allowances and excluding pre-opening expenses).

Visionary Leadership Team. Our iconic brand, values-driven culture and growth strategies are guided by our highly experienced senior management team, led by our Chief Executive Officer Michael Osanloo. Mr. Osanloo joined Portillo's in 2018 and has over 25 years of leadership experience, having previously served as CEO of P.F. Chang's and EVP of Kraft Foods. In addition to Mr. Osanloo, we have a talented team of industry veterans leading the organization including Chief Financial Officer, Michelle Hook, previously VP of Finance, FP&A and IR at Domino's; Chief Operating Officer, Derrick Pratt whose prior experience includes VP-level operations roles at McDonald's and Starbucks; Chief Human Resource Officer, Jill Waite, former executive at 24 Hour Fitness and Sephora; and Chief Development and Supply Chain Officer, Sherri Abruscato, a 43-year Portillo's veteran. Under Mr. Osanloo and the executive team's leadership, we have made significant investments in our brand, people, culture, systems, and infrastructure. We believe our experienced management team is a key driver of our success and positions us well for long-term growth.

Our Growth Strategies

We believe we are well-positioned to take advantage of significant growth opportunities due to our values-driven culture, highly trained and passionate team members, differentiated brand experience and

AUVs and Restaurant-Level Adjusted EBITDA Margins which are higher than other fast casual restaurant concepts according to data gathered by The NPD Group, which drive impressive unit economics. We plan to expand our business by executing on the following growth strategies:



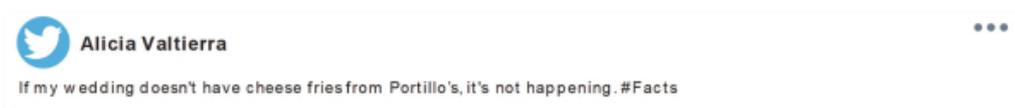
Expand Our Restaurant Base. We are in the early stages of our nationwide growth with 67 locations across nine states as of June 27, 2021. From November 2020 through the end of 2021, we are targeting opening seven new restaurants, including new locations in Illinois, Michigan, Florida and Arizona. Since 2015, we have opened new restaurants at a compound annual growth rate of approximately 9.3%. Over the long term, we plan to increase our number of restaurants by approximately 10% annually. Our near-term restaurant growth strategy is focused on leveraging our proven unit economic model primarily in adjacent and national markets outside Chicagoland with favorable macro-economic tailwinds where we already have a presence. We will also add select new restaurants in the Chicagoland market. We utilize a data driven approach with our real estate team to identify optimal sites and curate a high-quality restaurant pipeline. Given our leading volumes and the size of our restaurants, we typically do not compete for real estate with quick service or fast casual concepts and tend to be a tenant of choice by landlords due to the significant traffic going through our restaurants. People are key to our growth, which is why we have invested in creating professional development plans for our team members to ensure a steady flow of Portillo's trained managers who are ready to staff our new restaurants. Additionally, we have established multiple new restaurant opening teams, which allow us to support our future pace of openings while driving new restaurant opening success. Based on a whitespace analysis prepared for us by Forum Analytics in 2020, we believe we have a substantial runway for growth with a long-term opportunity to grow to more than 600 restaurants domestically over the next 25 years and are well-positioned for global growth in the future. While we are optimistic about our ability to expand our restaurant base, we will continue evaluating the impact of the COVID-19 pandemic, which may continue to disrupt our business and affect our ability to execute our expansion strategy. For more information, see "Risk Factors—Risks Related to Our Business, Industry and Growth Strategies—Our financial condition and results of operations have been and may continue to be adversely affected by the COVID-19 pandemic or future pandemics or disease outbreaks."



Increase Our Same-Restaurant Sales. We aim to continue delivering an outstanding value proposition to our guests and enhance our experience to grow our volumes. We believe the following initiatives will drive same-restaurant sales growth.

- **Deliver a Consistently Outstanding Guest Experience.** In our business, the best way to drive a return visit is to provide our guests a consistently fantastic experience when they visit our restaurants or eat our food. Therefore, our relentless focus on operational excellence enables us to drive significant throughput in our restaurants, provide a one-of-a-kind experience and a compelling everyday value proposition to our guests and thereby drive increased customer trial and frequency.

- *Purposeful Menu Enhancements.* We are maniacal about quality and crave-ability when it comes to our menu. We are constantly studying ways to further enhance our existing offerings while thoughtfully adding new high-quality items. We are also disciplined in maintaining the number of options on our menu. When a new item earns its way onto our menu, we often replace an existing item to maintain our operational efficiency. We believe this purposeful enhancement drives increased guest frequency and reinforces our everyday value proposition that is key to our success.
- *Increase Brand Awareness Through Non-Traditional and Social Marketing.* Portillo's does not rely on mass media advertising or promotion to drive traffic to our restaurants. We actively engage our fans and guests through a dynamic social media effort that includes email, Twitter, Instagram, TikTok, Facebook, and other platforms. Our social media activity generates significant engagement with our guests and provides our most passionate fans an opportunity to share their enthusiasm with their followers. Portillo's has dedicated Field Marketing Managers for each market that supplement our engaging social media efforts. These managers are involved in local restaurant marketing and assist in the preparation of new openings including coordinating "sneak peek" visits and organizing visits from "The Beef Bus," our food truck, to create excitement and awareness, and donating meals to community members including first responders and coordinating events with local media. After opening, our operations and field marketing teams continue to support brand awareness and drive sales by developing local partnerships with sports teams, such as our vending partnership with the Tampa Bay Lightning and hosting local community events and fundraisers in our restaurants.
- *Enhance Our Off-Premises Guest Experience.* We have always been committed to providing our guests with our delicious food however and whenever they want it. We are currently testing a third drive-thru lane for guests who have digitally pre-paid for their orders to enhance speed of service and further increase our capacity during peak times. We are also developing geo-fencing capabilities to support our curbside pick-up operations and provide additional convenience for our guests who place orders through our mobile app and website. Additionally, we will continue to invest in targeted digital advertising to drive demand and direct orders through our app and website to further drive sales across all channels.



Leverage Our Infrastructure to Drive Profitability. Our attractive business model generates strong operating margins and cash flow. We constantly focus on restaurant-level operations while ensuring that we do not sacrifice the quality and experience for which we are known. Our AUVs, which are higher than other fast casual restaurant concepts according to data gathered by The NPD Group, and strong operational focus give us the ability to manage variable costs and leverage our fixed costs. We believe we will continue to grow revenue and system-wide profitability by executing our growth strategy and leveraging the experience of existing Portillo's general managers to lead our new restaurants to drive successful and efficient new openings. Our investments to enhance our multichannel capabilities and drive a frictionless guest order experience are also expected to further leverage our fixed costs. We have made significant investments at the corporate level, which we believe we will leverage in the future, exclusive of the additional costs of operating as a public company.

Risks Associated With Our Business

Investing in our Class A common stock involves a number of risks. These risks represent challenges to the successful implementation of our strategy and the growth of our business. Some of these risks are:

- continued adverse effects of the COVID-19 pandemic or future pandemics or disease outbreaks on our financial condition and results of operations;
- our vulnerability to changes in consumer preferences and economic conditions;

- increases in the cost of our frequently used food items or shortages or disruptions in the supply or delivery of frequently used food items;
- our inability to open new restaurants in new and existing markets;
- the number of visitors to areas where our restaurants are located may decline;
- our inability to generate same-restaurant sales growth;
- our marketing programs and limited-time or seasonal menu offerings may fail to generate profits;
- incidents involving food-borne illness and food safety, including food tampering or contamination, which we may be unable to prevent;
- our inability to compete successfully with other lunch and dinner restaurants;
- our vulnerability to adverse geographic, demographic, unemployment, economic, regulatory and weather conditions;
- damage to our reputation and negative publicity, even if unwarranted;
- our vulnerability to changes in the digital and delivery business;
- our inability or failure to recognize, respond to and effectively manage the accelerated impact of social media;
- our reliance on a small number of suppliers and distributors for a substantial amount of our food and beverages;
- our failure to effectively address environmental, social and other sustainability matters affecting our industry, or to set and meet relevant sustainability goals;
- our level of indebtedness and our duty to comply with covenants under our Credit Facilities;
- the interests of Berkshire may differ from those of our public stockholders;
- our failure to adequately protect our network security;
- compliance with federal and local environmental, labor, employment and food safety laws and regulations; and
- our inability to effectively manage our internal controls over financial reporting.

For a discussion of these and other risks you should consider before making an investment in our Class A common stock, see the section entitled “Risk Factors.”

ORGANIZATIONAL STRUCTURE

We currently conduct our business through Portillo’s OpCo and its subsidiaries. Following this offering, Portillo’s Inc. will be a holding company and its sole material asset will be an ownership interest in Portillo’s OpCo.

Prior to the consummation of the Reorganization Transactions (as defined herein), the amended and restated limited liability company agreement of Portillo’s OpCo will be further amended and restated to, among other things, convert all outstanding equity interests (except for those redeemable preferred LLC units which will be redeemed in connection with this offering) into one class of non-voting common units (the “LLC Units”).

In connection with this offering, we intend to enter into the following series of transactions to implement an internal reorganization, which we collectively refer to as the “Reorganization Transactions.”

- Our amended and restated certificate of incorporation that will be in effect upon the completion of this offering will authorize the issuance of two classes of common stock: Class A common stock and Class B common stock (collectively, our “common stock”). Each share of common stock will entitle its holder to one vote per share on all matters submitted to a vote of our stockholders. The Class B common stock is not entitled to economic interests in Portillo’s Inc. See “Description of Capital Stock.”

- Prior to the completion of this offering, we will acquire, directly and indirectly, LLC Units through the mergers (the “Mergers”), in which certain Blocker Companies will each merge with a merger subsidiary created by us (and survive such merger as a wholly owned subsidiary of Portillo’s Inc.), after which each Blocker Company will immediately merge into Portillo’s Inc. The shareholders of the Blocker Companies (the “Reorganization Parties”), including affiliates of Berkshire, will collectively hold _____ shares of Class A common stock of Portillo’s Inc. after the Mergers. The Reorganization Parties will collectively receive a number of shares of our Class A common stock in the Mergers equal to the number of LLC Units held by the Blocker Companies prior to the Mergers, and will not directly hold interests in Portillo’s OpCo.
- Each Continuing Pre-IPO LLC Member will be issued a number of shares of our Class B common stock in an amount equal to the number of LLC Units held by such Continuing Pre-IPO LLC Member.
- Portillo’s OpCo will enter into the Amended LLC Agreement. Under the Amended LLC Agreement, holders of LLC Units (other than us and our wholly owned subsidiaries), including the Continuing Pre-IPO LLC Members, will have the right, from and after the completion of this offering (subject to the terms of the Amended LLC Agreement), to require Portillo’s OpCo to redeem all or a portion of their LLC Units for, at our election, newly issued shares of Class A common stock on a one-for-one basis or a cash payment from the proceeds of a sale of shares of Class A common stock in accordance with the terms of the Amended LLC Agreement. Additionally, in the event of a redemption request from a holder of LLC Units, we may, at our option, effect a direct exchange of cash or Class A common stock for LLC Units in lieu of such a redemption. Shares of Class B common stock will be cancelled on a one-for-one basis if we, following a redemption request from a holder of LLC Units, redeem or exchange LLC Units of such holder pursuant to the terms of the Amended LLC Agreement. See “Certain Relationships and Related Party Transactions—Amended Portillo’s OpCo Agreement.” Except for transfers to us or to certain permitted transferees pursuant to the Amended LLC Agreement, the LLC Units and corresponding shares of Class B common stock may not be sold, transferred or otherwise disposed of.
- We will use all of the net proceeds from this offering (including net proceeds received if the underwriters exercise their option to purchase additional shares of Class A common stock in full) to acquire newly issued LLC Units from Portillo’s OpCo at a purchase price per LLC Unit equal to the initial public offering price of Class A common stock, after deducting the underwriting discounts and commissions, collectively representing _____ % of Portillo’s OpCo’s outstanding LLC Units (or _____ %, if the underwriters exercise their option to purchase additional shares of Class A common stock in full).
- We will enter into a Tax Receivable Agreement that will obligate us to make payments to the TRA Parties in the aggregate generally equal to 85% of the applicable cash savings that we actually realize, or in certain circumstances are deemed to realize, as a result of (i) our allocable share of tax basis, including any applicable tax basis adjustments, acquired in this offering, (ii) certain favorable tax attributes we will acquire from the Blocker Companies in the Mergers (including net operating losses and the Blocker Companies’ allocable share of existing tax basis), (iii) increases in our allocable share of existing tax basis and tax basis adjustments resulting from future redemptions or exchanges of LLC Units by Continuing Pre-IPO LLC Members for cash or Class A common stock and (iv) certain payments made under the Tax Receivable Agreement. We will retain the benefit of the remaining 15% of these tax savings.
- Assuming no material changes in relevant tax law and that we earn sufficient taxable income to realize all tax benefits that are subject to the Tax Receivable Agreement, we expect future payments under the Tax Receivable Agreement relating to the purchase by us of LLC Units in connection with this offering, and the Mergers to be approximately \$ _____ (or approximately \$ _____ if the underwriters exercise their option to purchase additional shares, the proceeds of which will be used by Portillo’s Inc. to acquire additional LLC Units from Portillo’s OpCo) and, based on certain assumptions, to range

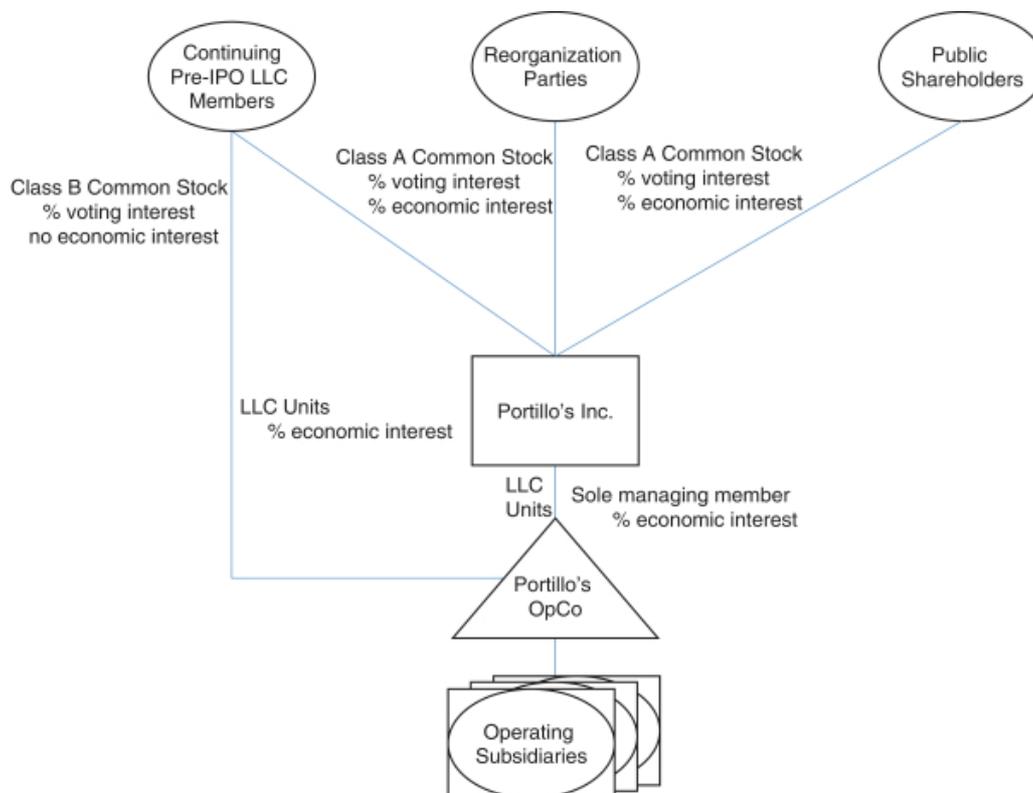
over the next 15 years from approximately \$ _____ to \$ _____ per year (or range from approximately \$ _____ to \$ _____ per year if the underwriters exercise their option to purchase additional shares) and decline thereafter. These estimates are based on an initial public offering price of \$ _____ per share of Class A common stock, which is the midpoint of the estimated public offering price range set forth on the cover page of this prospectus. Future payments in respect of subsequent redemptions or exchanges would be in addition to these amounts and are expected to be substantial.

The actual amounts we will be required to pay may materially differ from these hypothetical amounts. We are a holding company with no operations of our own and our ability to make payments under the Tax Receivable Agreement will depend on the ability of Portillo's OpCo to make distributions to us. Deterioration in the financial condition, earnings, or cash flow of Portillo's OpCo and its subsidiaries for any reason could limit or impair their ability to pay such distributions. To the extent that we are unable to make payments under the Tax Receivable Agreement for any reason, such payments generally will be deferred and will accrue interest until paid. Nonpayment for a specified period, however, may constitute a breach of a material obligation under the Tax Receivable Agreement (unless, generally, such nonpayment is due to a lack of sufficient funds) and therefore accelerate payments due under the Tax Receivable Agreement, which could negatively impact our results of operations and could also affect our liquidity in periods in which such payments are made. See "Organizational Structure—Holding Company Structure and the Tax Receivable Agreement."

- We will cause Portillo's OpCo to use the proceeds from the issuance of LLC Units to (i) pay fees and expenses of approximately \$ _____ in connection with this offering and (ii) as otherwise set forth in "Use of Proceeds."
- We will issue _____ shares of Class A common stock pursuant to this offering.

In connection with the Reorganization Transactions, Portillo's Inc. will become the sole managing member of Portillo's OpCo. Because we will manage and operate the business and control the strategic decisions and day-to-day operations of Portillo's OpCo and because we will also have a substantial financial interest in Portillo's OpCo, we will consolidate the financial results of Portillo's OpCo, and a portion of our net income will be allocated to the noncontrolling interest to reflect the entitlement of the Continuing Pre-IPO LLC Members to a portion of Portillo's OpCo's net income. In addition, because Portillo's OpCo will be under the common control of the Pre-IPO LLC Members before and after the Reorganization Transactions (both directly and indirectly through their ownership of the Company), we will account for the Reorganization Transactions as a reorganization of entities under common control and will initially measure the interests of the Continuing Pre-IPO LLC Members in the assets and liabilities of Portillo's OpCo at their carrying amounts as of the date of the completion of the consummation of the Reorganization Transactions.

The following diagram depicts our organizational structure immediately following the consummation of the Reorganization Transactions, the completion of this offering and the application of the net proceeds from this offering, based on an assumed initial public offering price of \$ per share of Class A common stock (the midpoint of the price range set forth on the cover page of this prospectus) and assuming the underwriters do not exercise their option to purchase additional shares of Class A common stock. This chart is provided for illustrative purposes only and does not purport to represent all legal entities within our organizational structure.



Our corporate structure following the completion of this offering, as described above, is commonly referred to as an umbrella partnership-C-corporation (or “Up-C”) structure, which is used by partnerships and limited liability companies when they undertake an initial public offering of their business. Our Up-C structure will allow the Continuing Pre-IPO LLC Members to continue to realize tax benefits associated with owning interests in an entity that is treated as a partnership, or “pass-through” entity, for U.S. federal and applicable state and local income tax purposes following this offering. One of these benefits is that future taxable income of Portillo’s OpCo that is allocated to such owners will be taxed on a flow-through basis and, therefore, will generally not be subject to U.S. federal and applicable state and local income taxes at the entity level. Additionally, because the LLC Units that the Continuing Pre-IPO LLC Members will hold are redeemable or exchangeable for, at our election, either newly issued shares of Class A common stock on a one-for-one basis or a cash payment from the proceeds of a sale of shares of Class A common stock in accordance with the terms of the Amended LLC Agreement, our “Up-C” structure also provides the Continuing Pre-IPO LLC Members with potential liquidity that holders of nonpublicly traded limited liability companies are not typically afforded. See “Organizational Structure” and “Description of Capital Stock.”

We will also hold LLC Units, and therefore receive the same benefits as the Continuing Pre-IPO LLC Members with respect to our ownership in an entity treated as a partnership, or “pass-through” entity, for U.S. federal and applicable state and local income tax purposes. The acquisition of LLC Units pursuant to this offering, the Mergers and future taxable redemptions or exchanges by the Continuing Pre-IPO LLC Members for shares of our Class A common stock or cash are expected to result in favorable tax attributes that will be allocated to us. These tax attributes would not be available to us in the absence of those transactions and are expected to reduce the amount of tax that we would otherwise be required to pay in the future. In connection with the Reorganization Transactions, we will enter into a Tax Receivable Agreement that will obligate us to make payments to the TRA Parties in the aggregate generally equal to 85% of the applicable cash savings that we actually realize, or in certain circumstances are deemed to realize, as a result of these tax attributes and tax attributes resulting from certain payments made under the Tax Receivable Agreement. We will retain the benefit of the remaining 15% of these tax savings. See “Organizational Structure—Holding Company Structure and the Tax Receivable Agreement.”

Under the Amended LLC Agreement, we will receive a pro rata share of any distributions, including tax distributions, made by Portillo’s OpCo to its members. Such tax distributions will be calculated based upon an assumed tax rate, which, under certain circumstances, may cause Portillo’s OpCo to make tax distributions that, in the aggregate, exceed the amount of taxes that Portillo’s OpCo would have paid if it were a similarly situated corporate taxpayer. Funds used by Portillo’s OpCo to satisfy its tax distribution obligations will not be available for reinvestment in our business. See “Risk Factors—Risks Related to Our Organizational Structure.”

Upon completion of the transactions described above, this offering and the application of the Company’s net proceeds from this offering:

- Portillo’s Inc. will be appointed as the managing member of Portillo’s OpCo and will hold _____ LLC Units, constituting _____ % of the outstanding economic interests in Portillo’s OpCo (or _____ LLC Units, constituting _____ % of the outstanding economic interests in Portillo’s OpCo if the underwriters exercise their option to purchase additional shares of Class A common stock in full).
- The Pre-IPO LLC Members will collectively hold (i) (x) _____ shares of Class A common stock and (y) _____ LLC Units, which together directly and indirectly represent approximately _____ % of the economic interest in Portillo’s OpCo (or _____ % if the underwriters exercise their option to purchase additional shares of Class A common stock in full) and (ii) through their collective ownership of _____ shares of Class A and _____ shares of Class B common stock, approximately _____ % of the combined voting power of our common stock (or _____ % if the underwriters exercise their option to purchase additional shares of Class A common stock in full).
- Investors in this offering will collectively hold (i) _____ shares of our Class A common stock, representing approximately _____ % of the combined voting power of our common stock (or _____ shares and _____ %, respectively, if the underwriters exercise their option to purchase additional shares of Class A common stock in full) and (ii) through our direct and indirect ownership of LLC Units, indirectly will hold approximately _____ % of the economic interest in Portillo’s OpCo (or _____ % if the underwriters exercise their option to purchase additional shares of Class A common stock in full).

See “Organizational Structure,” “Certain Relationships and Related Party Transactions” and “Description of Capital Stock” for more information on the rights associated with our common stock and the LLC Units.

Our Sponsor

Berkshire Partners has invested more than \$16 billion in over 135 private equity investments and as of December 31, 2020, had \$12.7 billion in assets under management within Berkshire Private Equity. Berkshire's current private equity portfolio comprises investments across five sectors — business services & technology, consumer, communications, healthcare, and industrials. The Berkshire Partners team includes more than 65 investment professionals across North America.

In August 2014, we entered into a merger transaction through which we were acquired by funds affiliated with or managed by Berkshire (the "Berkshire Acquisition").

Following the closing of this offering, funds managed by Berkshire are expected to own approximately % of our outstanding Class A common stock, representing approximately % of the combined voting power of our common stock, or %, representing approximately % of the combined voting power of our common stock, if the underwriters' option to purchase additional shares is fully exercised, approximately % of our outstanding Class B common stock, representing approximately % of the combined voting power of our common stock, or %, representing approximately % of the combined voting power of our common stock, if the underwriters' option to purchase additional shares is fully exercised, and approximately % of the LLC Units, or %, if the underwriters' option to purchase additional shares is fully exercised. As a result, Berkshire will be able to exercise significant voting influence over fundamental and significant corporate matters and transactions. See "Risk Factors—Risks Relating to This Offering and Ownership of Our Common Stock" and "Principal Stockholders."

Corporate Information

Portillo's Inc. was incorporated in Delaware on June 8, 2021. Our principal executive offices are located at 2001 Spring Road, Suite 400, Oak Brook, IL 60523, and our telephone number is (630) 954-3773. Our corporate website address is www.portillos.com. Our corporate website and the information contained on, or that can be accessed through, the website is not deemed to be incorporated by reference in, and is not considered part of, this prospectus. You should not rely on any such information in making your decision whether to purchase our Class A common stock.

Implications of Being an Emerging Growth Company

As a company with less than \$1.07 billion in gross revenue during our last fiscal year, we qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act (the "JOBS Act"). An emerging growth company may take advantage of specified reduced reporting and other regulatory requirements for up to five years that are otherwise applicable generally to public companies. These provisions include, among other matters:

- requirement to present only two years of audited financial statements and only two years of related Management's Discussion and Analysis of Financial Condition and Results of Operations;
- exemption from the auditor attestation requirement on the effectiveness of our system of internal control over financial reporting pursuant to the Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act");
- exemption from the adoption of new or revised financial accounting standards until they would apply to private companies;
- exemption from compliance with any new requirements adopted by the Public Company Accounting Oversight Board requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer;

- an exemption from the requirement to seek non-binding advisory votes on executive compensation and golden parachute arrangements; and
- reduced disclosure about executive compensation arrangements.

We will remain an emerging growth company until the last day of the fiscal year following the fifth anniversary of the completion of our initial public offering unless, prior to that time, we have more than \$1.07 billion in annual gross revenue, have a market value for our common stock held by non-affiliates of more than \$700 million as of the last day of our second fiscal quarter of the fiscal year and a determination is made that we are deemed to be a “large accelerated filer,” as defined in Rule 12b-2 promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or issue more than \$1.0 billion of non-convertible debt over a three-year period, whether or not issued in a registered offering. We have availed ourselves of the reduced reporting obligations with respect to audited financial statements and related Management’s Discussion and Analysis of Financial Condition and Results of Operations and executive compensation disclosure in this prospectus and expect to continue to avail ourselves of the reduced reporting obligations available to emerging growth companies in future filings.

In addition, Section 107 of the JOBS Act also provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act of 1933, as amended (the “Securities Act”) for complying with new or revised accounting standards. An emerging growth company can, therefore, delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. As an emerging growth company, we elected to take advantage of the extended transition period provided in Section 13(a) of the Exchange Act, for complying with new or revised accounting standards.

As a result of our decision to avail ourselves of certain provisions of the JOBS Act, the information that we provide may be different than what you may receive from other public companies in which you hold an equity interest. In addition, it is possible that some investors will find our Class A common stock less attractive as a result of our elections, which may cause a less active trading market for our Class A common stock and more volatility in our stock price.

THE OFFERING

Issuer	Portillo's Inc.
Class A common stock offered by us	shares of Class A common stock (shares if the underwriters exercise their option to purchase additional shares in full).
Option to purchase additional shares of Class A common stock	The underwriters have an option to purchase an additional shares of Class A common stock from us. The underwriters can exercise this option at any time within 30 days from the date of this prospectus.
Class A common stock to be outstanding after this offering	shares of Class A common stock, representing approximately % of the combined voting power of our common stock (shares, representing approximately % of the combined voting power of our common stock if the underwriters exercise their option to purchase additional shares of Class A common stock in full).
Class B common stock to be outstanding after this offering	shares of Class B common stock, representing approximately % of the combined voting power of our common stock (shares, representing approximately % of the combined voting power of our common stock if the underwriters exercise their option to purchase additional shares of Class A common stock in full).
LLC Units to be held by us after this offering	LLC Units, representing a % economic interest in Portillo's OpCo (or LLC Units, representing a % economic interest in Portillo's OpCo, if the underwriters exercise their option to purchase additional shares of Class A common stock in full). The LLC Units are not entitled to voting interests in Portillo's OpCo.
Total LLC Units to be outstanding after this offering	LLC Units (or LLC Units if the underwriters exercise their option to purchase additional shares of Class A common stock in full).
Ratio of shares of Class A Common stock to LLC Units	Our amended and restated certificate of incorporation will require that Portillo's OpCo at all times maintain a one-to-one ratio between the number of shares of Class A common stock issued by us and the number of LLC Units owned by us.

Ratio of shares of Class B Common stock to LLC Units	Our amended and restated certificate of incorporation will require that Portillo's OpCo at all times maintain a one-to-one ratio between the number of shares of Class B common stock issued by us and the number of LLC Units owned by holders of LLC Units (other than us and our wholly owned subsidiaries).
Permitted holders of shares of Class B common stock	Except for transfers in connection with the transfer of LLC Units, shares of Class B common stock may not be transferred.
Redemption rights of holders of LLC Units	Under the Amended LLC Agreement, holders of LLC Units (other than us and our wholly owned subsidiaries), including the Continuing Pre-IPO LLC Members, will have the right, from and after the completion of this offering (subject to the terms of the Amended LLC Agreement), to require Portillo's OpCo to redeem all or a portion of their LLC Units for, at our election, newly issued shares of Class A common stock on a one-for-one basis or a cash payment from the proceeds of a sale of shares of Class A common stock in accordance with the terms of the Amended LLC Agreement. Additionally, in the event of a redemption request from a holder of LLC Units, we may, at our option, effect a direct exchange of cash or Class A common stock for LLC Units in lieu of such a redemption. Shares of Class B common stock will be cancelled on a one-for-one basis if we, following a redemption request from a holder of LLC Units, redeem or exchange LLC Units of such holder pursuant to the terms of the Amended LLC Agreement. See "Certain Relationships and Related Party Transactions—Amended Portillo's OpCo Agreement."
Use of proceeds	<p>We estimate that the net proceeds from the sale of our Class A common stock in this offering, after deducting the estimated underwriting discount and estimated offering expenses payable by us, will be approximately \$ million (\$ million if the underwriters exercise their option to purchase additional shares in full) based on an assumed initial public offering price of \$ per share (the midpoint of the price range set forth on the cover of this prospectus).</p> <p>We intend to use the net proceeds from this offering to purchase newly issued LLC Units from Portillo's OpCo. The foregoing purchases of LLC Units will be at a price per unit equal to the public offering price per share of Class A common stock in this offering, less the underwriting discount. Portillo's OpCo currently intends to use the proceeds it receives from this offering to first repay the redeemable preferred LLC units in full and then, if any proceeds remain, repay a portion of the borrowings outstanding under the Credit Facilities.</p>

Tax Receivable Agreement	Upon the completion of this offering, we will be a party to the Tax Receivable Agreement with the TRA Parties. Under the Tax Receivable Agreement, we generally will be required to pay to the TRA Parties 85% of the amount of cash savings, if any, in U.S. federal, state and local income tax that we actually realize (or in some circumstances are deemed to realize) as a result of (i) our allocable share of tax basis, including any applicable tax basis adjustments, acquired in this offering, (ii) certain favorable tax attributes we will acquire from the Blocker Companies in the Mergers (including net operating losses and the Blocker Companies' allocable share of existing tax basis), (iii) increases in our allocable share of existing tax basis and tax basis adjustments resulting from future redemptions or exchanges of LLC Units by Continuing Pre-IPO LLC Members for cash or Class A common stock and (iv) certain payments made under the Tax Receivable Agreement. We will retain the benefit of the remaining 15% of these tax savings. See "Organizational Structure—Holding Company Structure and the Tax Receivable Agreement."
Dividend policy	We do not anticipate paying any dividends on our Class A common stock for the foreseeable future; however, we may change this policy in the future. See "Dividend Policy."
Voting Rights	<p>Each share of our Class A common stock and Class B common stock entitles its holder to one vote on all matters to be voted on by stockholders generally.</p> <p>Holders of outstanding shares of our Class A common stock and Class B common stock will vote as a single class on all matters on which stockholders are entitled to vote generally, except as otherwise required by law. See "Description of Capital Stock—Common Stock."</p>
Risk Factors	Investing in our Class A common stock involves a high degree of risk. See the "Risk Factors" section of this prospectus beginning on page 29 for a discussion of factors you should carefully consider before investing in our Class A common stock.
Listing	We intend to apply to have our Class A common stock listed on the Nasdaq under the symbol "PTLO."
	<p>Except as otherwise indicated, the number of shares of our Class A common stock outstanding after this offering:</p> <ul style="list-style-type: none">• excludes shares of Class A common stock reserved for issuance upon redemption or exchange of LLC Units that will be held by the Continuing Pre-IPO LLC Members on a one-for-one basis;• gives effect to the conversion of vested and unvested incentive units awarded under our 2014 Equity Incentive Plan (the "2014 Plan") into Class A common stock, which will occur upon the consummation of this offering;

- excludes an aggregate of _____ shares of our Class A common stock that will be available for future equity awards under a new equity incentive plan we will be establishing (the “2021 Plan”) that we intend to adopt at the time of this offering;
- excludes shares of our common stock issuable upon the exercise of stock options that we intend to grant under the 2021 Plan at the time of this offering with the initial public offering price as the exercise price; and
- assumes no exercise of the underwriters’ option to purchase additional shares of Class A common stock.

Unless otherwise indicated, all information in this prospectus:

- assumes an initial public offering price of \$ _____ per share (the midpoint of the price range set forth on the cover of this prospectus);
- assumes the underwriters’ option to purchase additional shares of Class A common stock has not been exercised; and
- assumes the completion of the Reorganization Transactions described under “Organization Structure—The Reorganization Transactions.”

Unless otherwise indicated or the context otherwise requires, references in this prospectus to the exercise of the underwriters’ option to purchase additional shares of Class A common stock give effect to the use of the net proceeds therefrom.

SUMMARY HISTORICAL AND PRO FORMA CONSOLIDATED FINANCIAL AND OTHER DATA

The following tables present the summary historical consolidated financial and other data for PHD Group Holdings LLC and its subsidiaries and the summary pro forma consolidated financial and other data for Portillo's Inc. PHD Group Holdings LLC is the predecessor of the issuer, Portillo's Inc., for financial reporting purposes. The statements of operations data for the years ended December 27, 2020 and December 29, 2019 and balance sheet data as of December 27, 2020 has been derived from PHD Group Holdings LLC's audited consolidated financial statements and the related notes thereto included elsewhere in this prospectus. The information for the year ended December 31, 2018 has been derived from PHD Group Holdings LLC's audited consolidated financial statements and the related notes thereto not included elsewhere in this prospectus. The summary historical consolidated financial information as of June 27, 2021 and for the two quarters ended June 27, 2021 and June 28, 2020, have been derived from the unaudited condensed consolidated financial statements and the related notes thereto included elsewhere in this prospectus. The unaudited condensed consolidated financial statements have been prepared on a basis consistent with our audited financial statements and, in our opinion, contain all adjustments, consisting of only normal recurring adjustments, necessary for fair presentation of such financial data. Results for any interim period are not necessarily indicative of the results that may be expected for the full fiscal year or any future period.

Portillo's Inc. was formed as a Delaware corporation on June 8, 2021 and has not, to date, conducted any activities other than those incident to its formation, those in preparation for the Reorganization Transactions and preparation of this prospectus and the registration statement of which this prospectus forms a part. The summary historical financial and other data of Portillo's Inc. has not been presented because Portillo's Inc. is a newly incorporated entity, has had no business transactions or activities to date, and had no assets or liabilities during the periods presented. Immediately following this offering, Portillo's Inc. will be a holding company and its sole material asset will be a controlling equity interest in Portillo's OpCo. Portillo's Inc. will, through Portillo's OpCo, operate and conduct our business. Following this offering, Portillo's OpCo will be considered our predecessor for accounting purposes and its consolidated financial statements will be our historical financial statements.

The summary unaudited pro forma combined and consolidated financial data of Portillo's Inc. presented below have been derived from our unaudited pro forma combined and consolidated financial statements included elsewhere in this prospectus. The summary unaudited pro forma combined and consolidated statement of operations data for the year ended December 27, 2020 and for the two quarters ended June 27, 2021 give effect to (i) the Reorganization Transactions and (ii) this offering, each as if they had occurred on December 30, 2019. The summary unaudited pro forma consolidated balance sheet data as of June 27, 2021 gives effect to (i) the Reorganization Transactions and (ii) this offering, each as if they had occurred on June 27, 2021. The summary unaudited combined and consolidated pro forma financial data is presented for illustrative purposes only and is not necessarily indicative of the results of operations or financial position that would have occurred if the relevant transactions had been consummated on the dates indicated, nor is it indicative of future operating results or financial position. See "Unaudited Pro Forma Consolidated Financial Information" and "Organizational Structure."

Our historical results are not necessarily indicative of future results of operations. You should read the information set forth below together with "Organizational Structure," "Unaudited Pro Forma Consolidated Financial Information," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Capitalization" and the audited consolidated financial statements and the related notes thereto included elsewhere in this prospectus.

	Portillo's OpCo		Two Quarters		Portillo's Inc.	Portillo's Inc.
	Fiscal Year Ended		Ended		Pro Forma Fiscal Year Ended	Pro Forma Two Quarters Ended
	December 27, 2020	December 29, 2019	June 27, 2021	June 28, 2020	December 27, 2020	June 27, 2021
(in thousands)						
Consolidated Statement of Operations and Comprehensive Loss:						
Revenues:						
Revenues	\$ 455,471	\$ 479,417	\$ 258,041	\$ 217,260	\$	\$
Cost and Expenses:						
Cost of goods sold, excluding depreciation and amortization	142,446	149,063	77,180	69,523		
Labor	115,991	134,206	65,512	58,080		
Occupancy	24,920	24,538	13,890	12,349		
Other operating expenses	50,169	54,540	28,633	24,457		
Total operating expenses	333,526	362,347	185,215	164,499		
General and administrative expenses	39,854	43,118	24,005	18,212		
Pre-opening expenses	2,209	2,834	1,960	294		
Depreciation and amortization	24,584	24,364	12,709	12,266		
Net income attributable to equity method investment	(459)	(766)	(359)	(232)		
Other income, net	(1,537)	(1,402)	(803)	(578)		
Operating income	57,294	48,922	35,314	22,799		
Interest expense	45,031	43,367	21,441	23,532		
Net income (loss)	\$ 12,263	\$ 5,555	\$ 13,873	\$ (733)	\$	\$
Earnings (loss) per common unit data:						
Weighted average number of common units outstanding-basic	378,633,829	378,535,959	378,689,468	378,609,104		
Weighted average number of common units outstanding-diluted	378,633,829	378,535,959	381,402,258	378,609,104		
Basic earnings (loss) per common unit	\$ (0.02)	\$ (0.03)	\$ 0.01	\$ (0.03)	\$	\$
Diluted earnings (loss) per common unit	\$ (0.02)	\$ (0.03)	\$ 0.01	\$ (0.03)	\$	\$

	Portillo's OpCo			
	Fiscal Year Ended		Two Quarters Ended	
	December 27, 2020	December 29, 2019	June 27, 2021	June 28, 2020
(in thousands)				
Consolidated Statement of Cash Flows Data:				
Net cash provided by operating activities	\$ 58,271	\$ 43,325	\$ 32,817	\$ 21,298
Net cash used in investing activities	(21,420)	(22,012)	(18,545)	(3,515)
Net cash used in financing activities	(18,048)	(11,721)	(1,312)	(16,411)
Net increase in cash and cash equivalents and restricted cash	\$ 18,803	\$ 9,592	\$ 12,960	\$ 1,372
	Portillo's OpCo			
	Fiscal Year Ended		Two Quarters Ended	
	December 27, 2020	December 29, 2019	June 27, 2021	June 28, 2020
Other Data:				
Total Restaurants (at end of period)(a)	64	62	67	62
Change in same-restaurant sales(a)	(8.3)%	3.2%	13.0%	(10.5)%
AUV (in millions)(a)	\$ 7.7	\$ 8.7	\$ 7.9	\$ 8.1
Adjusted EBITDA (in thousands)(b)	\$ 87,804	\$ 79,495	\$51,073	\$37,863
Adjusted EBITDA Margin(b)	19.3%	16.6%	19.8%	17.4%
Restaurant-Level Adjusted EBITDA (in thousands)(c)	\$ 121,945	\$ 117,070	\$72,826	\$52,761
Restaurant-Level Adjusted EBITDA Margin(c)	26.8%	24.4%	28.2%	24.3%
	Portillo's OpCo		Portillo's Inc. Pro Forma	
	As of December 27, 2020	As of June 27, 2021	As of June 27, 2021	
	Actual (unaudited)	Actual		
(in thousands)				
Consolidated Balance Sheet Data:				
Cash and cash equivalents	\$ 41,211	\$ 54,157	\$	
Total assets	910,222	924,033		
Total debt(d)	469,704	469,962		
Total liabilities	568,942	568,257		
Working capital(e)	(11,726)	332		
Total common equity	140,709	144,113		
(a)	Includes a restaurant that is owned by C&O Chicago, L.L.C. ("C&O") of which Portillo's owns 50% of the equity, as described in Note 6 – Equity Method Investment in the notes to the audited consolidated financial statements. In the table above, AUVs for the Two Quarters Ended June 27, 2021 and June 28, 2020 represent AUVs for the Twelve Months Ended June 27, 2021 and June 28, 2020, respectively.			
(b)	Adjusted EBITDA and Adjusted EBITDA Margin as presented in this prospectus are supplemental measures of our performance that are neither required by, nor presented in accordance with GAAP. Adjusted EBITDA and Adjusted EBITDA Margin are not measurements of our financial performance under GAAP and should not be considered as an alternative to net income (loss), operating income, or any other performance measures derived in accordance with GAAP, or as alternatives to cash flow from operating activities as a measure of our liquidity. Adjusted EBITDA represents net income (loss) before depreciation and amortization, interest expense and income taxes, adjusted for the impact of certain non-cash and other items that we do not consider in our evaluation of ongoing core operating performance as identified in the reconciliation of net income (loss), the most directly comparable measure under GAAP, to Adjusted EBITDA. Adjusted EBITDA Margin represents Adjusted EBITDA as a percentage of total revenues.			

Management uses Adjusted EBITDA and Adjusted EBITDA Margin (i) to evaluate our operating results and the effectiveness of our business strategies, (ii) internally as benchmarks to compare our performance to that of our competitors and (iii) as factors in evaluating management's performance when determining incentive compensation. The use of Adjusted EBITDA and Adjusted EBITDA Margin as performance measures permit a comparative assessment of our operating performance relative to our performance based on our GAAP results, while isolating the effects of some items that are either non-recurring in nature or vary from period to period without any correlation to our ongoing core operating performance.

Adjusted EBITDA and Adjusted EBITDA Margin or similar non-GAAP measures are frequently used by securities analysts, investors and other interested parties as supplemental measures of financial performance within our industry. Management believes that Adjusted EBITDA and Adjusted EBITDA Margin provide investors with additional transparency of our operations.

Our presentation of Adjusted EBITDA and Adjusted EBITDA Margin should not be construed to imply that our future results will be unaffected by these items that are excluded. Adjusted EBITDA and Adjusted EBITDA Margin are supplemental measures of operating performance and our calculations thereof may not be comparable to similar measures reported by other companies. Adjusted EBITDA and Adjusted EBITDA Margin have important limitations as analytical tools, and you should not consider them in isolation or as substitutes for analysis of our results as reported under GAAP. Some of these limitations are:

- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect our cash expenditures or future requirements for capital expenditures or contractual commitments;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect changes in, or cash requirements for, our working capital needs;
- Adjusted EBITDA and Adjusted EBITDA Margin do not adjust for all non-cash income or expense items that are reflected in our consolidated statement of cash flows;
- although depreciation is a non-cash charge, the assets being depreciated will often have to be replaced in the future, Adjusted EBITDA and Adjusted EBITDA Margin do not reflect any cash requirements for such replacements;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect the impact of unit-based compensation on our results of operations;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect the interest expense, or the cash requirements necessary to service interest or principal payments on our debt;
- Adjusted EBITDA and Adjusted EBITDA Margin do not reflect our income tax expense (benefit) or the cash requirements to pay our income taxes; and
- other companies in our industry may calculate Adjusted EBITDA and Adjusted EBITDA Margin differently than we do, limiting their usefulness as comparative measures.

In evaluating Adjusted EBITDA and Adjusted EBITDA Margin, you should be aware that in the future we may incur expenses similar to those adjusted for in the reconciliation of net income (loss), the most directly comparable GAAP measure to Adjusted EBITDA. We compensate for these limitations by providing specific information regarding the GAAP amounts excluded from such non-GAAP financial measures. We further compensate for the limitations in our use of non-GAAP financial measures by presenting comparable GAAP measures more prominently.

See below for a reconciliation of net income (loss), the most directly comparable GAAP measure, to EBITDA, Adjusted EBITDA and Adjusted EBITDA Margin:

	Portillo's OpCo				
	Fiscal Year Ended			Two Quarters Ended	
	December 27, 2020	December 29, 2019	December 31, 2018	June 27, 2021	June 28, 2020
	(\$ in thousands)				
Net income (loss)	\$ 12,263	\$ 5,555	\$ 5,042	\$13,873	\$ (733)
Depreciation and amortization	24,584	24,364	23,007	12,709	12,266
Interest expense	45,031	43,367	41,369	21,441	23,532
EBITDA	81,878	73,286	69,418	48,023	36,065
Deferred rent(1)	2,771	2,405	2,150	1,594	1,312
Unit-based compensation and consulting fees(2)	2,960	3,286	3,272	1,273	1,377
Other income(3)	130	304	168	132	52
Transaction-related fees & expenses(4)	65	214	261	51	57
Adjusted EBITDA	\$ 87,804	\$ 79,495	\$ 75,269	\$51,073	\$37,863
Adjusted EBITDA Margin	19.3%	16.6%	16.7%	19.8%	17.4%

- (1) Represents the difference between cash rent payments and the recognition of straight-line rent expense recognized over the lease term.
- (2) Represents unit-based compensation and consulting fees related to our former owner.
- (3) Represents loss on disposal of property and equipment.
- (4) Represents fees and expenses associated with public company readiness.

- (c) Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin are non-GAAP supplemental measures of operating performance of our restaurants that are neither required by, nor presented in accordance with GAAP, and should not be considered as a substitute for analysis of our results as reported under GAAP. Restaurant-Level Adjusted EBITDA represents revenue, less restaurant operating expenses, which include cost of goods sold, excluding depreciation and amortization, labor expenses, occupancy expenses, and other operating expenses. Restaurant-Level Adjusted EBITDA excludes corporate level expenses, pre-opening expenses and depreciation and amortization on restaurant property and equipment. Restaurant-Level Adjusted EBITDA Margin represents Restaurant-Level Adjusted EBITDA as a percentage of revenue.

Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin are important measures we use to evaluate the performance and profitability of our restaurants, individually and in the aggregate. Additionally, Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin or similar non-GAAP financial measures are frequently used by analysts, investors and other interested parties to evaluate companies in our industry. We believe that Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin, when used in conjunction with GAAP financial measures, provide useful information about our operating results, identify operational trends, and allow for greater transparency with respect to key metrics used by us in our financial and operational decision making. We use Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin to make decisions regarding future spending and other operational decisions. However, you should be aware that Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin are financial measures, which are not indicative of overall results for the Company, and Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin do not accrue directly to the benefit of stockholders because of corporate-level expenses excluded from such measures. In addition, our calculations of Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin

thereof may not be comparable to similar measures reported by other companies, have limitations as analytical tools and should not be considered as a substitute for analysis of our results as reported under GAAP.

See below for a reconciliation of operating income, the most directly comparable GAAP measure, to Restaurant-Level Adjusted EBITDA.

	Portillo's OpCo				
	Fiscal Year Ended			Two Quarters Ended	
	December 27, 2020	December 29, 2019	December 31, 2018	June 27, 2021	June 28, 2020
	(in thousands)				
Operating income	\$ 57,294	\$ 48,922	\$ 46,411	\$35,314	\$22,799
Plus:					
General and administrative expenses	39,854	43,118	38,039	24,005	18,212
Pre-opening expenses	2,209	2,834	5,693	1,960	294
Depreciation and amortization	24,584	24,364	23,007	12,709	12,266
Net income attributable to equity method investment	(459)	(766)	(756)	(359)	(232)
Other income, net	(1,537)	(1,402)	—	(803)	(578)
Restaurant-Level Adjusted EBITDA	<u>\$ 121,945</u>	<u>\$ 117,070</u>	<u>\$ 112,394</u>	<u>\$72,826</u>	<u>\$52,761</u>
Restaurant-Level Adjusted EBITDA Margin	26.8%	24.4%	24.9%	28.2%	24.3%

(d) Total debt includes unamortized debt discount and deferred issuance costs.

(e) Working capital means current assets less current liabilities.

RISK FACTORS

An investment in our Class A common stock involves a high degree of risk. You should carefully consider each of the following risk factors, as well as other information contained in this prospectus, including “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” our audited consolidated financial statements and related notes and our unaudited condensed consolidated financial statements and related notes, before investing in our Class A common stock. The occurrence of any of the following risks could materially and adversely affect our business, prospects, financial condition, results of operations and cash flow, in which case the trading price of our Class A common stock could decline and you could lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business, prospects, financial condition, results of operations and cash flow. See “Cautionary Note Regarding Forward-Looking Statements.”

Risks Related to Our Business, Industry and Growth Strategies

Our financial condition and results of operations have been and may continue to be adversely affected by the COVID-19 pandemic or future pandemics or disease outbreaks.

During March 2020, a global pandemic was declared by the World Health Organization related to the rapidly spreading outbreak of a novel strain of coronavirus (“COVID-19”). The COVID-19 pandemic has caused businesses, including our business, as well as federal, state and local governments to implement significant actions to attempt to mitigate this public health crisis in the United States. Our operations have been impacted by the COVID-19 pandemic. Future pandemics (or epidemics on a local basis) could have a similar impact on our business.

During 2020 and early 2021, individuals in many areas where we operate our restaurants were required to practice social distancing, restricted from gathering in groups and/or mandated to “stay home” except for “essential” purposes. In response to the COVID-19 pandemic and government restrictions, we were required to close or restrict our dining rooms, but were able to continue to operate our drive-thru and delivery channels. The mobility restrictions, fear of contracting COVID-19 and the sharp increase in unemployment caused by the closure of businesses in response to the COVID-19 pandemic, have adversely affected and may continue to adversely affect our guest traffic, which in turn adversely impacts our business, financial condition or results of operations. In fiscal 2020, same-restaurant sales decreased 8.3%, which was attributable to a 17.1% decline in guest traffic, partially offset by an 8.8% increase in the average check. Even as the mobility restrictions were loosened or lifted, some guests remained reluctant to return to in-restaurant dining and the impact of lost wages due to COVID-19 related unemployment has dampened consumer spending. Our restaurant operations have been and could continue to be adversely affected by employees who are unable or unwilling to work, whether because of illness, quarantine, fear of contracting COVID-19 or caring for family members due to COVID-19 disruptions or illness. Restaurant closures, limited service options or modified hours of operation due to staffing shortages could materially adversely affect our business, liquidity, financial condition or results of operations.

To protect the health and safety of our team members and guests, we implemented COVID-19 safety measures, including but not limited to COVID-19 screenings for all of our team members, utilizing and purchasing non-contact forehead thermometers for temperature checks, installing Plexiglas point of sale cashier wraps, raising the partitions between dining room booths, and limiting use of freestanding tables to meet social distancing requirements. Additionally, we purchased face coverings for all restaurant team members and offered them to our guests, purchased additional sanitation supplies and personal protective materials and introduced a new team member COVID-19 contact tracing tool for all team members in our restaurants, commissaries and restaurant support center. We implemented enhanced safety protocols in all of our locations, temporarily introduced one-time use menus in our restaurants, and developed COVID-19 training covering risks and the protocols implemented to ensure safe operations for our team members and guests. We also launched a new mobile app for self-delivery to supplement our other third-party delivery platforms. Additionally, we increased spending on healthcare and team member bonuses as a result of the COVID-19 pandemic. We temporarily paid 100% of the employer portion of premiums for active team members and team members on voluntary leaves of

absence participating in our health insurance program, eliminated the team member payment for a meal provided while working and distributed a \$100.00 Portillo's gift card to all team members. These investments decreased our operating income by an estimated \$4.5 million in 2020. We experienced a steady recovery during the first two quarters of 2021, as dine-in capacity grew, when same-restaurant sales increased 13.0% compared to the first two quarters of 2020.

As a result of the COVID-19 pandemic and the closure of our dining rooms, we negotiated with our landlords for rent relief and certain modified obligations under our leases. Due to operating uncertainties, we modified the timing of new restaurant openings and delayed the negotiation and commitments for new locations, as well as delayed plans for remodeling existing restaurants. These changes have impacted our pace of business growth.

The extent of the impact of the COVID-19 pandemic on our operations and financial results depends on future developments and is highly uncertain due to the unknown duration and severity of the outbreak, including the potential impact of the COVID-19 delta variant. The situation is changing rapidly and future impacts may materialize that are not yet known. As of the date of this filing, substantially all of our restaurants continue to operate, with dining rooms open at varying capacities. We intend to continue to actively monitor the evolving situation and may take further actions that alter our business operations as may be required by federal, state or local authorities or that we determine are in the best interests of our team members, customers, suppliers and shareholders. Recently, the Biden Administration announced that all U.S. private businesses with 100 or more employees will have to ensure staff are fully vaccinated against COVID-19 or tested regularly. Businesses that fail to comply will be subject to fines of up to \$13,600 per violation. The rules related to this federal mandate are still evolving and remain unclear, and the mandate is likely to be challenged in court by various states. We are actively monitoring the situation and will adopt policies at the appropriate time; however, any failure to comply with, or difficulty maintaining staffing levels due to, this mandate or any other governmental rules or regulations may have a material adverse impact on our business, financial condition and results of operations.

The further spread of COVID-19 or other infectious diseases, and the requirements or measures imposed or taken by federal, state and local governments and businesses to mitigate the spread of such diseases, could disrupt our business or impact our ability to carry out our business as usual. Depending on the duration and severity of any such business interruption, we may need to seek additional sources of liquidity. There can be no guarantee that additional liquidity, whether through the credit markets or government programs, will be readily available or available on favorable terms to us. The ultimate impact of adverse events in the future on our operations is unknown and will depend on future developments, which are highly uncertain and cannot be predicted with confidence, including the duration, and any additional preventative and protective actions that governments, or we, may direct, which may result in an extended period of continued business disruption, reduced guest traffic, damage to our reputation and reduced operations, any of which could have a material adverse effect on our business, financial condition and results of operations.

The COVID-19 pandemic or other infectious diseases may also have the effect of heightening other risks disclosed in this prospectus, including, but not limited to, those related to our growth strategy, our ability to service our debt obligations, comply with debt covenants, access capital markets and other funding sources, changes in consumer spending behaviors, supply chain interruptions and/or commodity price increases.

We are vulnerable to changes in economic conditions and consumer preferences that could have a material adverse effect on our business, financial condition and results of operations.

The restaurant industry depends on consumer discretionary spending and is often affected by changes in consumer tastes, national, regional and local economic conditions and demographic trends, including changes in behavior caused by the COVID-19 pandemic. In addition, factors such as traffic patterns, weather, fuel prices, local demographics, local regulations and the type, number and locations of competing restaurants may adversely affect the performances of individual locations. In addition, economic downturns, inflation or increased food or energy costs could harm the restaurant industry in general and our restaurants in particular. Adverse changes in

any of these factors could reduce consumer traffic or impose practical limits on pricing that could have a material adverse effect on our business, financial condition and results of operations. There can also be no assurance that consumers will continue to regard our menu offerings favorably, that we will be able to develop new menu items that appeal to consumer preferences or that there will not be a drop in consumer demands for restaurant dining during lunch and dinner dayparts. Restaurant traffic and our resulting sales depend in part on our ability to anticipate, identify and respond to changing consumer preferences and economic conditions. In addition, the restaurant industry is subject to scrutiny due to the perception that restaurant company practices have contributed to poor nutrition, high caloric intake, obesity or other health concerns of their customers. If we are unable to adapt to changes in consumer preferences and trends, we may lose customers, which could have a material adverse effect on our business, financial condition and results of operations.

Customer preference on how and where they purchase food may change because of advances in technology or alternative service channels. If we are not able to respond to these changes, or our competitors respond to these changes more effectively, our business, financial condition and results of operations could be adversely affected.

Changes in the cost of food could have a material adverse effect on our business, financial condition and results of operations.

Our profitability depends in part on our ability to anticipate and react to changes in the cost of sales, including, among other things, pork, beef, chicken, potatoes, bread, and produce items. We are susceptible to increases in the cost of food due to factors beyond our control, such as freight and delivery charges, general economic conditions, seasonal economic fluctuations, weather conditions, global demand, food safety concerns, infectious diseases, fluctuations in the U.S. dollar, tariffs and import taxes, product recalls and government regulations. Dependence on frequent deliveries of fresh produce and other food products subjects our business to the risk that shortages or interruptions in supply could adversely affect the availability, quality or cost of ingredients or require us to incur additional costs to obtain adequate supplies. Deliveries of supplies may be affected by adverse short-term weather conditions or long-term changes in weather patterns, including those related to climate change, natural disasters, labor shortages, or financial or solvency issues of our distributors or suppliers, product recalls or other issues. Further, increases in fuel prices could result in increased distribution costs. In addition, a material adverse effect on our business, financial condition and results of operations could occur if any of our distributors, suppliers, vendors, or other contractors fail to meet our quality or safety standards or otherwise do not perform adequately, or if any one or more of them seeks to terminate its agreement or fails to perform as anticipated, or if there is any disruption in any of our distribution or supply relationships or operations for any reason.

Changes in the price or availability of certain food products, including as a result of the COVID-19 pandemic, could affect our profitability and reputation. For example, beef supply shortages during the second quarter of 2020—largely due to the COVID-19 pandemic—resulted in significant inflation in beef prices, and impacted our results of operations. While a portion of other commodities we purchase are subject to contract pricing and therefore have not been impacted by price inflation as a result of the COVID-19 pandemic thus far, as our contracts expire we may not be able to successfully re-negotiate terms that protect us from price inflation in the future or the portion not covered by contract pricing might increase unexpectedly, creating price inflation we have not planned for.

Changes in the cost of ingredients can result from a number of factors, including seasonality, short-term weather conditions or long-term changes in weather patterns, natural disasters, currency exchange rates, increases in the cost of grain, consumer demand, disease and viruses and other factors that affect availability and greater international demand for domestic beef, pork and chicken products. In the event of cost increases with respect to one or more of our raw ingredients, we may choose to temporarily suspend or permanently discontinue serving menu items rather than paying the increased cost for the ingredients. Any such changes to our available menu could negatively impact our restaurant traffic, business and results of operations during the shortage and thereafter. While future cost increases can be partially offset by increasing menu prices, there can be no assurance that we will be able to offset future cost increases by such menu price increases. If we implement menu price increases, there can be no assurance that increased menu prices will be fully absorbed by our guests without any resulting change to their visit

frequencies or purchasing patterns. Competitive conditions may limit our menu pricing flexibility and if we implement menu price increases to protect our margins, restaurant traffic could be materially adversely affected.

An important aspect of our growth strategy involves opening new restaurants in existing and new markets. We may be unsuccessful in opening new restaurants or establishing new markets and our new restaurants may not perform as well as anticipated, which could have a material adverse effect on our business, financial condition and results of operations.

A key part of our growth strategy includes opening new restaurants in existing and new markets and operating those restaurants on a profitable basis. From November 2020 through the end of 2021, we are targeting opening seven new restaurants, including new locations in Illinois, Michigan, Florida and Arizona. Since 2015, we have opened new restaurants at a compound annual growth rate of approximately 9.3%. Over the long term, we plan to increase our number of restaurants by approximately 10% annually. We must identify target markets where we can enter or expand, and we may not be able to open our planned new restaurants within budget or on a timely basis, and our new restaurants may not perform as well as anticipated. Our ability to successfully open new restaurants is affected by several factors, many of which are beyond our control, including our ability to:

- identify available, appropriate and attractive restaurant sites;
- compete for restaurant sites;
- reach acceptable agreements regarding the lease or purchase of restaurant sites;
- obtain or have available the financing required to develop and operate new restaurants, including construction and opening costs, which includes access to leases and equipment leases at favorable interest and capitalization rates;
- respond to unforeseen engineering or environmental problems with our selected restaurant sites;
- respond to landlord delays and the failure of landlords to timely deliver real estate to us;
- mitigate the impact of inclement weather, natural disasters and other calamities on the development of restaurant sites;
- hire, train and retain the skilled management and other team members necessary to meet staffing needs of new restaurants;
- obtain, in a timely manner and for an acceptable cost, required licenses, permits and regulatory approvals and respond effectively to any changes in local, state or federal law and regulations that adversely affect our costs or ability to open new restaurants; and
- respond to construction and equipment cost increases for new restaurants.

There is no guarantee that a sufficient number of available, appropriate and attractive restaurant sites will be available in desirable areas or on terms that are acceptable to us in order to achieve our growth plan. If we are unable to open new restaurants, or if planned restaurant openings are significantly delayed, it could have a material adverse effect on our business, financial condition and results of operations.

As part of our long-term growth strategy, we may open restaurants in geographic markets in which we have little or no prior operating experience. Our restaurant base is geographically concentrated in the Midwestern United States, and we may encounter new challenges as we enter new markets. The challenges of entering new markets include: difficulties in hiring experienced personnel; unfamiliarity with local real estate markets and demographics; consumer unfamiliarity with our brand; and different competitive and economic conditions, consumer tastes and discretionary spending patterns that are more difficult to predict or satisfy than in our existing markets. Consumer recognition of our brand has been important in the success of our restaurants in our existing markets, and we may find that our concept has limited appeal in new markets. Restaurants we open in new markets may take longer to reach expected sales and profit levels on a consistent basis and may have higher

construction, occupancy and operating costs than existing restaurants. Any failure on our part to recognize or respond to these challenges may adversely affect the success of any new restaurants and could have a material adverse effect on our business, financial condition and results of operations.

We intend to continue to make investments to support our business growth and may require additional funds to respond to business challenges or opportunities, including the need to open additional restaurants. Accordingly, we may need to engage in equity or debt financings to secure additional funds. In addition, we may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, our ability to continue to support our business growth and to respond to business challenges could be significantly limited, which could have a material adverse effect on our business, financial condition and results of operations.

New restaurants may not be profitable or may close, and the performance of our restaurants that we have experienced in the past may not be indicative of future results.

Some of our restaurants open with an initial start-up period of higher than normal sales volumes. Our Restaurant-Level Adjusted EBITDA Margins are generally lower through the first 12 months of operation. In new markets, the length of time before average sales for new restaurants stabilize is less predictable as a result of our limited knowledge of these markets and consumers' limited awareness of our brand. In addition, our AUV and same-restaurant sales may not increase at the rates our existing restaurants have achieved over the past several years. Our ability to operate new restaurants profitably and increase AUV and same-restaurant sales will depend on many factors, some of which are beyond our control, including:

- consumer awareness and understanding of our brand;
- general economic conditions, which can affect restaurant traffic, local labor costs and prices we pay for the food products and other supplies we use;
- consumption patterns and food preferences that may differ from region to region;
- changes in consumer preferences and discretionary spending;
- difficulties obtaining or maintaining adequate relationships with distributors or suppliers in new markets;
- increases in prices for commodities;
- inefficiency in our labor costs as the staff gains experience;
- competition, either from our competitors in the restaurant industry or our own restaurants;
- temporary and permanent site characteristics of new restaurants;
- changes in government regulation; and
- other unanticipated increases in costs, any of which could give rise to delays or cost overruns.

Although we target specified operating and financial metrics, new restaurants may not meet these targets or may take longer than anticipated to do so. If our new restaurants do not perform as planned or close, or if we are unable to achieve our expected restaurant sales, it could have a material adverse effect on our business, financial condition and results of operations.

Our failure to manage our growth effectively could harm our business and results of operations.

Our growth plan includes opening new restaurants. Our existing restaurant management systems, financial and management controls and information systems may be inadequate to support our planned expansion. Managing our growth effectively will require us to continue to enhance these systems, procedures and controls and to hire, train and retain managers and team members. We may not respond quickly enough to the

changing demands that our expansion will impose on our management, restaurant teams and existing infrastructure, which could have a material adverse effect on our business, financial condition and results of operations. These demands could cause us to operate our existing business less effectively, which in turn could cause a deterioration in the financial performance of our existing restaurants. If we experience a decline in the financial performance, we may decrease the number of or discontinue restaurant openings, or we may decide to close restaurants that we are unable to operate in a profitable manner.

Opening new restaurants in existing markets may negatively impact sales at our existing restaurants.

The consumer target area of our restaurants varies by location, depending on a number of factors, including population density, other local retail and business attractions, area demographics and geography. As a result, if we open new restaurants in or near markets in which we already have restaurants, it could have a material adverse effect on sales at these existing restaurants. Existing restaurants could also make it more difficult to build our consumer base for a new restaurant in the same market. Our core business strategy does not entail opening new restaurants that we believe will materially affect sales at our existing restaurants over the long term. However, due to brand recognition and logistical synergies, as part of our growth strategy, we also intend to open new restaurants in areas where we have existing restaurants. This plan could have a material adverse effect on the results of operations and same-restaurant sales for our restaurants in such markets due to the close proximity with our other restaurants and market saturation, particularly within our core market of Chicago. Although some sales cannibalization between our restaurants will be intentional in order to relieve sales pressures on some existing locations, unintentional sales cannibalization or sales cannibalization in excess of what was intended may become significant in the future as we continue to open new restaurants, and could affect our sales growth, which could, in turn, have a material adverse effect on our business, financial condition and results of operations.

Our plans to open new restaurants, and the ongoing need for capital expenditures at our existing restaurants, require us to spend capital.

Our growth strategy depends on opening new restaurants, which will require us to use cash flows from operations and a portion of the net proceeds of this offering. We cannot assure you that cash flows from operations and the net proceeds of this offering will be sufficient to allow us to implement our growth strategy. If this cash is not allocated efficiently among our various projects, or if any of these initiatives prove to be unsuccessful, we may experience reduced profitability and we could be required to delay, significantly curtail or eliminate planned restaurant openings, which could have a material adverse effect on our business, financial condition, results of operations and the price of our Class A common stock.

In addition, as our restaurants mature, our business will require capital expenditures for the maintenance, renovation and improvement of existing restaurants to remain competitive and maintain the value of our brand standard. This creates an ongoing need for cash, and, to the extent we cannot fund capital expenditures from cash flows from operations, funds will need to be borrowed or otherwise obtained.

If the costs of funding new restaurants or renovations or enhancements at existing restaurants exceed budgeted amounts, and/or the time for building or renovation is longer than anticipated, our profits could be reduced. If we cannot access the capital we need, we may not be able to execute on our growth strategy, take advantage of future opportunities or respond to competitive pressures.

A decline in visitors to any of the retail centers, lifestyle centers, or entertainment centers where our restaurants are located could negatively affect our restaurant sales.

Our restaurants are primarily located in high-activity trade areas that often contain retail centers, lifestyle centers, and entertainment centers. We depend on high visitor rates in these trade areas to attract guests to our restaurants. Factors that may result in declining visitor rates at these locations include economic or

political conditions, anchor tenants closing in retail centers in which we operate, changes in consumer preferences or shopping patterns, changes in discretionary consumer spending, increasing petroleum prices, mobility restrictions, fear of contracting COVID-19 and the sharp increase in unemployment caused by the closure of businesses in response to the COVID-19 pandemic, or other factors. A decline in traffic at these locations for a sustained period could have a material adverse effect on our business, financial condition and results of operations.

Our same-restaurant sales may be lower than we expect in future periods.

Same-restaurant sales will continue to be a critical factor affecting our ability to generate profits because the profit margin on same-restaurant sales is generally higher than the profit margin on new restaurant sales. Our ability to increase same-restaurant sales depends in part on our ability to successfully implement our initiatives to build sales. It is possible such initiatives will not be successful, that we will not achieve our target same-restaurant sales or that the change in same-restaurant sales could be negative, which may cause a decrease in sales growth and ability to achieve profitability. This could have a material adverse effect on our business, financial condition and results of operations.

Our marketing programs and any limited time or seasonal offerings may not be successful and could fail to meet expectations, and our new menu items, advertising campaigns and restaurant designs and remodels may not generate increased sales or profits.

We incur costs and expend other resources in our marketing efforts on new and seasonal menu items, advertising campaigns and restaurant designs and remodels to raise brand awareness and attract and retain guests. In addition, as the number of our restaurants increases, and as we expand into new markets, we expect to increase our investment in advertising and consider additional promotional activities. Accordingly, in the future, we will incur greater marketing expenditures, resulting in greater financial risk. Our limited time or seasonal menu offerings, which we offer as a part of our promotional activities from time to time, may not perform as anticipated, which could have an adverse impact on our results of operations for the related period. If these initiatives are not successful, it could result in us incurring expenses without the benefit of higher revenues, which could have a material adverse effect on our business, financial condition and results of operations.

Incidents involving food-borne illness and food safety, including food tampering or contamination could adversely affect our brand perception, business, financial condition and results of operations.

Food safety is a top priority, and we dedicate substantial resources to help ensure that our guests enjoy safe, quality food products. However, food-borne illnesses and other food safety issues have occurred in the food industry in the past, and could occur in the future. Incidents or reports of food-borne or water-borne illness or other food safety issues, food contamination or tampering, team member hygiene and cleanliness failures or improper team member conduct, guests entering our restaurants while ill and contaminating food ingredients or surfaces at our restaurants could lead to product liability or other claims. Such incidents or reports could negatively affect our brand and reputation and could have a material adverse effect on our business, financial condition and results of operations. Similar incidents or reports occurring at competitors in our industry unrelated to us could likewise create negative publicity, which could negatively impact consumer behavior towards us.

We cannot guarantee to consumers that our food safety controls, procedures and training will be fully effective in preventing all food safety and public health issues at our restaurants, including any occurrences of pathogens (i.e., Ebola, “mad cow disease,” “SARS,” “swine flu,” Zika virus, avian influenza, hepatitis A, porcine epidemic diarrhea virus, norovirus or other virus), bacteria (i.e., salmonella, listeria or E. coli), parasites or other toxins infecting our food supply. For example, in August 2021, we received a report from the county health department of cases of E. coli that were possibly connected to our Glendale Heights, Illinois restaurant and subsequently one lawsuit that has been filed in Illinois state court. We have cooperated fully with state and county health authorities, and the DuPage County Health Department in August 2021 stated that the information gathered so far indicates there is no current risk to the public’s health. Although we believe all guest and team member cases have been identified, additional cases may be reported and additional lawsuits or negative publicity may result.

These public health issues, in addition to food tampering, could adversely affect food prices and availability of certain food products, could generate negative publicity and litigation, and could lead to closure of restaurants resulting in a decline in our sales or profitability. In addition, there is no guarantee that our restaurant locations will maintain the high levels of internal controls and training we require at our restaurants. Furthermore, our reliance on third-party food processors makes it difficult to monitor food safety compliance and may increase the risk that food-borne illness would affect multiple locations rather than single restaurants. Some food-borne illness incidents could be caused by third-party food suppliers and transporters outside of our control, and may affect multiple restaurant locations as a result. We cannot assure you that all food items will be properly maintained during transport throughout the supply chain and that our team members will identify all products that may be spoiled and should not be used in our restaurants. The risk of food-borne illness may also increase whenever our menu items are served outside of our control, such as by third-party food delivery services, guest take out or at catered events. We do not have direct control over our third-party suppliers, transporters or delivery services, including in their adherence to additional sanitation protocols and guidelines as a result of the COVID-19 pandemic or other infectious diseases, and may not have visibility into their practices. New illnesses resistant to our current precautions may develop in the future, or diseases with long incubation periods could arise, that could give rise to claims or allegations on a retroactive basis. One or more instances of food-borne illness in one of our restaurants could negatively affect sales at all our restaurants if highly publicized, such as on national media outlets or through social media, especially due to the geographic concentration of many of our restaurants. This risk exists even if it were later determined that the illness was wrongly attributed to one of our restaurants. Food safety incidents, whether at our restaurants or involving our business partners, could lead to wide public exposure and negative publicity, which could materially harm our business. A number of other restaurant chains have experienced incidents related to food-borne illnesses that have had material adverse impacts on their operations, and we cannot assure you that we could avoid a similar impact upon the occurrence of a similar incident at one of our restaurants. Additionally, even if food-borne illnesses were not identified at our restaurants, our restaurant sales could be adversely affected if instances of food-borne illnesses at other restaurant chains were highly publicized.

We face significant competition for guests, and our inability to compete effectively may affect our traffic, our sales and our operating profit margins, which could have a material adverse effect on our business, financial condition and results of operations.

The restaurant industry is intensely competitive with many companies that compete directly and indirectly with us with respect to food quality, brand recognition, service, price and value, convenience, design and location. We compete in the restaurant industry with national, regional and locally-owned and/or operated limited-service restaurants and full-service restaurants. We compete with fast casual restaurants, quick service restaurants and casual dining restaurants. Some of our competitors have significantly greater financial, marketing, personnel and other resources than we do, and many of our competitors are well-established in markets in which we have existing restaurants or intend to locate new restaurants. In addition, many of our competitors have greater name recognition nationally or in some of the local markets in which we have or plan to have restaurants. Competition from food delivery services has also increased in recent years, particularly during the COVID-19 pandemic, and is expected to continue to increase. Any inability to successfully compete with the restaurants in our existing or new markets will place downward pressure on our guest traffic and could have a material adverse effect on our business, financial condition and results of operations. Additionally, a significant amount of the delivery from our restaurants is through third-party delivery companies. If these third-party delivery companies cease doing business with us, or cannot make their scheduled deliveries, or do not continue their relationship with us on favorable terms, it may have a negative impact on sales or result in increased third-party delivery fees.

Our continued success also depends in part on the continued popularity of our menu and the experience we offer guests at our restaurants. Consumer tastes, nutritional and dietary trends, traffic patterns and the type, number, and location of competing restaurants often affect the restaurant business, and our competitors may react more efficiently and effectively to changes in those conditions. In addition, some of our competitors in the past have implemented promotional programs that provide price discounts on certain menu offerings, and they may continue to do so in the future. If we are unable to continue to compete effectively, our traffic, restaurant sales and restaurant operating profit margins could decline, which could have a material adverse effect on our business, financial condition and results of operations.

Additionally, our competitors with greater financial resources can spend significantly more on marketing and advertising and other initiatives than we are able to. Should our competitors increase spending on marketing and advertising and other initiatives or our marketing expenditures decrease for any reason, or should our advertising, promotions, and restaurant designs and locations be less effective than our competitors, it could have a material adverse effect on our business, financial condition and results of operations.

Our restaurant base is geographically concentrated in the Midwestern United States, and we could be negatively affected by conditions specific to that region.

Our restaurants in the Midwestern United States represented approximately 89% of our restaurants as of December 27, 2020. Our restaurants in the Chicagoland area represented approximately 61% of our restaurants as of December 27, 2020. Adverse changes in demographic, unemployment, economic, regulatory or weather conditions in the Midwestern United States have had, and may continue to have, material adverse effects on our business, financial condition and results of operations. As a result of our concentration in this market, we have been, and in the future may be, disproportionately affected by conditions in this geographic area compared to other chain restaurants with a national footprint.

In addition, our competitors could open additional restaurants in the Midwestern United States, which could result in reduced market share for us in this key geographic region, which could have a material adverse effect on our business, financial condition and results of operations.

Damage to our reputation and negative publicity could have a material adverse effect on our business, financial condition and results of operations.

Our reputation and the quality of our brand are critical to our business and success in existing markets, and will be critical to our success as we enter into new markets. Any incident that erodes consumer loyalty for our brand could significantly reduce its value and damage our business. We may be adversely affected by negative publicity relating to food quality, the safety, sanitation and welfare of our restaurant facilities, guest complaints or litigation alleging illness or injury, health inspection scores, integrity of our or our suppliers' food processing and other policies, practices and procedures, team member relationships and welfare or other matters at one or more of our restaurants. Any publicity relating to health concerns, perceived or specific outbreaks of a food-borne illness attributed to one or more of our restaurants, or non-compliance with food handling and sanitation requirements imposed by federal, state and local governments could result in a significant decrease in guest traffic in all of our restaurants and could have a material adverse effect on our results of operations. Furthermore, similar negative publicity or occurrences with respect to other restaurants or other restaurant chains could also decrease our guest traffic and have a similar material adverse effect on our business. In addition, incidents of restaurant commentary have increased dramatically with the proliferation of social media platforms. Negative publicity may adversely affect us, regardless of whether the allegations are valid or whether we are held responsible. In addition, the negative impact of adverse publicity may extend far beyond the restaurant involved, especially due to the high geographic concentration of many of our restaurants, and affect some or all our other restaurants. For example, we, or other restaurant companies generally, could come under criticism from animal rights and welfare activists for our business practices or those of our suppliers. Such criticisms could impair our brand, our restaurant sales, our hiring, and our expansion plans. If we changed our practices because of concerns about animal welfare, or in response to such criticisms, our costs might increase, or we may have to change our suppliers or our menu. A similar risk exists with respect to food service businesses unrelated to us, if customers mistakenly associate such unrelated businesses with our operations. Team member claims against us based on, among other things, wage and hour violations, discrimination, harassment or wrongful termination may also create not only legal and financial liability but negative publicity that could adversely affect us and divert our financial and management resources that would otherwise be used to benefit the future performance of our operations. A significant increase in the number of these claims or an increase in the number of successful claims could have a material adverse effect on our business, financial condition and results of operations.

The digital and delivery business, and expansion thereof, is uncertain and subject to risk.

We believe digital investments to be a critical differentiator for our business, creating the opportunity to drive greater engagement and frequency with both new and existing customers. As the digital space around us continues to evolve, our technology needs to evolve concurrently to stay competitive with the industry. If we do not maintain and innovate our digital systems that are competitive with the industry, our digital business may be adversely affected and could damage our sales. We rely on third-parties for our ordering and payment platforms. Such services performed by these third-parties could be damaged or interrupted by technological issues, which could then result in a loss of sales for a period of time. Information processed by these third-parties could also be impacted by cyber-attacks, which could not only negatively impact our sales, but also harm our brand image.

Recognizing the rise in delivery services offered throughout the restaurant industry, we understand the importance of providing such services to meet our guests wherever and whenever they want. We have invested in marketing to promote our delivery partnerships, which could negatively impact our profitability if the business does not continue to expand. We rely on third-parties to fulfill delivery orders timely and in a fashion that will satisfy our guests. Errors in providing adequate delivery services may result in guest dissatisfaction, which could also result in loss of guest retention, loss in sales and damage to our brand image. Additionally, as with any third-party handling food, such delivery services increase the risk of food tampering while in transit. We developed sealed packaging to provide some deterrence against such potential food tampering. We are also subject to risk if there is a shortage of delivery drivers, which could result in a failure to meet our guests' expectations.

Third-party delivery services within the restaurant industry is a competitive environment and includes a number of players competing for market share. If our third-party delivery partners fail to effectively compete with other third-party delivery providers in the sector, our delivery business may suffer resulting in a loss of sales. If any third-party delivery provider we partner with experiences damage to their brand image, we may also see ramifications due to our partnership with them.

Our inability or failure to recognize, respond to and effectively manage the accelerated impact of social media could have a material adverse effect on our business, financial condition or results of operations.

Our marketing efforts rely heavily on the use of social media. In recent years, there has been a marked increase in the use of social media platforms, including weblogs (blogs), mini-blogs, chat platforms, social media websites, and other forms of Internet-based communications which allow individuals access to a broad audience of consumers and other interested persons. Many of our competitors are expanding their use of social media, especially since the beginning of the COVID-19 pandemic, and new social media platforms are rapidly being developed, potentially making more traditional social media platforms obsolete. As a result, we need to continuously innovate and develop our social media strategies in order to maintain broad appeal with customers and brand relevance, particularly given the rise in digital orders by customers at home due to the COVID-19 pandemic. We also continue to invest in other digital marketing initiatives that allow us to reach our customers across multiple digital channels and build their awareness of, engagement with, and loyalty to our brand. These initiatives may not be successful, resulting in expenses incurred without the benefit of higher sales or increased brand recognition. Additionally, negative commentary regarding our restaurants, our food or our service may be posted on social media platforms and may be adverse to our reputation or business. This harm may be immediate, without affording us an opportunity for redress or correction.

As laws and regulations rapidly evolve to govern the use of these platforms and devices, the failure by us or third parties acting at our direction to abide by applicable laws and regulations in the use of these platforms and devices could subject us to regulatory investigations, class action lawsuits, liability, fines or other penalties and have a material adverse effect on our business, financial condition and results of operations. In addition, an increase in the use of social media for product promotion and marketing may cause an increase in the burden on us to monitor compliance of such materials and increase the risk that such materials could contain problematic product or marketing claims in violation of applicable regulations.

We have a limited number of suppliers and distributors for several of our frequently used ingredients. If our suppliers or distributors are unable to fulfill their obligations under our arrangements with them, we could encounter supply shortages and incur higher costs.

We utilize a combination of direct suppliers and distributors dependent on both the product category as well as geography. These products are purchased through various pricing protocols inclusive of commodity and risk management, fixed pricing agreements and market-based costing measures. Due to the concentration of suppliers and distributors that we utilize, the cancellation of our supply arrangements with these suppliers or the disruption, delay or inability of these suppliers to deliver these products to our restaurants due to problems in production or distribution, inclement weather, natural disasters, unanticipated demand or other conditions may materially and adversely affect our results of operations while we establish alternative distribution channels.

In addition, we do not control the businesses of our suppliers and distributors and our efforts to monitor the standards by which they perform may not be successful. If our suppliers or distributors fail to comply with food safety or other laws and regulations, or face allegations of non-compliance, their operations may be disrupted. If that were to occur, we may not be able to find replacement suppliers on commercially reasonable terms or a timely basis, if at all.

Contingency platforms have been developed to mitigate the risk in various cases including secondary supply, floor stocking arrangements, product diversification and inventory management. While we therefore believe that alternative supply and distribution sources are available, there can be no assurance that we will continue to be able to identify or negotiate with such sources on terms that are commercially reasonable to us or that the quality of the product from an alternative supplier is comparable to existing standards. If our suppliers or distributors are unable to fulfill their obligations under their contracts or we are unable to identify alternative sources, we could encounter supply shortages and incur higher costs, each of which could have a material adverse effect on our results of operations.

Any prolonged disruption in the operations of our two supply chain centers could harm our business.

We operate two manufacturing and supply chain centers in Illinois. We plan to continue investing in additional supply chain capacity in the future, as necessary, based on our growth in existing and new restaurants. Our supply chain centers produce all the Italian beef, gravy and sweet peppers used within all of our restaurants. As a result, any prolonged disruption in the operations of any of these facilities, whether due to technical, operational or labor difficulties, destruction or damage to the facility, real estate issues, limited capacity or other reasons, could adversely affect our business, financial condition and results of operations.

We face potential liability with our gift cards under the property laws of some states.

Our gift cards, which may be used to purchase food and beverages in our restaurants, may be considered stored value cards by certain states in accordance with their abandoned and unclaimed property laws. These laws could require us to remit cash to such state in an amount equal to all or a designated portion of the unredeemed balance on the gift cards based on certain card attributes and the length of time that the cards are inactive. The Company formed an affiliate in Florida, PHD Card Services, LLC that handles the issuance of Portillo's gift cards, and the gift card breakage is recorded based on historical data on gift card redemption.

The analysis of the potential application of the abandoned and unclaimed property laws to our gift cards is complex, involving an analysis of constitutional, statutory provisions and factual issues. In the event that one or more states change their existing abandoned and unclaimed property laws or successfully challenge our position on the application of its abandoned and unclaimed property laws to our gift cards, or if the estimates that we use in projecting the likelihood of the cards being redeemed prove to be inaccurate, our liabilities with respect to unredeemed gift cards may be materially higher than the amounts shown in our consolidated financial statements. If we are required to materially increase the estimated liability recorded in our consolidated financial statements with respect to unredeemed gift cards, our financial condition and results of operations could be adversely affected.

We depend on our executive officers and certain other key team members, the loss of whom could have a material adverse effect on our business, financial condition and results of operations.

We rely upon the accumulated knowledge, skills and experience of our executive officers and certain other key team members. Our chief executive officer has been with us for more than three years and our executive officers have a combined total of over 140 years of experience in the food service industry. The loss of the services of any of our executive officers could have a material adverse effect on our business, financial condition and results of operations, as we may not be able to find suitable individuals to replace such personnel on a timely basis or without incurring increased costs, or at all. If our executive officers were to leave us or become incapacitated, it might negatively impact our planning and execution of business strategy and operations. We believe that our future success will depend on our continued ability to attract and retain highly skilled and qualified executive personnel. There is a high level of competition for experienced, successful executive personnel in our industry. Our inability to meet our executive staffing requirements in the future could have a material adverse effect on our business, financial condition and results of operations.

Our inability to identify qualified individuals for our workforce could slow our growth and adversely impact our ability to operate our restaurants.

Our success depends in part upon our ability to attract, motivate and retain a sufficient number of qualified team members to meet the needs of our existing restaurants and to staff new restaurants. A sufficient number of qualified individuals to fill these positions may be in short supply in some communities. Competition in these communities for qualified team members could require us to pay higher wages and provide greater benefits. We place a heavy emphasis on the qualification and training of our personnel and spend a significant amount of time and money on training our team members. Any inability to recruit and retain qualified individuals may result in higher turnover and increased labor costs, and could compromise the quality of our service, could have a material adverse effect on our business, financial condition and results of operations. Any such inability could also delay the planned openings of new restaurants and could adversely impact our existing restaurants. The inability to retain or recruit qualified team members, increased costs of attracting qualified team members or delays in restaurant openings could have a material adverse effect on our business, financial condition and results of operations. The COVID-19 pandemic has exacerbated staffing complexities for us and other restaurant operators. During 2020, we closed our dining rooms at the time required by different jurisdictions, but were able to maintain our drive-thru, delivery and curbside pick-up business. We reopened our dining rooms as permitted by the various applicable municipal health and safety mandates. We reopened all of our restaurants in a new environment, filled with increased complexity for our team members and managers, a decreased applicant pool for all positions, safety concerns, and ongoing staff call-outs and exclusions due to illness. The COVID-19 pandemic has also resulted in aggressive competition for talent, wage inflation and pressure to improve benefits and workplace conditions to remain competitive. Maintaining adequate staffing in our existing restaurants and hiring and training staff for our new restaurants has been significantly complicated by the impacts of the COVID-19 pandemic on our business. Our existing wages and benefits programs, combined with the challenging conditions due to the COVID-19 pandemic and the highly competitive wage pressure resulting from the labor shortage, may be insufficient to attract and retain the best talent. Our failure to recruit and retain new team members in a timely manner or higher team member turnover levels all could affect our ability to open new restaurants and grow sales at existing restaurants, and we may experience higher than projected labor costs.

The failure to obtain or to properly verify the employment eligibility of our team members could have a material adverse effect on our business, financial condition and results of operations.

Although we require all workers to provide us with government-specified documentation evidencing their employment eligibility, some of our team members may, without our knowledge, be unauthorized workers. We currently participate in the “E-Verify” program, an Internet-based, free program run by the U.S. government to verify employment eligibility, in Arizona, which is the only state in which we operate where participation is required. However, use of the “E-Verify” program does not guarantee that we will properly identify all applicants who are ineligible for employment, and we are not utilizing “E-Verify” in any other states where we operate.

Unauthorized workers are subject to deportation and may subject us to fines or penalties, and if any of our workers are found to be unauthorized, we could experience adverse publicity that may negatively impact our brand and may make it more difficult to hire and keep qualified team members. Termination of a significant number of team members who are unauthorized employees may disrupt our operations, cause temporary increases in our labor costs as we train new team members and result in adverse publicity. We could also become subject to fines, penalties and other costs related to claims that we did not fully comply with all recordkeeping obligations of federal and state immigration compliance laws. These factors could materially adversely affect our business, financial condition and results of operations.

Failure to maintain our corporate culture as we grow could have a material adverse effect on our business, financial condition and results of operations.

We believe that a critical component to our success has been our corporate culture and values of Family, Greatness, Energy and Fun. We have invested substantial time and resources in building our team. As we continue to grow, we may find it difficult to maintain the innovation, teamwork, passion and focus on execution that we believe are important aspects of our corporate culture. Any failure to preserve our culture could negatively impact our operations, including our ability to retain and recruit personnel and to effectively focus on and pursue our corporate objectives. If we cannot maintain our corporate culture as we grow, it could have a material adverse effect on our business, financial condition and results of operations.

Unionization activities may disrupt our operations and increase our costs.

Although none of our team members are currently covered under collective bargaining agreements, our team members may elect to be represented by labor unions in the future. If a significant number of our team members were to become unionized and collective bargaining agreement terms were significantly different from our current compensation arrangements, it could have a material adverse effect on our business, financial condition and results of operations. In addition, a labor dispute involving some or all our team members may harm our reputation, disrupt our operations and reduce our revenues, and resolution of disputes could increase our costs. Further, if we enter into a new market with unionized construction companies, or the construction companies in our current markets become unionized, construction and build-out costs for new restaurants in such markets could materially increase.

Matters relating to employment and labor law could have a material adverse effect on our business, financial condition and results of operations and restaurant companies have been the target of class action lawsuits and other proceedings alleging violations of workplace and employment laws. Proceedings of this nature are costly, divert management attention and, if successful, could result in our payment of substantial damages or settlement costs.

Various federal and state labor laws govern our relationships with our team members and affect our operating costs. Our operations are subject to the U.S. Occupational Safety and Health Act, which governs worker health and safety, the U.S. Fair Labor Standards Act, which governs such matters as minimum wages and overtime, and a variety of similar federal, state and local laws that govern these and other employment law matters. These laws include employee classifications as exempt or non-exempt, minimum wage requirements, unemployment tax rates, workers' compensation rates, overtime, family leave, working conditions, safety standards, immigration status, unemployment tax rates, workers' compensation rates, state and local payroll taxes, federal and state laws which prohibit discrimination, citizenship requirements and other wage and benefit requirements for team members classified as non-exempt. In addition, with the passage in 2010 of the U.S. Patient Protection and Affordable Care Act (the "ACA"), we are required to provide affordable coverage, as defined in the ACA, to all team members, or otherwise be subject to a payment per team member based on the affordability criteria in the ACA. Additionally, some states and localities have passed state and local laws mandating the provision of certain levels of health benefits by some employers. Significant additional government regulations and new laws, including mandated increases in minimum wages, changes in exempt and non-exempt status, or increased mandated benefits such as health care and insurance costs could have a material adverse effect on our business, financial condition and results of operations. In addition, changes in federal or state workplace regulations could adversely affect our ability to meet our financial targets.

Our business is subject to the risk of litigation by team members, consumers, suppliers, stockholders or others through private actions, class actions, administrative proceedings, regulatory actions or other litigation. The outcome of litigation, particularly class action and regulatory actions, is difficult to assess or quantify. In recent years, restaurant companies, including us, have been subject to lawsuits alleging violations of federal and state laws regarding workplace and employment conditions, discrimination and similar matters, and some restaurants have been subject to class action lawsuits in respect of such matters. A number of these lawsuits have resulted in the payment of substantial damages by the defendants. Similar lawsuits have been instituted from time to time alleging violations of various federal and state wage and hour laws regarding, among other things, employee meal deductions, overtime eligibility of managers and failure to pay for all hours worked. Regardless of whether any claims against us are valid or whether we are liable, claims may be expensive to defend and may divert time and money away from our operations and result in increases in our insurance premiums. In addition, they may generate negative publicity, which could reduce guest traffic and sales. Although we maintain what we believe to be adequate levels of insurance, insurance may not be available at all or in sufficient amounts to cover any liabilities with respect to these or other matters. A judgment or other liability in excess of our insurance coverage for any claims or any adverse publicity resulting from claims could have a material adverse effect on our business, financial condition and results of operations.

If we face labor shortages or increased labor costs, it could have a material adverse effect on our business, financial condition and results of operations.

Labor is a primary component in the cost of operating our restaurants. If we face labor shortages or increased labor costs because of increased competition for team members, federal or state unemployment benefits, higher team member-turnover rates, unionization of restaurant workers, or increases in the federally-mandated or state-mandated minimum wage, change in exempt and non-exempt status, or other employee benefits costs (including costs associated with health insurance coverage or workers' compensation insurance), our operating expenses could increase and our growth could be adversely affected.

As a result of wage pressures, our team members are all paid more than the applicable minimum wage in the area where they work. Increases in federal or state minimum wages or unemployment benefits may also result in increases in the wage rates paid. We may be unable to increase our menu prices in order to pass future increased labor costs on to our guests, in which case our operating margins would be negatively affected. If menu prices are increased by us to cover increased labor costs, the higher prices could adversely affect demand for our menu items, resulting in lower sales.

In addition, our success depends in part upon our ability to attract, motivate and retain a sufficient number of well-qualified restaurant operators, management personnel and other team members. Qualified individuals needed to fill these positions can be in short supply in some geographic areas. Competition for these team members could require us to pay higher wages, which could also result in higher labor costs. In addition, limited service restaurants have traditionally experienced relatively high employee turnover rates. Although we have not yet experienced any significant problems in recruiting team members, our ability to recruit and retain such individuals may delay the planned openings of new restaurants or result in higher team member turnover in existing restaurants, which could increase our labor costs and have a material adverse effect on our business, financial condition and results of operations.

We are exposed to risks associated with leasing property subject to long-term and non-cancelable leases and may be unable to renew leases at the end of their terms.

Many of our restaurant leases are non-cancelable and typically have initial terms of 10 to 20 years, providing for four renewal options of five years each as well as rent escalations. Generally, our leases are triple-net leases that require us to pay our share of the costs of real estate taxes, utilities, building operating expenses, insurance and other charges in addition to rent. We generally cannot cancel these leases, and additional sites that we lease are likely to be subject to similar long-term non-cancelable leases. Even if we close a restaurant, we are required to perform our obligations under the applicable lease, which could include, among other things, a payment of the base rent, property taxes, insurance and common area maintenance costs for the

balance of the lease term, which would impact our profitability. Due to the COVID-19 pandemic, we temporarily closed dining rooms in all restaurants and negotiated extensively with our landlords for rent relief and certain modified obligations under our leases, but we still may not be able to recover our investment in these properties. In addition, as leases expire for restaurants that we will continue to operate, we may, at the end of the lease term and any renewal period for a restaurant, be unable to negotiate renewals, either on commercially acceptable terms or at all. As a result, we may close or relocate the restaurant, which could subject us to unanticipated construction costs related to leasehold improvements at the new restaurant location that we are unable to control, the delay or failure by the landlord to deliver the new restaurant location to us, and unfavorable anticipated commercial, residential or infrastructure development near our new restaurant location, among other costs and risks. Additionally, the revenues and profit, if any, generated at a relocated restaurant may not equal the revenues and profit generated at the existing restaurant.

Our business is subject to risks related to our sale of alcoholic beverages.

We serve alcoholic beverages at most of our restaurants, and we may introduce alcoholic beverages at additional restaurants in the future. Alcoholic beverage control regulations generally require our restaurants to apply to a state authority and, in certain locations, county or municipal authorities for a license that must be renewed annually and may be revoked or suspended for cause at any time. Alcoholic beverage control regulations relate to numerous aspects of daily operations of our restaurants, including minimum age of team members, advertising, trade practices, wholesale purchasing, other relationships with alcoholic beverages manufacturers, wholesalers and distributors, inventory control and handling, storage and dispensing of alcoholic beverages and training of team members. Any future failure to comply with these regulations and obtain or retain licenses could have a material adverse effect on our business, financial condition and results of operations.

We are also subject in certain states to “dram shop” statutes, which generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. We carry liquor liability coverage as part of our existing comprehensive general liability insurance. Recent litigation against restaurant chains has resulted in significant judgments and settlements under dram shop statutes. Because these cases often seek punitive damages, which may not be covered by insurance, such litigation could have a material effect on our business, financial condition and results of operations. Regardless of whether any claims against us are valid or whether we are liable, claims may be expensive to defend and may divert time and money away from operations and hurt our financial performance. A judgment significantly in excess of our insurance coverage or not covered by insurance could have a material adverse effect on our business, financial condition or results of operations.

An impairment in the carrying value of our goodwill, indefinite-lived intangible assets or long-lived assets could have a material adverse effect on our financial condition and results of operations.

As of December 27, 2020, we had approximately \$394 million of goodwill and \$266 million of intangible assets, primarily related to the purchase price allocation performed in connection with the Berkshire Acquisition. We test goodwill and indefinite-lived intangible assets for impairment in the fourth quarter of each fiscal year and whenever events or changes in circumstances indicate that impairment may have occurred. In fiscal 2020, we performed an impairment test and even with changes in circumstances brought about by the COVID-19 pandemic, we did not recognize impairment charges; however, an impairment test in the future may indicate that an impairment has occurred. In the event that the book value of goodwill or other indefinite-lived intangible assets is impaired, any such impairment would be charged to earnings in the period of impairment. We cannot accurately predict the amount and timing of any impairment of assets. Should the value of goodwill or other indefinite-lived intangible assets become impaired in the future, any impairment could have a material adverse effect on our financial condition and results of operations. See Note 5 – Goodwill and Intangible Assets in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information.

Changes to estimates related to our property, fixtures and equipment and definite-lived intangible assets or operating results that are lower than our current estimates at certain restaurant locations may cause us to incur impairment charges or accelerate the amortization on certain long-lived assets, which may adversely affect our results of operations.

Natural disasters, unusual weather conditions, pandemic outbreaks, political events, war and terrorism could disrupt our business and result in lower sales, increased operating costs and capital expenditures.

Our home office, restaurant locations, suppliers and distributors, and their respective facilities, as well as certain of our vendors and customers, are located in areas that have been and could be subject to natural disasters such as floods, drought, hurricanes, tornadoes, fires or earthquakes. As a result of the concentration of our restaurants in the Midwestern United States, adverse weather conditions or other extreme changes in short-term weather conditions or long-term changes in weather patterns related to climate change, including those that may result in electrical and technological failures, may disrupt our business and may adversely affect our ability to obtain food and supplies and sell menu items. Our business may be harmed if our ability to obtain food and supplies and sell menu items is impacted by any such events, any of which could influence customer trends and purchases and may negatively impact our revenues, properties or operations. Such events could result in physical damage to one or more of our properties, the temporary closure of some or all of our restaurants and our suppliers and distributors, the temporary lack of an adequate work force in a market, temporary or long-term disruption in the transport of goods, delay in the delivery of goods and supplies to our restaurants and our suppliers and distributors, disruption of our technology support or information systems, or fuel shortages or dramatic increases in fuel prices, all of which would increase the cost of doing business. These events also could have indirect consequences such as increases in the costs of insurance if they result in significant loss of property or other insurable damage. Any of these factors, or any combination thereof, could have a material adverse effect on our business, financial condition and results of operations.

The increasing focus on environmental sustainability and social initiatives could increase our costs, harm our reputation, and adversely impact our financial results.

There has been increasing public focus by investors, environmental activists, the media and governmental and nongovernmental organizations on a variety of environmental, social and other sustainability matters. With respect to the restaurant industry, concerns have been expressed regarding energy management, water management, food and packaging waste management, food safety, nutritional content, labor practices and supply chain and management food sourcing. We experience pressure to make commitments relating to sustainability matters that affect companies in our industry, including the design and implementation of specific risk mitigation strategic initiatives relating to sustainability. If we are not effective in addressing environmental, social and other sustainability matters affecting our industry, or setting and meeting relevant sustainability goals, our brand image may suffer. In addition, we may experience increased costs in order to execute upon our sustainability goals and measure achievement of those goals, which could have an adverse impact on our business and financial condition.

Risks Related to Our Indebtedness

Our level of indebtedness could have a material adverse effect on our business, financial condition and results of operations and limit our ability to plan for or respond to changes in our business.

The total principal amount of debt outstanding under our Credit Facilities, excluding finance lease liabilities and financing obligations, as of December 27, 2020 was approximately \$484.0 million. Our indebtedness could have significant effects on our business, such as:

- limiting our ability to borrow additional amounts to fund capital expenditures, acquisitions, debt service requirements, execution of our growth strategy and other purposes;
- limiting our ability to make investments, including acquisitions, loans and advances, and to sell, transfer or otherwise dispose of assets;
- requiring us to dedicate a substantial portion of our cash flow from operations to pay principal and interest on our borrowings, which would reduce availability of our cash flow to fund working capital, capital expenditures, acquisitions, execution of our growth strategy and other general corporate purposes;

- making us more vulnerable to adverse changes in general economic, industry and competitive conditions, in government regulation and in our business by limiting our ability to plan for and react to changing conditions;
- placing us at a competitive disadvantage compared with our competitors that have less debt; and
- exposing us to risks inherent in interest rate fluctuations because our borrowings are at variable rates of interest, which could result in higher interest expense in the event of increases in interest rates.

In addition, we may not be able to generate sufficient cash flow from our operations to repay our indebtedness when it becomes due and to meet our other cash needs. If we are not able to pay our borrowings as they become due, we will be required to pursue one or more alternative strategies, such as selling assets, refinancing or restructuring our indebtedness or selling additional debt or equity securities. We may not be able to refinance our debt or sell additional debt or equity securities or our assets on favorable terms, if at all, and if we must sell our assets, it may negatively affect our financial condition and results of operations.

Pursuant to the First Lien Credit Agreement (as defined herein), if the revolving credit exposure exceeds 35% of the aggregate amount of revolving credit commitments as of the last day of any fiscal quarter (which calculation shall exclude letter of credit obligations that have been cash collateralized or backstopped in full and obligations with respect to other letters of credit in an aggregate amount not to exceed \$5.0 million), the Borrower (as defined herein) must maintain a ratio of consolidated first lien net debt to consolidated EBITDA (with certain adjustments as set forth in the First Lien Credit Agreement) of no greater than 6.50 to 1.00, to be tested as of the last day of each fiscal quarter and determined on the basis of the four most recently ended fiscal quarters of the Borrower for which financial statements have been delivered pursuant to the First Lien Credit Agreement. Events beyond our control, including changes in general economic and business conditions, may affect our ability to satisfy the financial covenant. We cannot assure you that we will satisfy the financial covenant in the future, or that our lenders will waive any failure to satisfy the financial covenant.

Further, a portion of our indebtedness bears interest at fluctuating interest rates based on the London interbank offered rate ("LIBOR"), and the financial authority that regulates LIBOR has announced that it intends to stop compelling banks to submit rates for the calculation of LIBOR after 2023. If LIBOR ceases to exist, we may need to renegotiate certain loan documents and we cannot predict what alternative index would be negotiated with our lenders. As a result, our interest expense could increase, in which event we may have difficulties making interest payments and funding our other fixed costs, and our available cash flow for general corporate requirements may be adversely affected.

We may be unable to generate sufficient cash flow to satisfy our debt service obligations, which would adversely affect our financial condition and results of operations.

Our ability to manage our debt is dependent on our level of positive cash flow from our restaurants. An economic downturn may negatively impact our cash flows. Credit and capital markets can be volatile, which could make it more difficult for us to refinance our existing debt or to obtain additional debt or equity financings in the future. Such constraints could increase our costs of borrowing and could restrict our access to other potential sources of future liquidity. Our failure to comply with the covenants under the Credit Facilities or to have sufficient liquidity to make interest and other payments required by our debt could result in a default of such debt and acceleration of our borrowings, which could have a material adverse effect on our business, financial condition and results of operations.

Downgrades in our credit ratings could impact our ability to access capital and materially adversely affect our business, financial condition and results of operations.

Our debt is rated by credit rating agencies. These agencies may downgrade their credit ratings for us based on the performance of our business, our capital strategies or their overall view of our industry. There can be no assurance that any rating assigned to our currently outstanding indebtedness will remain in effect for any

given period of time or that any such ratings will not be lowered, suspended or withdrawn entirely by a rating agency if, in that agency's judgment, circumstances so warrant.

A downgrade of our credit ratings could, among other things, increase our cost of borrowing, limit our ability to access capital, result in more restrictive covenants in agreements governing the terms of any future indebtedness that we may incur, including restrictions on our ability to pay dividends or repurchase shares, or require us to provide collateral for future borrowings, and thereby adversely impact our business, financial condition and results of operations.

Risks Related to Our Organizational Structure

The interests of Berkshire may conflict with our interests or the interests of the holders of our Class A common stock in the future.

Berkshire Private Equity engages in a range of investing activities, including investments in restaurants and other consumer-related companies. In the ordinary course of its business activities, Berkshire may engage in activities where its interests conflict with our interests or those of our stockholders. Our amended and restated certificate of incorporation will provide that our directors and stockholders, including Berkshire, do not have any obligation to offer us an opportunity to participate in business opportunities presented to them even if the opportunity is one that we might reasonably have pursued (and therefore may be free to compete with us in the same business or similar businesses) and that, to the extent permitted by law, such directors and stockholders will not be liable to us or our stockholders for breach of any duty by reason of any such activities. Accordingly, the interests of Berkshire may supersede ours, causing them or their affiliates to compete against us or to pursue opportunities instead of us, for which we have no recourse. Such actions on the part of Berkshire and inaction on our part could have a material adverse effect on our business, financial condition and results of operations. In addition, Berkshire may have an interest in pursuing acquisitions, divestitures and other transactions that, in its judgment, could enhance its investment in us, even though such transactions might involve risks to you, such as debt-financed acquisitions.

Delaware law and our organizational documents, as well as our existing and future debt agreements, may impede or discourage a takeover, which could deprive our investors of the opportunity to receive a premium for their shares.

We are a Delaware corporation, and the anti-takeover provisions of Delaware law impose various impediments to the ability of a third party to acquire control of us, even if a change of control would be beneficial to our existing stockholders. In addition, provisions of our amended and restated certificate of incorporation and bylaws that will be effective upon closing of this offering may make it more difficult for, or prevent a third party from, acquiring control of us without the approval of our Board. Among other things, these provisions:

- do not permit cumulative voting in the election of directors, which would otherwise allow less than a majority of stockholders to elect director candidates;
- delegate the sole power of a majority of the Board to fix the number of directors;
- provide the power of our Board to fill any vacancy on our Board, whether such vacancy occurs as a result of an increase in the number of directors or otherwise;
- authorize the issuance of "blank check" preferred stock without any need for action by stockholders;
- eliminate the ability of stockholders to call special meetings of stockholders;
- establish advance notice requirements for nominations for election to our Board or for proposing matters that can be acted on by stockholders at stockholder meetings; and

- limit the ability of stockholders to act by written consent after Berkshire no longer holds 50% of our Class A common stock.

In addition, our Credit Facilities impose, and we anticipate that documents governing our future indebtedness may impose, limitations on our ability to enter into change of control transactions. Thereunder, the occurrence of a change of control transaction could constitute an event of default permitting acceleration of the indebtedness, thereby impeding our ability to enter into certain transactions.

The foregoing factors, as well as the significant Class A common stock ownership by Berkshire, could impede a merger, takeover, or other business combination, or discourage a potential investor from making a tender offer for our Class A common stock, which, under certain circumstances, could reduce the market value of our Class A common stock. See “Description of Capital Stock.”

We are a holding company and our principal asset after completion of this offering will be our % ownership interest in Portillo’s OpCo, and we are accordingly dependent upon distributions from Portillo’s OpCo to pay dividends, if any, and taxes, make payments under the Tax Receivable Agreement and pay other expenses.

We are a holding company and, upon completion of the Reorganization Transactions and this offering, our principal asset will be our ownership of % of the outstanding LLC Units. See “Organizational Structure.” We have no independent means of generating revenue. Portillo’s OpCo is, and will continue to be, treated as a partnership for U.S. federal and applicable state and local income tax purposes and, as such, will generally not be subject to entity-level U.S. federal and applicable state and local income tax. Instead, the taxable income of Portillo’s OpCo will be allocated to holders of LLC Units, including us. Accordingly, we will incur income taxes on our allocable share of any taxable income of Portillo’s OpCo. We will also incur expenses related to our operations, and will have obligations to make payments under the Tax Receivable Agreement. As the sole managing member of Portillo’s OpCo, we intend to cause Portillo’s OpCo to make distributions to the holders of LLC Units (including us) in amounts sufficient to (i) cover all of the income taxes payable on our and the other LLC Unit holders’ respective allocable shares of the taxable income of Portillo’s OpCo, (ii) allow us to make any payments required under the Tax Receivable Agreement we intend to enter into as part of the Reorganization Transactions, (iii) fund dividends to our stockholders in accordance with our dividend policy, to the extent that our Board declares such dividends and (iv) pay our expenses.

Deterioration in the financial condition, earnings or cash flow of Portillo’s OpCo and its subsidiaries for any reason could limit or impair their ability to pay such distributions. Additionally, to the extent that we need funds and Portillo’s OpCo is restricted from making such distributions to us under applicable law or regulation, as a result of covenants in its debt agreements or otherwise, we may not be able to obtain such funds on terms acceptable to us, or at all, which could have a material adverse effect on our liquidity and financial condition.

In certain circumstances, Portillo’s OpCo will be required to make distributions to us and the other holders of LLC Units, and the distributions that Portillo’s OpCo will be required to make may be substantial.

Under the Amended LLC Agreement, Portillo’s OpCo will generally be required from time to time to make pro rata distributions in cash to us and the other holders of LLC Units at certain assumed tax rates in amounts that are intended to be sufficient to cover the income taxes payable on our and the other LLC Unit holders’ respective allocable shares of the taxable income of Portillo’s OpCo. As a result of (i) potential differences in the amount of taxable income allocable to us and the other LLC Unit holders, (ii) the lower tax rate applicable to corporations than individuals and (iii) the use of an assumed tax rate (based on the tax rate applicable to individuals) in calculating Portillo’s OpCo distribution obligations, we may receive tax distributions significantly in excess of our tax liabilities and obligations to make payments under the Tax Receivable Agreement. Our Board, in its sole discretion, will make any determination from time to time with respect to the use of any such excess cash so accumulated, which may include, among other uses, funding repurchases of

Class A common stock; acquiring additional newly issued LLC Units from Portillo's OpCo at a per unit price determined by reference to the market value of the Class A common stock; paying dividends, which may include special dividends, on its Class A common stock; or any combination of the foregoing. We will have no obligation to distribute such cash (or other available cash other than any declared dividend) to our stockholders. To the extent that we do not distribute such excess cash as dividends on our Class A common stock or otherwise undertake ameliorative actions between LLC Units and shares of Class A common stock and instead, for example, hold such cash balances, holders of our LLC Units (other than Portillo's Inc.) may benefit from any value attributable to such cash balances as a result of their ownership of Class A common stock following a redemption or exchange of their LLC Units, notwithstanding that such holders of our LLC Units (other than Portillo's Inc.) may previously have participated as holders of LLC Units in distributions by Portillo's OpCo that resulted in such excess cash balances at Portillo's Inc. See "Certain Relationships and Related Party Transactions—Amended Portillo's OpCo Agreement."

The Tax Receivable Agreement with the TRA Parties requires us to make cash payments to them in respect of certain tax benefits to which we may become entitled, and we expect that the payments we will be required to make will be substantial.

Under the Tax Receivable Agreement, we will be required to make cash payments to the TRA Parties equal to 85% of the tax benefits, if any, that we actually realize, or in certain circumstances are deemed to realize, as a result of (i) our allocable share of tax basis, including any applicable tax basis adjustments, acquired in this offering, (ii) certain favorable tax attributes we will acquire from the Blocker Companies in the Mergers (including net operating losses and the Blocker Companies' allocable share of existing tax basis), (iii) increases in our allocable share of existing tax basis and tax basis adjustments resulting from future redemptions or exchanges of LLC Units by Continuing Pre-IPO LLC Members for cash or Class A common stock and (iv) certain payments made under the Tax Receivable Agreement.

The payment obligations under the Tax Receivable Agreement are obligations of the Company and we expect that the amount of the cash payments that we will be required to make under the Tax Receivable Agreement will be significant. Any payments made by us to the TRA Parties under the Tax Receivable Agreement will not be available for reinvestment in our business and will generally reduce the amount of overall cash flow that might have otherwise been available to us. The payments under the Tax Receivable Agreement are not conditioned upon continued ownership of us by the exchanging TRA Parties. Furthermore, our future obligation to make payments under the Tax Receivable Agreement could make us a less attractive target for an acquisition, particularly in the case of an acquirer that cannot use some or all of the tax benefits that are the subject of the Tax Receivable Agreement. For more information, see "Certain Relationships and Related Party Transactions—Tax Receivable Agreement". The amount of existing tax basis and anticipated tax basis adjustments and utilization of tax attributes, as well as the amount and timing of any payments under the Tax Receivable Agreement, will vary depending upon a number of factors, including the timing of redemptions or exchanges by the Continuing Pre-IPO LLC Members, the price of shares of our Class A common stock at the time of the redemptions or exchanges, the extent to which such redemptions or exchanges are taxable, the amount of gain recognized by such holders of LLC Units, the amount and timing of the taxable income allocated to us or otherwise generated by us in the future, the portion of our payments under the Tax Receivable Agreement constituting imputed interest and the federal and state tax rates then applicable.

Our organizational structure, including the Tax Receivable Agreement, confers certain benefits upon the TRA Parties that will not benefit holders of our Class A common stock to the same extent that it will benefit the TRA Parties.

Our organizational structure, including the Tax Receivable Agreement, confers certain benefits upon the TRA Parties that will not benefit the holders of our Class A common stock to the same extent that it will benefit the TRA Parties. We will enter into the Tax Receivable Agreement with Portillo's OpCo and the TRA Parties in connection with the completion of this offering, which will provide for the payment by us to the TRA

Parties of 85% of the amount of tax benefits, if any, that we actually realize, or in certain circumstances are deemed to realize, as a result of (i) our allocable share of tax basis, including any applicable tax basis adjustments, acquired in this offering, (ii) certain favorable tax attributes we will acquire from the Blocker Companies in the Mergers (including net operating losses and the Blocker Companies' allocable share of existing tax basis), (iii) increases in our allocable share of existing tax basis and tax basis adjustments resulting from future redemptions or exchanges of LLC Units by Continuing Pre-IPO LLC Members for cash or Class A common stock and (iv) certain payments made under the Tax Receivable Agreement.

See "Certain Relationships and Related Party Transactions—Tax Receivable Agreement". Although we will retain 15% of the amount of such tax benefits, this and other aspects of our organizational structure may adversely impact the future trading market for our Class A common stock.

In certain cases, payments under the Tax Receivable Agreement to the TRA Parties may be accelerated or significantly exceed any actual benefits we realize in respect of the tax attributes subject to the Tax Receivable Agreement.

The Tax Receivable Agreement provides that upon certain mergers, asset sales, other forms of business combinations or other changes of control, upon a breach of any of our material obligations under the Tax Receivable Agreement or if, at any time, we elect an early termination of the Tax Receivable Agreement, then our obligations, or our successor's obligations, under the Tax Receivable Agreement to make payments will accelerate. The accelerated payments required in such circumstances will be calculated by reference to the present value (at a discount rate equal to) of all future payments that holders of LLC Units or other recipients would have been entitled to receive under the Tax Receivable Agreement, and such accelerated payments and any other future payments under the Tax Receivable Agreement will utilize certain valuation assumptions, including an assumption that we would have sufficient taxable income to fully utilize all potential future tax benefits that are subject to the Tax Receivable Agreement. Based on these assumptions and assuming that the market value of a share of Class A common stock were to be equal to an initial public offering price of \$ per share of Class A common stock (the midpoint of the price range set forth on the cover of this prospectus) and a discount rate of , we estimate that the aggregate amount of these termination payments would be approximately \$ if Portillo's Inc. were to exercise its early termination right immediately following this offering. The foregoing number is merely an estimate and the actual payments could differ materially.

As a result of the foregoing, we could be required to make payments under the Tax Receivable Agreement that are greater than the specified percentage of any actual benefits we ultimately realize in respect of the tax benefits that are subject to the Tax Receivable Agreement and we could be required to make payments under the Tax Receivable Agreement significantly in advance of the actual realization, if any, of such future tax benefits. In these situations, our obligations under the Tax Receivable Agreement could have a substantial negative impact on our liquidity and could have the effect of delaying, deferring or preventing certain mergers, asset sales, other forms of business combinations or other changes of control. There can be no assurance that we will be able to fund or finance our obligations under the Tax Receivable Agreement.

The acceleration of payments under the Tax Receivable Agreement in the case of certain changes of control may impair our ability to consummate change of control transactions or negatively impact the value received by owners of our Class A common stock.

In the case of certain changes of control, payments under the Tax Receivable Agreement will be accelerated and may significantly exceed the actual benefits we realize in respect of the tax attributes subject to the Tax Receivable Agreement. We expect that the payments that we may make under the Tax Receivable Agreement in the event of a change of control will be substantial. As a result, our accelerated payment obligations and/or the assumptions adopted under the Tax Receivable Agreement in the case of a change of control may impair our ability to consummate change of control transactions or negatively impact the value received by owners of our Class A common stock in a change of control transaction.

We will not be reimbursed for any payments made to the TRA Parties under the Tax Receivable Agreement in the event that any tax benefits are disallowed.

Payments under the Tax Receivable Agreement will be based on the tax reporting positions that we determine, and the U.S. Internal Revenue Service, or the IRS, or another taxing authority may challenge all or part of the amount of existing tax basis, tax basis increases or other tax benefits we claim, as well as other related tax positions we take, and a court could sustain such challenge. If the outcome of any such challenge would reasonably be expected to materially affect a recipient's payments under the Tax Receivable Agreement, then we will not be permitted to settle or fail to contest such challenge without the consent (not to be unreasonably withheld or delayed) of certain TRA Parties. The interests of the TRA Parties in any such challenge may differ from or conflict with our interests and your interests, and the TRA Parties may exercise their consent rights relating to any such challenge in a manner adverse to our interests and your interests. We will not be reimbursed for any cash payments previously made to the TRA Parties under the Tax Receivable Agreement in the event that any tax benefits initially claimed by us and for which payment has been made to a TRA Party are subsequently challenged by a taxing authority and are ultimately disallowed. Instead, any excess cash payments made by us to a TRA Party will be netted against any future cash payments that we might otherwise be required to make to such TRA Party, as applicable, under the terms of the Tax Receivable Agreement. However, we might not determine that we have effectively made an excess cash payment to a TRA Party for a number of years following the initial time of such payment and, if any of our tax reporting positions are challenged by a taxing authority, we will not be permitted to reduce any future cash payments under the Tax Receivable Agreement until any such challenge is finally settled or determined. Moreover, the excess cash payments we previously made under the Tax Receivable Agreement could be greater than the amount of future cash payments against which we would otherwise be permitted to net such excess. As a result, payments made under the Tax Receivable Agreement could be significantly in excess of any tax savings that we realize from the tax attributes that are the subject of the Tax Receivable Agreement.

If we were deemed to be an investment company under the Investment Company Act of 1940, as amended (the "1940 Act"), as a result of our ownership of Portillo's OpCo, applicable restrictions could make it impractical for us to continue our business as contemplated and could have a material adverse effect on our business.

Under Sections 3(a)(1)(A) and (C) of the 1940 Act, a company generally will be deemed to be an "investment company" for purposes of the 1940 Act if (i) it is, or holds itself out as being, engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities or (ii) it engages, or proposes to engage, in the business of investing, reinvesting, owning, holding, or trading in securities and it owns or proposes to acquire investment securities having a value exceeding 40% of the value of its total assets (exclusive of U.S. government securities and cash items) on an unconsolidated basis. We do not believe that we are an "investment company," as such term is defined in either of those sections of the 1940 Act.

As a result of the Reorganization Transactions, we obtained control over Portillo's OpCo. As the sole managing member of Portillo's OpCo, we control and operate Portillo's OpCo. On that basis, we believe that our interest in Portillo's OpCo is an "investment security" as that term is used in the 1940 Act. However, if we were to cease participation in the management of Portillo's OpCo, or if Portillo's OpCo itself becomes an investment company, our interest in Portillo's OpCo, could be deemed an "investment security" for purposes of the 1940 Act.

We, and Portillo's OpCo intend to conduct our operations so that we will not be deemed an investment company. If it were established that we were an unregistered investment company, there would be a risk that we would be subject to monetary penalties and injunctive relief in an action brought by the SEC, that we would be unable to enforce contracts with third parties, and that third parties could seek to obtain rescission of transactions undertaken during the period it was established that we were an unregistered investment company. If we were required to register as an investment company, restrictions imposed by the 1940 Act, including limitations on our capital structure and our ability to transact with affiliates, could make it impractical for us to continue our business as contemplated and could have a material adverse effect on our business.

Risks Related to Intellectual Property, Information Technology, and Data Security

The failure to protect and maintain our intellectual property, including our trademarks, could have a material adverse effect on our business, including our ability to establish and maintain brand awareness.

Our intellectual property includes our trademarks and service marks registered with the United States Patent and Trademark Office (including Portillo's® and other names used by our restaurants), the trade dress of our restaurants, our websites and domain names (including our website at portillos.com and other websites and domain names used by our restaurants) and other unregistered intellectual property. The success of our business strategy depends on our continued ability to use such intellectual property that we own, in addition to intellectual property we license from third parties. We require continued use of our existing trademarks and service marks in order to increase brand awareness and develop our branded products. If our efforts to maintain and protect our intellectual property are not adequate (including by way of confidentiality or other contractual restrictions we impose on third parties), or if any third-party misappropriates, infringes, dilutes or otherwise violates our intellectual property, the value of our intellectual property may be harmed. For example, failure to protect or enforce trademarks, whether in print, on the Internet or through social media or other media, could prevent us from challenging third parties who use trademarks similar to our trademarks and who, as a result, could cause consumer confusion, harm the public perception of our brands, prevent our brands and branded products from achieving and maintaining market acceptance and cause a material adverse effect on our business, financial condition and results of operations. There can be no assurance that all the steps we have taken to maintain and protect our intellectual property in the United States will be adequate or will permit us to obtain or maintain any competitive advantage.

Security breaches could negatively impact our business by causing disruption to our operations, a compromise of confidential guest information, or confidential team member information, and could subject us to loss and harm our business.

Our business requires the collection, transmission and retention of large volumes of guest and team member data, including credit and debit card numbers and other personally identifiable information, in various information technology systems that we maintain and in those maintained by third parties with whom we contract to provide services. The integrity and protection of that guest and team member data is critical to us. Further, our guests and team members have a high expectation that we and our service providers will adequately protect their personal information.

Like many other retail and restaurant companies, we have experienced, and will likely continue to experience, attempts to compromise our information technology systems. Additionally, the techniques and sophistication used to conduct cyber-attacks and breaches of information technology systems, as well as the sources and targets of these attacks, change frequently and are often not recognized until such attacks are launched or have been in place for a period of time. While we continue to make significant investment in physical and technological security measures, team member training, and third party services, designed to anticipate cyber-attacks and prevent breaches, our information technology networks and infrastructure or those of our third party vendors and other service providers could be vulnerable to damage, disruptions, shutdowns, data loss, or breaches due to criminal conduct, team member error, negligence or malfeasance, utility failures, natural disasters or other catastrophic events. Due to these scenarios we cannot provide assurance that we will be successful in preventing such cyber-attacks, breaches or data loss.

Additionally, the information security and privacy requirements imposed by governmental regulation are evolving and we are expected to fulfill such requirements. Our systems may not be able to satisfy these requirements and expectations or may require significant additional investments or time in order to do so. Efforts to hack or breach security measures, failures of systems or software to operate as designed or intended, viruses, operator error or inadvertent releases of data all threaten our and our service providers' information systems and records. A breach in the security of our information technology systems or those of our service providers could lead to an interruption in the operation of our systems, resulting in operational inefficiencies and a loss of profits.

Additionally, a significant theft, loss or misappropriation of, or unauthorized access to, our guests' data or other proprietary data or other breach of our information technology systems could result in fines, legal claims or proceedings, regulatory investigations and actions, or liability for failure to comply with privacy and information security laws, which could disrupt our operations, damage our reputation and expose us to claims from guests and team members, any of which could have a material adverse effect on our business, financial condition and results of operations.

System interruptions or a material failure of our systems could damage our business, reputation and brand and substantially harm our business, financial condition and results of operations.

Our omni-channel approach will in large part rely on our information technology systems to operate successfully, including the implementation of our delivery strategy. As we expand our delivery business channels, our exposure to such risks will increase.

Our systems, which in some cases rely on third-party providers, may experience service interruptions, degradation or other performance problems because of hardware and software defects or malfunctions, distributed denial-of-service and other cyberattacks, infrastructure changes, human error, earthquakes, hurricanes, floods, fires, natural disasters, power losses, disruptions in telecommunications services, fraud, military or political conflicts, terrorist attacks, computer viruses, ransomware, malware, or other events. Our systems also may be subject to break-ins, sabotage, theft, and intentional acts of vandalism as a result of criminal third parties (including state-sponsored organizations with significant financial and technological resources), third parties we do business with and team members. Our reliance on third parties increases our exposure to such risks as we exercise a lesser degree of control over such persons. Our cyber insurance and business interruption insurance may not be sufficient to cover all of our losses that may result from interruptions in our service as a result of systems failures and similar events. As a result, if we experience any outsized material impacts from a failure of our systems, our business, financial condition and results of operations could be materially and adversely effected.

While we endeavor to keep all systems current, there can be no guarantee that we can reliably update and maintain our systems. In instances where we are unable to do so, the mitigating controls we put in place to reduce the risk may fail. Any such failure could lead to website downtime, disruptions to our information technology systems and systems vulnerability exposure to cyber-criminals.

Failure to comply with federal and state laws and regulations relating to privacy, data protection, advertising and consumer protection, or the expansion of current or the enactment of new laws or regulations relating to privacy, data protection, advertising and consumer protection, could have a material adverse effect on our business, financial condition and results of operations.

We rely on a variety of marketing and advertising techniques, including email communications, affiliate partnerships, social media interactions, digital marketing, direct mailers, public relations initiatives and local community sponsorships, promotions and partnerships, and we are subject to various laws and regulations that govern such marketing and advertising practices. A variety of federal and state laws and regulations govern the collection, use, retention, sharing and security of consumer data, particularly in the context of digital marketing, which we rely upon to attract new customers.

Laws and regulations relating to privacy, data protection, marketing and advertising, and consumer protection are evolving and subject to potentially differing interpretations. These requirements may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another or may conflict with other rules or our practices. As a result, our practices may not have complied or may not comply in the future with all such laws, regulations, requirements and obligations. Any failure, or perceived failure, by us to comply with our privacy policies, our contractual commitments or any federal or state privacy or consumer protection-related laws, regulations, industry self-regulatory principles, industry standards or codes of conduct, regulatory guidance, orders to which we may be subject or other legal obligations relating to privacy or consumer protection

could adversely affect our reputation, brand and business, and may result in claims, proceedings or actions against us by governmental entities, customers, suppliers or others or other liabilities or may require us to change our operations and/or cease using certain data sets. Any such claims, proceedings or actions could hurt our reputation, brand and business, force us to incur significant expenses in defense of such proceedings or actions, distract our management, increase our costs of doing business, result in a loss of customers, suppliers or vendors and result in the imposition of monetary penalties. We may also be contractually required to indemnify and hold harmless third parties from the costs or consequences of non-compliance with any laws, regulations or other legal obligations relating to privacy or consumer protection or any inadvertent or unauthorized use or disclosure of data that we store or handle as part of operating our business.

Federal and state governmental authorities continue to evaluate the privacy implications inherent in the use of third-party “cookies” and other methods of online tracking for behavioral advertising and other purposes. The U.S. government has enacted, has considered or is considering legislation or regulations that could significantly restrict the ability of companies and individuals to engage in these activities, such as by regulating the level of consumer notice and consent required before a company can employ cookies or other electronic tracking tools or the use of data gathered with such tools. Additionally, some providers of consumer devices and web browsers have implemented, or announced plans to implement, means to make it easier for Internet users to prevent the placement of cookies or to block other tracking technologies, which could if widely adopted result in the use of third-party cookies and other methods of online tracking becoming significantly less effective. For example, Apple recently moved to “opt-in” privacy models, requiring users to voluntarily choose to receive targeted ads, which may reduce the value of ad impressions on its iOS mobile application platform. Many applications and other devices allow consumers to avoid receiving advertisements by paying for subscriptions or other downloads. The regulation of the use of these cookies and other current online tracking and advertising practices or a loss in our ability to make effective use of services that employ such technologies could increase our costs of operations and limit our ability to acquire new customers on cost-effective terms and, consequently, have a material adverse effect on our business, financial condition and results of operations.

In addition, various federal and state legislative and regulatory bodies, or self-regulatory organizations, may expand current laws or regulations, enact new laws or regulations or issue revised rules or guidance regarding privacy, data protection, consumer protection, and advertising. Additionally, the Federal Trade Commission (the “FTC”) and many state attorneys general are interpreting federal and state consumer protection laws to impose standards for the online collection, use, dissemination and security of data. Each of these privacy, security, and data protection laws and regulations, and any other such changes or new laws or regulations, could impose significant limitations, require changes to our business, or restrict our use or storage of personal information, which may increase our compliance expenses and make our business more costly or less efficient to conduct. In addition, any such changes could compromise our ability to develop an adequate marketing strategy and pursue our growth strategy effectively, which, in turn, could have a material adverse effect on our business, financial condition and results of operations.

Litigation with respect to intellectual property, if decided against us, may result in competing uses or require adoption of new, non-infringing intellectual property, which may in turn adversely affect sales and revenues.

There can be no assurance that third parties will not assert claims of infringement, misappropriation or other violation of intellectual property against us, or assert claims that our trademarks, service marks, trade names and other intellectual property are invalid or unenforceable. In addition, our trademarks may be narrowed. Any such claims decided against us could have a material adverse effect on our business, financial condition and results of operations. For example, if any of our intellectual property is invalidated or deemed unenforceable, competing uses of such intellectual property would be permitted and could lead to a decline in our results of operations. Additionally any infringement or misappropriation claims decided against us could result in our being required to pay damages, to cease using our intellectual property, to develop or adopt non-infringing intellectual property or to acquire a license to the third party intellectual property that is the subject of the asserted claim. There could be significant expenses associated with the defense of any claims of infringement, misappropriation,

or other violation of third party intellectual property. We may also from time to time have to assert claims against third parties and initiate litigation in order to enforce our trademarks, service marks and other intellectual property. Any such litigation could result in substantial costs and diversion of resources, could be protracted with no certain of success, or could fail to achieve an adequate remedy. Any of these occurrences could have a material adverse effect on our business, financial condition and results of operations.

Risks Related to this Offering and Ownership of Our Class A Common Stock

Future offerings of debt or equity securities by us may have a material adverse effect on the market price of our Class A common stock.

In the future, we may attempt to obtain financing or to further increase our capital resources by issuing additional shares of our Class A common stock or by offering debt or other equity securities, including senior or subordinated notes, debt securities convertible into equity or shares of preferred stock.

Any future debt financing could involve restrictive covenants relating to our capital-raising activities and other financial and operational matters, which might make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. Moreover, if we issue debt securities, the debt holders would have rights to make claims on our assets senior to the rights of our holders of our Class A common stock. The issuance of additional shares of our Class A common stock or other equity securities or securities convertible into equity may dilute the economic and voting rights of our existing stockholders or reduce the market price of our Class A common stock or both. Debt securities convertible into equity could be subject to adjustments in the conversion ratio pursuant to which certain events may increase the number of equity securities issuable upon conversion. Preferred shares, if issued, could have a preference with respect to liquidating distributions or a preference with respect to dividend payments that could limit our ability to pay dividends to the holders of our Class A common stock. Our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, which may have a material adverse effect on the amount, timing, or nature of our future offerings. Thus, holders of our Class A common stock bear the risk that our future offerings may reduce the market price of our Class A common stock and dilute their stockholdings in us.

If the ownership of our Class A common stock continues to be highly concentrated, it may prevent you and other minority stockholders from influencing significant corporate decisions and may result in conflicts of interest.

Following the closing of this offering, Berkshire will indirectly beneficially own approximately _____ % of our outstanding Class A common stock, or _____ % if the underwriters' option to purchase additional shares is fully exercised. As a result, Berkshire will indirectly beneficially own shares sufficient for majority votes over all matters requiring stockholder votes, including: the election of directors; mergers, consolidations and acquisitions; the sale of all or substantially all of our assets and other decisions affecting our capital structure; amendments to our certificate of incorporation or our bylaws; and our winding up and dissolution.

This concentration of ownership may delay, deter or prevent acts that would be favored by our other stockholders. The interests of Berkshire may not always coincide with our interests or the interests of our other stockholders. This concentration of ownership may also have the effect of delaying, preventing or deterring a change in control of us. Also, Berkshire may seek to cause us to take courses of action that, in its judgment, could enhance its investment in us, but which might involve risks to our other stockholders or adversely affect us or our other stockholders, including investors in this offering. As a result, the market price of our Class A common stock could decline or stockholders might not receive a premium over the then-current market price of our Class A common stock upon a change in control. In addition, this concentration of share ownership may adversely affect the trading price of our Class A common stock because investors may perceive disadvantages in

owning shares in a company with significant stockholders. See “Principal Stockholders” and “Description of Capital Stock—Anti-takeover Provisions.”

As a controlled company, we will not be subject to all of the corporate governance rules of the Nasdaq.

Upon the listing of our Class A common stock on the Nasdaq in connection with this offering, we will be considered a “controlled company” under the rules of the Nasdaq. Controlled companies are exempt from the Nasdaq corporate governance rules requiring that listed companies have (i) a majority of the Board consist of “independent” directors under the listing standards of the Nasdaq, (ii) a nominating/corporate governance committee composed entirely of independent directors and a written nominating/corporate governance committee charter meeting the Nasdaq requirements and (iii) a compensation committee composed entirely of independent directors and a written compensation committee charter meeting the requirements of the Nasdaq. Following this offering, we will use some or all these exemptions. However, we anticipate that our Board will be composed of a majority of independent directors and that our Compensation Committee and our Nominating and Corporate Governance Committee will be composed entirely of independent directors. If we choose to take advantage of these exceptions in the future, we may not have a majority of independent directors and our nomination and corporate governance committee and compensation committee may not consist entirely of independent directors and you may not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of the Nasdaq. See “Management.”

We do not anticipate paying any dividends on our Class A common stock in the foreseeable future.

We do not expect to declare or pay any cash or other dividends in the foreseeable future on our Class A common stock because we intend to use cash flow generated by operations to grow our business. Our Credit Facilities do not restrict our ability to pay cash dividends on our Class A common stock but they may restrict the ability of certain subsidiaries of Portillo’s OpCo to pay such cash dividends to Portillo’s OpCo. We may also enter into other credit agreements or other borrowing arrangements in the future that restrict or limit our ability to pay cash dividends on our Class A common stock. As a result, you may not receive any return on an investment in our Class A common stock unless you sell our Class A common stock for a price greater than that which you paid for it. See “Dividend Policy.”

Our quarterly results of operations may fluctuate significantly and could fall below the expectations of securities analysts and investors due to seasonality and other factors, some of which are beyond our control, resulting in a decline in our stock price.

Our quarterly results of operations may fluctuate due principally to seasonal factors and the timing of holidays. Accordingly, results for any one quarter are not necessarily indicative of results to be expected for any other quarter or for any year and same-restaurant sales for any particular future period may decrease. In addition, as we expand our number of restaurants in hot weather climates, the seasonality of our business may be amplified due to a portion of the population who lives elsewhere in the summer. Similarly, our plans to expand the number of restaurants in cold weather climate could be impacted by the population heading south for the summer. In the future, results of operations may fall below the expectations of securities analysts and investors. In that event, the price of our Class A common stock could be adversely impacted.

No market currently exists for our Class A common stock and we cannot assure you that an active market will develop for such stock.

Prior to this offering, there has been no public market for our Class A common stock. The initial public offering price for our Class A common stock has been determined through negotiations among us and the representatives of the underwriters and may not be indicative of the market price of our Class A common stock after this offering or to any other established criteria of the value of our business. If you purchase shares of our Class A common stock, you may not be able to resell those shares at or above the initial public offering price. We cannot predict the extent to which investor interest in us will lead to the development of an active trading market on the Nasdaq or otherwise or how liquid that market might become. An active public market for our Class A common stock may not develop or be sustained after this offering. If an active public market does not

develop or is not sustained, it may be difficult for you to sell your shares of Class A common stock at a price that is attractive to you or at all.

The market price and trading volume of our Class A common stock may be volatile, which could result in rapid and substantial losses for our stockholders, and you may lose all or part of your investment.

Shares of our Class A common stock sold in this offering may experience significant volatility on the Nasdaq. An active, liquid and orderly market for our Class A common stock may not be sustained, which could depress the trading price of our Class A common stock or cause it to be highly volatile or subject to wide fluctuations. The market price of our Class A common stock may fluctuate or may decline significantly in the future and you could lose all or part of your investment. Some of the factors that could negatively affect our share price or result in fluctuations in the price or trading volume of our Class A common stock include:

- variations in our quarterly or annual results of operations;
- changes in our earnings estimates (if provided) or differences between our actual results of operations and those expected by investors and analysts;
- the contents of published research reports about us or our industry or the failure of securities analysts to cover our Class A common stock;
- additions or departures of key management personnel;
- any increased indebtedness we may incur in the future;
- announcements by us or others and developments affecting us;
- actions by institutional stockholders;
- litigation and governmental investigations;
- legislative or regulatory changes;
- judicial pronouncements interpreting laws and regulations;
- changes in government programs;
- changes in market valuations of similar companies;
- restaurant or dining area closures or modified operating hours due to the COVID-19 pandemic;
- reduced guest traffic due to illness, quarantine or government or self-imposed restrictions placed on our restaurants' operations;
- changes in consumer spending behaviors (e.g., continued practice of social distancing, decrease in consumer confidence in general macroeconomic conditions and a decrease in consumer discretionary spending);
- speculation or reports by the press or investment community with respect to us or our industry in general;
- announcements by us or our competitors of significant contracts, acquisitions, dispositions, strategic relationships, joint ventures or capital commitments; and
- general market, political and economic conditions, including local conditions in the markets in which we operate.

These broad market and industry factors may decrease the market price of our Class A common stock, regardless of our actual financial performance. The stock market in general has from time to time experienced extreme price and volume fluctuations, including recently. In addition, in the past, following periods of volatility in the overall market and decreases in the market price of a company's securities, securities class action litigation

has often been instituted against these companies. This litigation, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources, which could have a material adverse effect on our business, financial condition and results of operations.

The market price of our Class A common stock could be negatively affected by sales of substantial amounts of our Class A common stock in the public markets.

After this offering, we will have _____ shares of Class A common stock outstanding. Of our issued and outstanding shares, all the Class A common stock sold in this offering will be freely transferable, except for any shares held by our "affiliates," as that term is defined in Rule 144 under the Securities Act. Following closing of this offering, approximately _____ % of our outstanding Class A common stock, or _____ % if the underwriters exercise their option to purchase additional shares in full, will be indirectly beneficially owned by Berkshire, and can be resold into the public markets in the future in accordance with the requirements of Rule 144. See "Shares Eligible For Future Sale."

We and our officers, directors and holders of substantially all of our outstanding capital stock and other securities have agreed, subject to specified exceptions, not to directly or indirectly:

- sell, offer, contract or grant any option to sell (including any short sale), pledge, transfer, establish an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Exchange Act, or
- otherwise dispose of any shares of Class A common stock, options or warrants to acquire shares of Class A common stock, or securities exchangeable or exercisable for or convertible into shares of Class A common stock currently or hereafter owned either of record or beneficially, or
- publicly announce an intention to do any of the foregoing for a period of 180 days after the date of this prospectus without the prior written consent of _____.

This restriction terminates after the close of trading of the Class A common stock on and including the 180th day after the date of this prospectus. _____ may, in their sole discretion and at any time or from time to time before the termination of the 180-day period release all or any portion of the securities subject to lock-up agreements. See "Underwriting—No Sales of Similar Securities."

The market price of our Class A common stock may decline significantly when the restrictions on resale by our existing stockholders lapse. A decline in the price of our Class A common stock might impede our ability to raise capital through the issuance of additional Class A common stock or other equity securities.

The future issuance of additional Class A common stock in connection with any equity plans, acquisitions or otherwise will dilute all other stockholdings.

After this offering, we will have an aggregate of _____ shares of Class A common stock authorized but unissued and not reserved for issuance under our equity incentive plans. We may issue all these shares of Class A common stock without any action or approval by our stockholders, subject to certain exceptions. Any Class A common stock issued in connection with any equity incentive plan, the exercise of outstanding stock options, or otherwise, would dilute the percentage ownership held by the investors who purchase Class A common stock in this offering.

You will incur immediate dilution as a result of this offering.

If you purchase Class A common stock in this offering, you will pay more for your shares than the amounts paid by existing stockholders for their shares. As a result, you will incur immediate dilution of \$ _____ per share, representing the difference between the assumed initial public offering price of \$ _____ per share (the midpoint of the price range set forth on the cover of this prospectus) and our pro forma net tangible book value (deficit) per share after giving effect to this offering. See "Dilution."

For as long as we are an emerging growth company, we will not be required to comply with certain reporting requirements, including those relating to accounting standards and disclosure about our executive compensation, that apply to other public companies.

We are an emerging growth company, as defined in Section 2(a) of the Securities Act, as modified by the JOBS Act, and we have elected to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies. These provisions include, but are not limited to, not being required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a non-binding advisory vote on executive compensation and of stockholder approval of any golden parachute payments not previously approved. We do not know if some investors will find our Class A common stock less attractive as a result of our decision to avail ourselves of certain of these exemptions. The result may be a less-active trading market for our Class A common stock and our stock price may be more volatile.

In addition, Section 107 of the JOBS Act provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. In other words, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to avail ourselves of this exemption and, therefore, we can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies.

We could remain an emerging growth company for up to five years or until the earliest of (a) the last day of the first fiscal year in which our annual gross revenues exceed \$1.07 billion, (b) the date that we become a large accelerated filer as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of our common stock that is held by non-affiliates exceeds \$700 million as of the last business day of our most recently completed second fiscal quarter, or (c) the date on which we have issued more than \$1 billion in non-convertible debt securities in the preceding three-year period.

The exact implications of the JOBS Act are still subject to interpretations and guidance by the SEC and other regulatory agencies, and we cannot assure you that we will be able to take advantage of all of the benefits of the JOBS Act. In addition, investors may find our Class A common stock less attractive to the extent we rely on the exemptions and relief granted by the JOBS Act. If some investors find our Class A common stock less attractive as a result, there may be a less active trading market for our Class A common stock and our stock price may decline or become more volatile.

Risks Related to Legal and Regulatory Matters

We are subject to many federal, state and local laws with which compliance can be both costly and complex.

The restaurant industry is subject to extensive federal, state and local laws and regulations, including those relating to building and zoning requirements and those relating to the preparation and sale of food. Such laws and regulations are subject to change from time to time. The failure to comply with these laws and regulations could adversely affect our results of operations. Typically, licenses, permits and approvals under such laws and regulations must be renewed annually and may be revoked, suspended or denied renewal for cause at any time if governmental authorities determine that our conduct violates applicable regulations. Difficulties or failure to maintain or obtain the required licenses, permits and approvals could adversely affect our existing restaurants and delay or result in our decision to cancel the opening of new restaurants, which could have a material adverse effect on our business, financial condition and results of operations.

The development and operation of our restaurants depend, to a significant extent, on the selection of suitable sites, which are subject to zoning, land use, environmental, traffic and other regulations and

requirements. We are also subject to licensing and regulation by state and local authorities relating to health, sanitation, safety and fire standards.

There is also a potential for increased regulation of certain food establishments in the United States, where compliance with a Hazard Analysis and Critical Control Points (“HACCP”) approach would be required. HACCP refers to a management system in which food safety is addressed through the analysis and control of potential hazards from production, procurement and handling, to manufacturing, distribution and consumption of the finished product. Many states have required restaurants to develop and implement HACCP Systems, and the United States government continues to expand the sectors of the food industry that must adopt and implement HACCP programs. For example, the FDA Food Safety Modernization Act (“FSMA”), signed into law in January 2011, granted the U.S. Food and Drug Administration new authority regarding the safety of the entire food system, including through increased inspections and mandatory food recalls. Although restaurants are specifically exempted from or not directly implicated by some of these requirements, we anticipate that the requirements may impact our industry. Additionally, our suppliers may initiate or otherwise be subject to food recalls that may impact the availability of certain products, result in adverse publicity or require us to take actions that could be costly for us or otherwise impact our business. We may be required to incur additional time and resources to comply with new food safety requirements made under the FSMA or other federal or state food safety regulations. Failure to comply with the laws and regulatory requirements of federal, state and local authorities could result in, among other things, revocation of required licenses, administrative enforcement actions, fines and civil and criminal liability. In addition, many applicable laws could require us to expend significant funds to make modifications to our restaurants or operations to comply with such laws. Compliance with these laws can be costly and may increase our exposure to litigation or governmental investigations or proceedings.

Additionally, government regulation may impact our business as a result of changes in attitudes regarding diet and health or new information regarding the adverse health effects of consuming certain menu offerings. These changes have resulted in, and may continue to result in, laws and regulations requiring us to disclose the nutritional and allergen content of our food offerings and laws and regulations affecting permissible or limitations on ingredients and menu items. A number of counties, cities and states have enacted menu labeling laws requiring multi-unit restaurant operators to disclose to consumers certain nutritional and allergen information, or have enacted legislation restricting the use of certain types of ingredients in restaurants. An unfavorable report on, or reaction to, our menu ingredients, the size of our portions or the nutritional content of our menu items could negatively influence the demand for our menu offerings.

Compliance with current and future laws and regulations regarding the ingredients, nutritional and allergen content of our menu items may be costly and time-consuming. If we fail to comply with existing or future laws and regulations, we may be subject to governmental or judicial fines or sanctions. The risks and costs associated with nutritional disclosures on our menus could also impact our operations, particularly given differences among applicable legal requirements and practices within the restaurant industry with respect to testing and disclosure, ordinary variations in food preparation among our own restaurants and the need to rely on the accuracy and completeness of nutritional information obtained from third-party suppliers. We may not be able to effectively respond to changes in consumer health perceptions, comply with further nutrient content disclosure requirements or adapt our menu offerings to trends in eating habits, which could have a material adverse effect on our business, financial condition and results of operations.

We are subject to the Americans with Disabilities Act (the “ADA”), which, among other things, requires our restaurants to meet federally mandated requirements for the disabled. The ADA prohibits discrimination in employment and public accommodations on the basis of disability. Under the ADA, we could be required to expend funds to modify our restaurants to provide service to, or make reasonable accommodations for the employment of, disabled persons. In addition, our employment practices are subject to the requirements of the Immigration and Naturalization Service relating to citizenship and residency.

Further, a new presidential and legislative administration recently took office, and it is not yet known what changes the new administration will make to economic or tax policies and how those policies will impact the economy or consumer discretionary spending.

The impact of current laws and regulations, the effect of future changes in laws or regulations that impose additional requirements and the consequences of litigation relating to current or future laws and regulations, or our inability to respond effectively to significant regulatory or public policy issues, could increase our compliance and other costs of doing business and could have a material adverse effect on our business, financial condition and results of operations. Failure to comply with the laws and regulatory requirements of federal, state and local authorities could result in, among other things, revocation of required licenses, administrative enforcement actions, fines and civil and criminal liability. In addition, certain laws, including the ADA, could require us to expend significant funds to make modifications to our restaurants if we failed to comply with applicable standards. Compliance with all these laws and regulations can be costly and can increase our exposure to litigation or governmental investigations or proceedings.

We could be party to litigation that could distract management, increase our expenses or subject us to material monetary damages or other remedies.

Our guests occasionally file complaints or lawsuits against us alleging we caused an illness or injury they suffered at or after a visit to our restaurants, or that we have problems with food quality or operations. We may also be subject to a variety of other claims arising in the ordinary course of our business, including personal injury claims, contract claims and claims alleging violations of federal and state law regarding workplace and employment matters, equal opportunity, harassment, discrimination and similar matters, and we could become subject to class action or other lawsuits related to these or different matters in the future. In recent years, a number of restaurant companies have been subject to such claims, and some of these lawsuits have resulted in the payment of substantial damages by the defendants. Regardless of whether any claims against us are valid, or whether we are ultimately held liable, claims may be expensive to defend and may divert time and money away from our operations and hurt our performance. A judgment in excess of our insurance coverage for any claims could have a material adverse effect on our business, financial condition and results of operations. In addition, such allegations could result in adverse publicity and negatively impact our reputation, which could have a material adverse effect on our business, financial condition and results of operations.

In addition, the restaurant industry has been subject to a growing number of claims based on the nutritional content of food products sold and disclosure and advertising practices. We may also be subject to this type of proceeding in the future and, even if we are not, publicity about these matters (particularly directed at the fast casual or traditional fast food segments of the industry) may harm our reputation and could have a material adverse effect on our business, financial condition and results of operations.

We can incur liabilities arising from environmental laws and compliance with environmental laws could increase our operating expenses.

We are subject to federal, state and local laws, regulations and ordinances that govern activities or operations that may have adverse environmental effects, such as waste handling and disposal practices for solid and hazardous wastes, discharges to water and air and odor control and also impose liability for the costs of cleaning up, and damage resulting from, sites of past spills, disposals or other releases of hazardous materials. In particular, under applicable environmental laws, we may be responsible for remediation of environmental conditions and may be subject to associated liabilities, including liabilities for clean-up costs and personal injury or property damage, relating to our restaurants and the land on which our restaurants are located, regardless of whether such environmental conditions were created by us or by a prior owner or tenant. Third parties also may make claims against owners or operators of properties for personal injuries and property damage associated with releases of, or actual or alleged exposure to, such hazardous or toxic substances at, on or from our restaurants. Some of our leases provide for indemnification of our landlords for environmental contamination, clean-up or owner liability. See “Business—Environmental Matters.”

If we fail to maintain effective internal controls over financial reporting, our ability to produce timely and accurate financial information or comply with Section 404 of the Sarbanes-Oxley Act of 2002 could be impaired, which could have a material adverse effect on our business and stock price.

Upon becoming a public company, we will be required to comply with Section 404 of the Sarbanes-Oxley Act (“Section 404”), which will require management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of our internal control over financial reporting commencing with our second annual report after this offering. In addition, under Section 404 our independent registered public accounting firm will also need to attest to the effectiveness of our internal control over financial in the future to the extent that we are no longer an emerging growth company or a smaller reporting company. To achieve compliance with Section 404 within the prescribed period, we will need to continue to dedicate internal resources, engage outside consultants and continue to execute on a detailed work plan to assess and document the adequacy of our internal control over financial reporting, continue taking steps to improve control processes, as appropriate, validate through testing that controls are functioning as documented and implement a continuous reporting and improvement process for internal control over financial reporting. Despite our efforts, there is a risk that we will not be able to conclude, within the prescribed timeframe or at all, that our internal control over financial reporting is effective as required by Section 404.

The failure to achieve and maintain an effective internal control environment could have a material adverse effect on our business, financial condition and results of operations. In the event that we are not able to demonstrate compliance with Section 404, or if our internal control over financial reporting is perceived as inadequate or it is perceived that we are unable to produce timely or accurate consolidated financial statements, investors may lose confidence in our results of operations, the price of our Class A common stock could decline, we could become subject to investigations by the stock exchange on which our Class A common stock is listed, the SEC or other regulatory agencies, which could require additional financial and management resources, or our Class A common stock may not be able to remain listed on such exchange.

As a public company, we will be subject to additional reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, and the listing standards of the Nasdaq.

General Risks

Our management does not have experience managing a public company and our current resources may not be sufficient to fulfill our public company obligations.

Following the closing of this offering, we will be subject to various regulatory requirements, including those of the SEC and the Nasdaq. These requirements include record keeping, financial reporting and corporate governance rules and regulations. Our management team does not have experience in managing a public company and, historically, has not had the resources typically found in a public company. Our internal infrastructure may not be adequate to support our increased reporting obligations and we may be unable to hire, train or retain necessary staff and may be reliant on engaging outside consultants or professionals to overcome our lack of experience or team members. If our internal infrastructure is inadequate, we are unable to engage outside consultants at a reasonable rate or attract talented team members to perform these functions or are otherwise unable to fulfill our public company obligations, it could have a material adverse effect on our business, financial condition and results of operations.

Fluctuations in our tax obligations and effective tax rate and realization of our deferred tax assets may result in volatility of our results of operations.

We are subject to income taxes in various U.S. jurisdictions. We record tax expense based on our estimates of future payments, which may in the future include reserves for uncertain tax positions in multiple tax jurisdictions, and valuation allowances related to certain net deferred tax assets. At any one time, many tax years

may be subject to audit by various taxing jurisdictions. The results of these audits and negotiations with taxing authorities may affect the ultimate settlement of these issues. We expect that throughout the year there could be ongoing variability in our quarterly tax rates as events occur and exposures are evaluated.

In addition, our effective tax rate in a given financial reporting period may be materially impacted by a variety of factors including, but not limited to, changes in the mix and level of earnings, varying tax rates in the different jurisdictions in which we operate, fluctuations in the valuation allowance or by changes to existing accounting rules or regulations. Further, new or revised tax legislation may be enacted in the future, which could negatively impact our current or future tax structure and effective tax rates. For example, President Joe Biden and certain members of Congress have set forth tax proposals that would, if enacted, make significant changes to U.S. tax laws. Such proposals include, but are not limited to, (i) an increase in the U.S. income tax rate applicable to corporations, (ii) an increase in the maximum U.S. federal income tax rate applicable to individuals, (iii) a minimum book income tax on certain large corporations, (iv) the modification or replacement of the minimum tax on global intangible low-taxed income and base erosion and anti-abuse tax and (v) an increase in the U.S. federal income tax rate for long-term capital gain for certain taxpayers with income in excess of a threshold amount. It is unclear whether these or similar changes will be enacted and, if enacted, how soon any such changes could take effect. The passage of any legislation as a result of these proposals and other similar changes in U.S. federal income tax laws could adversely affect our or Portillo's OpCo's business and future profitability.

If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our Class A common stock will be influenced by the research and reports that industry or securities analysts publish about us or our business. We do not currently have and may never obtain research coverage by securities and industry analysts. If no securities or industry analysts commence coverage of us, the trading price for our Class A common stock would be negatively impacted. If we obtain securities or industry analyst coverage and if one or more of these analysts ceases coverage of our company or fails to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline. Moreover, if our results of operations do not meet the expectations of the investor community, or one or more of the analysts who cover our company downgrade our stock, our stock price could decline. As a result, you may not be able to sell shares of our Class A common stock at prices equal to or greater than the initial public offering price.

Our insurance may not provide adequate levels of coverage against claims.

We believe that we maintain insurance customary for businesses of our size and type. However, there are types of losses we may incur that cannot be insured against or that we believe are not economically reasonable to insure. Such losses could have a material adverse effect on our business, financial condition and results of operations.

Changes in accounting principles applicable to us could have a material adverse effect on our financial condition and results of operations.

Generally accepted accounting principles in the U.S. are subject to interpretation by the Financial Accounting Standards Board ("FASB"), the American Institute of Certified Public Accountants, the SEC and various bodies formed to promulgate and interpret appropriate accounting principles. A change in these principles or interpretations could have a significant effect on our financial condition and results of operations, and could affect the reporting of transactions completed before the announcement of a change.

Our amended and restated certificate of incorporation will designate the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, and will designate the federal district courts of the United States as the sole and exclusive forum for claims arising under the Securities Act, which, in each case could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers employees, agents or other stockholders.

Our amended and restated certificate of incorporation will provide that, unless we consent in writing to an alternative forum, the Court of Chancery of the State of Delaware (or if the Court of Chancery lacks

jurisdiction, a state court located within the State of Delaware or the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for any (a) derivative action or proceeding brought on our behalf; (b) action asserting a claim of breach of a fiduciary duty owed by or other wrongdoing by any current or former director, officer, employee, agent or stockholder to us or our stockholders; (c) action asserting a claim arising under any provision of the DGCL or our amended and restated certificate of incorporation or amended and restated bylaws (as either may be amended from time to time), or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; or (d) action asserting a claim governed by the internal affairs doctrine. For the avoidance of doubt, our amended and restated certificate of incorporation will also provide that the foregoing exclusive forum provision does not apply to actions brought to enforce any liability or duty created by the Securities Act or the Exchange Act, or any rules or regulations promulgated thereunder, or any other claim or cause of action for which the federal courts have exclusive jurisdiction.

Our amended and restated certificate of incorporation will also provide that, unless we consent in writing to an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any action asserting a claim arising under the Securities Act or the rules and regulations promulgated thereunder. Pursuant to the Exchange Act, claims arising thereunder must be brought in federal district courts of the United States.

To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in any shares of our capital stock shall be deemed to have notice of and consented to the forum provision in our amended and restated certificate of incorporation. This choice of forum provision may limit a stockholder's ability to bring a claim in a different judicial forum, including one that it may find favorable or convenient for a specified class of disputes with us or our directors, officers, other stockholders or employees, which may discourage such lawsuits, make them more difficult or expensive to pursue and result in outcomes that are less favorable to such stockholders than outcomes that may have been attainable in other jurisdictions. By agreeing to this provision, however, stockholders will not be deemed to have waived our compliance with the federal securities laws and the rules and regulations thereunder. The enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that a court could find these types of provisions to be inapplicable or unenforceable. If a court were to find the choice of forum provisions in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could have a material adverse effect on our business, financial condition and results of operations.

As a public company, we incur significant costs to comply with the laws and regulations affecting public companies which could harm our business and results of operations.

As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, and the listing requirements of the Nasdaq, and other applicable securities rules and regulations. These rules and regulations have increased and will continue to increase our legal, accounting and financial compliance costs and have made and will continue to make some activities more time-consuming and costly, particularly after we cease to be an emerging growth company as defined in Section 2(a) of the Securities Act, as modified by the JOBS Act. For example, these rules and regulations could make it more difficult and more costly for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or to incur substantial costs to maintain the same or similar coverage. These rules and regulations could also make it more difficult for us to attract and retain qualified persons to serve on our Board or our Board committees or as executive officers. Our management and other personnel will devote a substantial amount of time to these compliance initiatives. As a result, management's attention may be diverted from other business concerns, which could harm our business and results of operations. We will need to hire more team members in the future to comply with these requirements, which will increase our costs and expenses.

Our management team and other personnel devote a substantial amount of time to new compliance initiatives and we may not successfully or efficiently manage our transition to a public company. To comply with

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the requirements of being a public company, including the Sarbanes-Oxley Act, we will need to undertake various actions, such as implementing new internal controls and procedures and hiring accounting or internal audit staff or outsourcing certain functions to third parties, which could have a material adverse effect on our business, financial condition and results of operations.

Our annual and quarterly results of operations may fluctuate, and if our operating and financial performance in any given period does not meet the guidance that we have provided to the public or the expectations of our investors and securities analysts, the trading price of our Class A common stock may decline.

Our annual and quarterly results of operations may fluctuate for a variety of reasons, many of which are beyond our control. These reasons include those described in these risk factors as well as the following:

- variations in the timing and volume of our sales;
- the timing of expenditures in anticipation of future sales;
- planned or actual changes to our capital or debt structure;
- strategic actions by us or our competitors, such as sales promotions, acquisitions or restructurings;
- significant litigation;
- legislation or other regulatory developments affecting us or our industry;
- changes in competitive and economic conditions generally;
- general market conditions; and
- changes in the cost or availability of our ingredients or labor.

Fluctuations in our annual and quarterly results of operations may cause those results to fall below the guidance that we have provided to the public or the expectations of our investors and securities analysts, which could cause the trading price of our Class A common stock to decline. Fluctuations in our results could also cause a number of other problems. For example, analysts or investors might change their models for valuing our Class A common stock, we could experience short-term liquidity issues, our ability to retain or attract key personnel may diminish and other unanticipated issues may arise.

In addition, we believe that our quarterly results of operations may vary in the future and that period-to-period comparisons of our results of operations may not be meaningful. You should not rely on the results of one quarter as an indication of future performance.

Our disclosure controls and procedures may not prevent or detect all errors or acts of fraud.

Upon the closing of this initial public offering, we will become subject to the periodic reporting requirements of the Exchange Act. We designed our disclosure controls and procedures to provide reasonable assurance that information we must disclose in reports we file or submit under the Exchange Act is accumulated and communicated to management, and recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. We believe that any disclosure controls and procedures, no matter how well-conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements due to error or fraud may occur and not be detected and could materially adversely affect our business, liquidity, financial condition or results of operations.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements. Forward-looking statements can be identified by words such as “anticipates,” “intends,” “plans,” “seeks,” “believes,” “estimates,” “expects” and similar references to future periods, or by the inclusion of forecasts or projections. Examples of forward-looking statements include, but are not limited to, statements we make regarding the outlook for our future business and financial performance, such as those contained in “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

Forward-looking statements are based on our current expectations and assumptions regarding our business, the economy and other future conditions. Because forward-looking statements relate to the future, by their nature, they are subject to inherent uncertainties, risks and changes in circumstances that are difficult to predict. As a result, our actual results may differ materially from those contemplated by the forward-looking statements. Important factors that could cause actual results to differ materially from those in the forward-looking statements include regional, national or global political, economic, business, competitive, market and regulatory conditions and the following:

- continued adverse effects of the COVID-19 pandemic or future pandemics or disease outbreaks on our financial condition and results of operations;
- our vulnerability to changes in consumer preferences and economic conditions;
- increases in the cost of our frequently used food items or shortages or disruptions in the supply or delivery of frequently used food items;
- our inability to open new restaurants in new and existing markets;
- the number of visitors to areas where our restaurants are located may decline;
- our inability to generate same-restaurant sales growth;
- our marketing programs and limited-time or seasonal menu offerings may fail to generate profits;
- incidents involving food-borne illness and food safety, including food tampering or contamination, which we may be unable to prevent;
- our inability to compete successfully with other lunch and dinner restaurants;
- our vulnerability to adverse geographic, demographic, unemployment, economic, regulatory and weather conditions;
- damage to our reputation and negative publicity, even if unwarranted;
- our vulnerability to changes in the digital and delivery business;
- our inability or failure to recognize, respond to and effectively manage the accelerated impact of social media;
- our reliance on a small number of suppliers and distributors for a substantial amount of our food and beverages;
- our failure to effectively address environmental, social and other sustainability matters affecting our industry, or to set and meet relevant sustainability goals;
- our level of indebtedness and our duty to comply with covenants under our Credit Facilities;
- the interests of Berkshire may differ from those of our public stockholders;
- our failure to adequately protect our network security;
- compliance with federal and local environmental, labor, employment and food safety laws and regulations; and
- our inability to effectively manage our internal controls over financial reporting.

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See “Risk Factors” for a further description of these and other factors. For the reasons described above, we caution you against relying on any forward-looking statements, which should also be read in conjunction with the other cautionary statements that are included elsewhere in this prospectus. Any forward-looking statement made by us in this prospectus speaks only as of the date on which we make it. Factors or events that could cause our actual results to differ may emerge from time to time, and it is not possible for us to predict all of them. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by law.

ORGANIZATIONAL STRUCTURE

Structure Prior to the Reorganization Transactions

We currently conduct our business through Portillo's OpCo and its subsidiaries. Following this offering, we will be a holding company and our sole material asset will be an ownership interest in Portillo's OpCo. Portillo's Inc. was incorporated as a Delaware corporation on June 8, 2021 to serve as the issuer of the Class A common stock offered hereby.

Prior to the consummation of the Reorganization Transactions, the amended and restated limited liability company agreement of Portillo's OpCo will be amended and restated to, among other things, convert all outstanding equity interests (except for those redeemable preferred LLC units which will be redeemed in connection with this offering) into LLC Units.

The Reorganization Transactions

In connection with this offering, we intend to enter into the Reorganization Transactions.

In connection with the Reorganization Transactions, Portillo's Inc. will become the sole managing member of Portillo's OpCo. Because we will manage and operate the business and control the strategic decisions and day-to-day operations of Portillo's OpCo and because we will also have a substantial financial interest in Portillo's OpCo, we will consolidate the financial results of Portillo's OpCo, and a portion of our net income will be allocated to the noncontrolling interest to reflect the entitlement of the Continuing Pre-IPO LLC Members to a portion of Portillo's OpCo's net income. In addition, because Portillo's OpCo will be under the common control of the Pre-IPO LLC Members before and after the Reorganization Transactions (both directly and indirectly through their ownership of us), we will account for the Reorganization Transactions as a reorganization of entities under common control and will initially measure the interests of the Continuing Pre-IPO LLC Members in the assets and liabilities of Portillo's OpCo at their carrying amounts as of the date of the completion of the consummation of the Reorganization Transactions.

Our amended and restated certificate of incorporation that will be in effect upon the completion of this offering will authorize the issuance of two classes of common stock: Class A common stock and Class B common stock. Each share of common stock will entitle its holder to one vote per share on all matters submitted to a vote of our stockholders. The Class B common stock is not entitled to economic interests in Portillo's Inc. See "Description of Capital Stock."

Prior to the completion of this offering, we will acquire, directly and indirectly, LLC Units through the Mergers. The Reorganization Parties will collectively hold _____ shares of Class A common stock of Portillo's Inc. after the Mergers. The Reorganization Parties will collectively receive a number of shares of our Class A common stock in the Mergers equal to the number of LLC Units held by the Blocker Companies prior to the Mergers, and will not directly hold interests in Portillo's OpCo.

Each Continuing Pre-IPO LLC Member will be issued a number of shares of our Class B common stock in an amount equal to the number of LLC Units held by such Continuing Pre-IPO LLC Member.

Portillo's OpCo will enter into the Amended LLC Agreement. Under the Amended LLC Agreement, holders of LLC Units (other than us and our wholly owned subsidiaries), including the Continuing Pre-IPO LLC Members, will have the right, from and after the completion of this offering (subject to the terms of the Amended LLC Agreement), to require Portillo's OpCo to redeem all or a portion of their LLC Units for, at our election, newly issued shares of Class A common stock on a one-for-one basis or a cash payment from the proceeds of a sale of shares of Class A common stock in accordance with the terms of the Amended LLC Agreement.

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Additionally, in the event of a redemption request from a holder of LLC Units, we may, at our option, effect a direct exchange of cash or Class A common stock for LLC Units in lieu of such a redemption. Shares of Class B common stock will be cancelled on a one-for-one basis if we, following a redemption request from a holder of LLC Units, redeem or exchange LLC Units of such holder pursuant to the terms of the Amended LLC Agreement. See “Certain Relationships and Related Party Transactions—Amended Portillo’s OpCo Agreement.” Except for transfers to us or to certain permitted transferees pursuant to the Amended LLC Agreement, the LLC Units and corresponding shares of Class B common stock may not be sold, transferred or otherwise disposed of.

We will issue _____ shares of Class A common stock pursuant to this offering.

We will use all of the net proceeds from this offering (including net proceeds received if the underwriters exercise their option to purchase additional shares of Class A common stock in full) to acquire newly issued LLC Units from Portillo’s OpCo at a purchase price per LLC Unit equal to the initial public offering price of Class A common stock, after deducting the underwriting discounts and commissions, collectively representing _____ % of Portillo’s OpCo’s outstanding LLC Units (or _____ %, if the underwriters exercise their option to purchase additional shares of Class A common stock in full).

We will enter into a Tax Receivable Agreement, that will obligate us to make payments to the TRA Parties in the aggregate generally equal to 85% of the applicable cash savings that we actually realize, or in certain circumstances are deemed to realize, as a result of (i) our allocable share of tax basis, including any applicable tax basis adjustments, acquired in this offering, (ii) certain favorable tax attributes we will acquire from the Blocker Companies in the Mergers (including net operating losses and the Blocker Companies’ allocable share of existing tax basis), (iii) increases in our allocable share of existing tax basis and tax basis adjustments resulting from future redemptions or exchanges of LLC Units by Continuing Pre-IPO LLC Members for cash or Class A common stock and (iv) certain payments made under the Tax Receivable Agreement. We will retain the benefit of the remaining 15% of these tax savings.

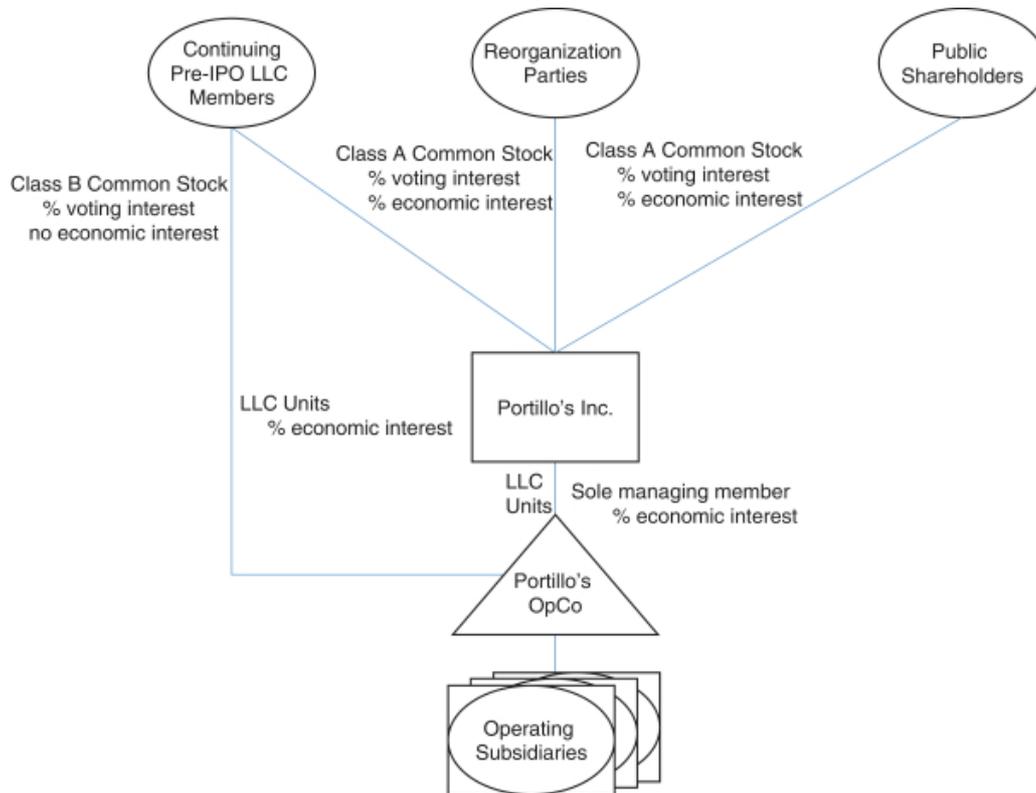
We will cause Portillo’s OpCo to use the proceeds from the issuance of LLC Units to (i) pay fees and expenses of approximately \$ _____ in connection with this offering and (ii) as otherwise set forth in “Use of Proceeds.”

Effect of the Reorganization Transactions and This Offering

The Reorganization Transactions are intended to create a holding company that will facilitate public ownership of, and investment in, the Company and are structured in a tax-efficient manner for the Blocker Companies and Reorganization Parties. The Continuing Pre-IPO LLC Members will continue to hold their ownership interests in Portillo’s OpCo until such time in the future as they may elect to cause us to redeem or exchange their LLC Units for a corresponding number of shares of our Class A common stock or cash.

We estimate that the offering expenses (other than the underwriting discounts and commissions) will be approximately \$ _____. All of such offering expenses will be paid for by Portillo’s OpCo. See “Use of Proceeds.”

The following diagram depicts our organizational structure immediately following the consummation of the Reorganization Transactions, the completion of this offering and the application of the net proceeds from this offering, based on an assumed initial public offering price of \$ _____ per share of Class A common stock (the midpoint of the price range set forth on the cover page of this prospectus) and assuming the underwriters do not exercise their option to purchase additional shares of Class A common stock. This chart is provided for illustrative purposes only and does not purport to represent all legal entities within our organizational structure.



Upon completion of the transactions described above, this offering and the application of the Company's net proceeds from this offering:

- Portillo's Inc. will be appointed as the managing member of Portillo's OpCo and will hold _____ LLC Units, constituting _____ % of the outstanding economic interests in Portillo's OpCo (or _____ LLC Units, constituting _____ % of the outstanding economic interests in Portillo's OpCo if the underwriters exercise their option to purchase additional shares of Class A common stock in full).
- The Pre-IPO LLC Members will collectively hold (i) (x) _____ shares of Class A common stock and (y) _____ LLC Units, which together directly and indirectly represent approximately _____ % of the economic interest in Portillo's OpCo (or _____ % if the underwriters exercise their option to purchase additional shares of Class A common stock in full) and (ii) through their collective ownership of _____ shares of Class A and _____ shares of Class B common stock, approximately _____ % of the combined voting power of our common stock (or _____ % if the underwriters exercise their option to purchase additional shares of Class A common stock in full).
- Investors in this offering will collectively hold (i) _____ shares of our Class A common stock, representing approximately _____ % of the combined voting power of our common stock (or _____ shares and _____ %, respectively, if the underwriters exercise their option to purchase additional shares of Class A common stock in full) and (ii) through our direct and indirect ownership of LLC Units, indirectly will hold approximately _____ % of the economic interest in Portillo's OpCo (or _____ % if the underwriters exercise their option to purchase additional shares of Class A common stock in full).

Holding Company Structure and the Tax Receivable Agreement

We are a holding company, and immediately after the consummation of the Reorganization Transactions and this offering, our sole material asset will be our ownership interests in Portillo's OpCo. The number of LLC Units that we will own directly and indirectly in the aggregate at any time will equal the aggregate number of outstanding shares of our Class A common stock. The economic interest represented by each LLC Unit that we own directly and indirectly will correspond to one share of our Class A common stock, and the total number of LLC Units owned directly and indirectly by us and the holders of our Class B common stock at any given time will equal the sum of the outstanding shares of all classes of our common stock.

We do not intend to list our Class B common stock on any stock exchange.

We will acquire certain favorable tax attributes from the Blocker Companies in the Mergers. In addition, acquisitions by us of LLC Units in connection with this offering and from Continuing Pre-IPO LLC Members in connection with future redemptions or exchanges by the Continuing Pre-IPO LLC Members of LLC Units for shares of our Class A common stock or cash are expected to result in favorable tax attributes that will be allocated to us. These tax attributes would not be available to us in the absence of those transactions and are expected to reduce the amount of tax that we would otherwise be required to pay in the future.

We intend to enter into a Tax Receivable Agreement with the TRA Parties. Under the Tax Receivable Agreement, we generally will be required to pay to the TRA Parties, in the aggregate, 85% of the amount of cash savings, if any, in U.S. federal, state and local income tax that we actually realize, or in certain circumstances are deemed to realize, as a result of (i) our allocable share of tax basis, including any applicable tax basis adjustments, acquired in this offering, (ii) certain favorable tax attributes we will acquire from the Blocker Companies in the Mergers (including net operating losses and the Blocker Companies' allocable share of existing tax basis), (iii) increases in our allocable share of existing tax basis and tax basis adjustments resulting from future redemptions or exchanges of LLC Units by Continuing Pre-IPO LLC Members for cash or Class A common stock and (iv) certain payments made under the Tax Receivable Agreement.

Assuming no material changes in relevant tax law and that we earn sufficient taxable income to realize all tax benefits that are subject to the Tax Receivable Agreement, we expect future payments under the Tax Receivable Agreement relating to the purchase by us of LLC Units in connection with this offering, and the Mergers to be approximately \$ (or approximately \$ if the underwriters exercise their option to purchase additional shares, the proceeds of which will be used by Portillo's Inc. to acquire additional LLC Units from Portillo's OpCo) and, based on certain assumptions, to range over the next 15 years from approximately \$ to \$ per year (or range from approximately \$ to \$ per year if the underwriters exercise their option to purchase additional shares) and decline thereafter. These estimates are based on an initial public offering price of \$ per share of Class A common stock, which is the midpoint of the estimated public offering price range set forth on the cover page of this prospectus. Future payments in respect of subsequent redemptions or exchanges would be in addition to these amounts and are expected to be substantial. The actual amounts we will be required to pay may materially differ from these hypothetical amounts, depending on a number of factors, including potential future tax savings that we will actually realize or be deemed to realize, and the Tax Receivable Agreement payments made by us, will be calculated based in part on the market value of our Class A common stock at the time of each redemption or exchange of an LLC Unit for cash or a share of Class A common stock and the prevailing applicable federal tax rate (plus the assumed combined state and local tax rate) applicable to us over the life of the Tax Receivable Agreement and will depend on our generating sufficient taxable income to realize the tax benefits that are subject to the Tax Receivable Agreement. See "Certain Relationships and Related Party Transactions—Tax Receivable Agreement."

Payments under the Tax Receivable Agreement will be based on the tax reporting positions we determine, and the IRS or another taxing authority may challenge all or part of the existing tax basis, deductions, tax basis increases, net operating losses or other tax attributes subject to the Tax Receivable Agreement, and a

court could sustain such challenge. Payments we will be required to make under the Tax Receivable Agreement generally will not be reduced as a result of any taxes imposed on us, Portillo's OpCo or any direct or indirect subsidiary thereof that are attributable to a tax period (or portion thereof) ending on or before the Mergers or the date of the completion of this offering. Further, the TRA Parties will not reimburse us for any payments previously made if such tax attributes are subsequently challenged by a taxing authority and are ultimately disallowed, except that any excess payments made to a TRA Party will be netted against future payments otherwise to be made to such TRA Party under the Tax Receivable Agreement, if any, after our determination of such excess. As a result, in such circumstances we could make future payments under the Tax Receivable Agreement that are greater than our actual cash tax savings and may not be able to recoup those payments, which could negatively impact our liquidity. See "Risk Factors—Risks Related to Our Organizational Structure—We will not be reimbursed for any payments made to the TRA Parties under the Tax Receivable Agreement in the event that any tax benefits are disallowed."

Our obligations under the Tax Receivable Agreement will also apply with respect to any person who is issued LLC Units in the future and who becomes a party to the Tax Receivable Agreement.

We are a holding company with no operations of our own and our ability to make payments under the Tax Receivable Agreement will depend on the ability of Portillo's OpCo to make distributions to us. Deterioration in the financial condition, earnings, or cash flow of Portillo's OpCo and its subsidiaries for any reason could limit or impair their ability to pay such distributions. To the extent that we are unable to make payments under the Tax Receivable Agreement for any reason, such payments generally will be deferred and will accrue interest until paid. Nonpayment for a specified period, however, may constitute a breach of a material obligation under the Tax Receivable Agreement and therefore accelerate payments due under the Tax Receivable Agreement (unless, generally, such nonpayment is due to a lack of sufficient funds) which could negatively impact our results of operations and could also affect our liquidity in periods in which such payments are made.

USE OF PROCEEDS

We estimate that the net proceeds to us from our sale of _____ shares of Class A common stock in this offering will be approximately \$ _____ million, after deducting estimated underwriting discounts and commissions and estimated expenses payable by us in connection with this offering. The underwriters also have an option to purchase up to an additional _____ shares of Class A common stock from us. We estimate that the net proceeds to us, if the underwriters exercise their right to purchase the maximum of _____ additional shares of Class A common stock from us, will be approximately \$ _____ million, after deducting estimated underwriting discounts and commissions and estimated expenses payable by us in connection with this offering. This estimate assumes a public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover of this prospectus.

We estimate that the offering expenses (other than the underwriting discount and commissions) will be approximately \$ _____ million. All of such offering expenses will be paid for or otherwise borne by Portillo's OpCo.

We intend to use the net proceeds from this offering to purchase _____ newly issued LLC Units (or _____ LLC Units, if the underwriters exercise their over-allotment option to purchase additional shares of Class A common stock in full) from Portillo's OpCo. The foregoing purchases of LLC Units will be at a price per unit equal to the public offering price per share of Class A common stock in this offering, less the underwriting discount.

Portillo's OpCo currently intends to use the net proceeds from this offering to first repay the redeemable preferred LLC units in full and then, if any proceeds remain, repay a portion of the borrowings outstanding under the Credit Facilities. The Credit Facilities are comprised of the First Lien Credit Facilities, which include the First Lien Term B-3 Loans and the Revolving Loans, and the Second Lien Credit Facility, which includes the Second Lien Term B-3 Loans. The First Lien Term B-3 Loans mature on September 6, 2024, the Revolving Loans mature on June 6, 2024 and the Second Lien Term B-3 Loans mature on December 6, 2024. As of December 27, 2020, the interest rate on the First Lien Term B-3 Loans was 6.50%, the interest rate on the Revolving Loans was 3.25% (subject to change based on a consolidated first lien net leverage ratio, as described in "Description of Material Indebtedness—Interest Rate and Fees—First Lien Credit Facilities" below) and the interest rate on the Second Lien Term B-3 Loans was 10.75%. All borrowings under the Revolving Facility were repaid as of December 27, 2020. See "Description of Material Indebtedness."

If the underwriters exercise their option to purchase additional shares of Class A common stock in full, we estimate that our additional net proceeds will be approximately \$ _____ million. We will use the additional net proceeds we receive pursuant to any exercise of the underwriters' option to purchase additional shares of Class A common stock to purchase additional LLC Units from Portillo's OpCo to maintain the one-to-one ratio between the number of shares of Class A common stock issued by us and the number of LLC Units owned by us. We currently intend to cause Portillo's OpCo to use such additional proceeds it receives to first repay the redeemable preferred LLC units in full and then, if any proceeds remain, repay a portion of the borrowings outstanding under the Credit Facilities, as stated above.

A \$1.00 increase (decrease) in the assumed initial public offering price of \$ _____ per share would increase (decrease) the amount of proceeds to us from this offering available by approximately \$ _____ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting the estimated underwriting discounts and commissions. An increase (decrease) of 1,000,000 shares from the expected number of shares to be sold by us in this offering, assuming no change in the assumed initial public offering price per share, the midpoint of the price range shown on the cover page of this prospectus, would increase (decrease) the amount of proceeds to us from this offering available by approximately \$ _____ million.

DIVIDEND POLICY

We do not currently intend to pay cash dividends on our Class A common stock in the foreseeable future. However, in the future, subject to the factors described below and our future liquidity and capitalization, we may change this policy and choose to pay dividends. Any determination to pay dividends in the future will be at the discretion of our Board and will depend upon our results of operations, cash requirements, financial condition, contractual restrictions, restrictions imposed by applicable laws and other factors that our Board may deem relevant.

We are a holding company that does not conduct any business operations of our own and has no material assets other than its ownership of LLC Units. As a result, our ability to pay cash dividends on our common stock, if our Board determines to do so, will be dependent upon the ability of Portillo's OpCo to pay cash dividends and distributions to us. The ability of Portillo's OpCo to pay cash dividends and distributions to us is not restricted by the terms of our Credit Facilities but the ability of certain subsidiaries of Portillo's OpCo to make such cash dividend and distributions to Portillo's OpCo may be restricted by the terms of the Credit Facilities. See "Description of Material Indebtedness."

If Portillo's OpCo makes such distributions, the holders of LLC Units will be entitled to receive equivalent distributions from Portillo's OpCo. However, because we must pay taxes, make payments under the Tax Receivable Agreement and pay our expenses, amounts ultimately distributed as dividends to holders of our Class A common stock are expected to be less than the amounts distributed by Portillo's OpCo to the other holders of LLC Units on a per share basis. See "Certain Relationships and Related Party Transactions—Amended Portillo's OpCo Agreement."

Under the Amended LLC Agreement, Portillo's OpCo will generally be required from time to time to make pro rata distributions in cash to us and the other holders of LLC Units at certain assumed tax rates in amounts that are intended to be sufficient to cover the income taxes payable on our and the other LLC Unit holders' respective allocable shares of the taxable income of Portillo's OpCo. We may receive tax distributions significantly in excess of our tax liabilities and obligations to make payments under the Tax Receivable Agreement. Our Board, in its sole discretion, will make any determination from time to time with respect to the use of any such excess cash so accumulated, which may include, among other uses, funding repurchases of Class A common stock; acquiring additional newly issued LLC Units from Portillo's OpCo at a per unit price determined by reference to the market value of the Class A common stock; paying dividends, which may include special dividends, on its Class A common stock; or any combination of the foregoing. We will have no obligation to distribute such cash (or other available cash other than any declared dividend) to our stockholders. We also expect, if necessary, to undertake ameliorative actions, which may include pro rata or non-pro rata reclassifications, combinations, subdivisions or adjustments of outstanding LLC Units, to maintain 1:1 parity between LLC Units and shares of Class A common stock. See "Risk Factors—In certain circumstances, Portillo's OpCo will be required to make distributions to us and the other holders of LLC Units, and the distributions that Portillo's OpCo will be required to make may be substantial."

See "Risk Factors—Risks Related to this Offering and Ownership of Our Class A Common Stock—We do not anticipate paying any dividends on our Class A common stock in the foreseeable future," "Organizational Structure," "Management's Discussion and Analysis of Financial Condition and Results of Operations—Results of Operations—Liquidity, Capital Resources and COVID-19," "Description of Material Indebtedness" and "Description of Capital Stock."

CAPITALIZATION

The following table sets forth our cash and cash equivalents and our capitalization as of June 27, 2021:

- on an actual basis for Portillo’s OpCo;
- on an as adjusted basis to reflect the Reorganization Transactions; and
- on a pro forma basis after giving effect to the Offering Adjustments described under “Unaudited Pro Forma Consolidated Financial Information,” including the sale of _____ shares of our Class A common stock in this offering at an assumed public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover of this prospectus, and the application of the net proceeds received by us from this offering as described under “Use of Proceeds.”

This table should be read in conjunction with “Use of Proceeds,” “Unaudited Pro Forma Consolidated Financial Information,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Description of Capital Stock” and the consolidated financial statements and notes thereto appearing elsewhere in this prospectus.

	Portillo’s OpCo		
	As of June 27, 2021		
	Actual	As Adjusted	Pro Forma(1)
	(in thousands)		
Cash and cash equivalents	\$ 54,157	\$ _____	\$ _____
Debt:			
Short-term debt	—	\$ _____	\$ _____
Current portion of long-term debt	3,324	\$ _____	\$ _____
Long-term debt, net of current portion	466,638	\$ _____	\$ _____
Total debt(2)(3)	\$469,962	\$ _____	\$ _____
Redeemable preferred units	211,663		
Equity:			
Common units—378,659,104 units authorized, 378,659,104 and 378,609,104 units issued and outstanding as of December 27, 2020	—		
Class A common stock, \$0.01 par value per share, shares authorized, actual, and shares issued and outstanding, as adjusted			
Class B common stock, \$0.01 par value per share, shares authorized, actual, and shares issued and outstanding, as adjusted			
Additional paid-in capital	141,581		
Total common equity	144,113		
Total capitalization	\$825,738	\$ _____	\$ _____

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- (1) Each \$1.00 increase or decrease in the assumed initial public offering price per share would increase or decrease, as applicable, our net proceeds, after deducting the estimated underwriting discount and estimated offering expenses payable by us, by \$ million (assuming no exercise of the underwriters' option to purchase additional shares). Similarly, an increase or decrease of one million shares of Class A common stock sold in this offering by us would increase or decrease, as applicable, our net proceeds, after deducting the estimated underwriting discount and estimated offering expenses payable by us, by \$, based on an assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover of this prospectus.
- (2) Total debt includes unamortized debt discount and deferred issuance costs.
- (3) For a description of our debt, see "Description of Material Indebtedness."

DILUTION

If you invest in our Class A common stock, you will experience dilution to the extent of the difference between the initial public offering price per share of our Class A common stock and the pro forma net tangible book value per share of our Class A common stock. Dilution results from the fact that the per share offering price of the Class A common stock is substantially in excess of the pro forma net tangible book value per share attributable to the Continuing Pre-IPO LLC Members.

The Continuing Pre-IPO LLC Members will maintain their LLC Units in Portillo's OpCo after the Reorganization Transactions, but will be able to cause the redemption or exchange of their LLC Units for, at our election, shares of Class A common stock or cash. We have presented dilution in pro forma net tangible book value per share assuming that all of the holders of LLC Units (other than the Company) had their LLC Units redeemed or exchanged for newly issued shares of Class A common stock on a one-for-one basis (rather than for cash) and the cancellation for no consideration of all of their shares of Class B common stock (which are not entitled to receive distributions or dividends, whether cash or stock, from the Company) in order to more meaningfully present the dilutive impact on the investors in this offering.

Our pro forma net tangible book value as of June 27, 2021, would have been approximately \$, or \$ per share of our Class A common stock on a fully diluted basis. Pro forma net tangible book value represents the amount of total tangible assets less total liabilities, and pro forma net tangible book value per share represents pro forma net tangible book value divided by the number of shares of common stock outstanding, in each case after giving effect to the Reorganization Transactions (based on an assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover of this prospectus), assuming that the Continuing Pre-IPO LLC Members redeem or exchange all of their LLC Units and shares of Class B common stock for newly issued shares of our Class A common stock on a one-for-one basis (assuming shares of Class A common stock are sold in this offering).

After giving effect to the Reorganization Transactions, assuming that the Continuing Pre-IPO LLC Members redeem or exchange all of their LLC Units for newly issued shares of our Class A common stock on a one-for-one basis, and after giving further effect to the sale of \$ shares of Class A common stock in this offering at the assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover of this prospectus, and the use of the net proceeds from this offering, our pro forma as adjusted net tangible book value would have been approximately \$, or \$ per share, representing an immediate increase in net tangible book value of \$ per share to existing equity holders and an immediate dilution in net tangible book value of \$ per share to new investors.

The following table illustrates the per share dilution:

Assumed initial public offering price per share	\$
Pro forma net tangible book value per share as of	\$
Increase in pro forma net tangible book value per share attributable to new investors	
Pro forma as adjusted net tangible book value per share after this offering	
Dilution in net tangible book value per share to new investors in this offering	\$

- (1) Reflects outstanding shares of Class A common stock (assuming all LLC Units and corresponding shares of Class B common stock held by the Continuing Pre-IPO LLC Members are exchanged for shares of Class A common stock).
- (2) Reflects outstanding shares, consisting of (i) shares of Class A common stock to be issued in this offering and (ii) the outstanding shares described in note (1) above.

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Dilution is determined by subtracting pro forma net tangible book value per share after this offering from the initial public offering price per share of Class A common stock.

A \$1.00 increase (decrease) in the assumed initial public offering price of \$ per share would increase (decrease) our pro forma net tangible book value after this offering by \$ million and the dilution per share to new investors by \$, in each case assuming the number of shares offered, as set forth on the cover page of this prospectus, remains the same. Each increase (decrease) of shares in the number of shares sold by us in this offering, as set forth on the cover page of this prospectus, would increase (decrease) the net proceeds to us from this offering by approximately \$, assuming the assumed initial public offering price of \$ per share (the midpoint of the price range set forth on the cover page of this prospectus) remains the same.

To the extent the underwriters' option to purchase additional shares of Class A common stock is exercised, there will be further dilution to new investors.

The following table illustrates, as of June 27, 2021, after giving effect to the Reorganization Transactions, assuming that the Continuing Pre-IPO LLC Members redeem or exchange all of their LLC Units for newly issued shares of our Class A common stock on a one-for-one basis, and after giving further effect to the sale by us of shares of our Class A common stock in this offering at the initial public offering price of \$ per share (the midpoint of the price range set forth on the cover page of this prospectus), the difference between the Pre-IPO LLC Members, and the investors purchasing shares of our Class A common stock in this offering with respect to the number of shares of our common stock purchased from us, the total consideration paid or to be paid to us, and the average price per share paid or to be paid to us, before deducting underwriting discounts and commissions and the estimated offering expenses payable by us:

	<u>Shares Purchased</u>		<u>Total Consideration</u>		<u>Average</u>
	<u>Number</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>	<u>Price Per Share</u>
Pre-IPO LLC Members		%	\$	%	\$
Investors in this offering					
Total		<u>100.0%</u>		<u>\$100.0%</u>	<u>\$</u>

We may choose to raise additional capital due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. To the extent additional capital is raised through the sale of equity or convertible debt securities, the issuance of these securities could result in further dilution to holders of our Class A common stock.

UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL INFORMATION

The following unaudited pro forma consolidated statement of operations for the year ended December 27, 2020 and for two quarters ended June 27, 2021 gives effect to the pro forma adjustments related to (i) the Reorganization Transactions, which we refer to as the “Transactions Accounting Adjustments” and (ii) the IPO transactions (the “IPO Transactions”), including the sale of _____ shares of Class A common stock and the application of the net proceeds from this offering, which we refer to as the “Offering Adjustments.” We refer to the Reorganization Transactions and the IPO Transactions collectively as the “Transactions.” The unaudited pro forma consolidated statement of operations for the year ended December 27, 2020 and for two quarters ended June 27, 2021 gives effect to the Transactions and their related adjustments as if they had occurred on December 30, 2019. The unaudited pro forma balance sheet information as of June 27, 2021 gives effect to as the Transactions and their related adjustments if they had occurred on June 27, 2021. See “Capitalization.” The unaudited pro forma financial information has been prepared by our management and is based on Portillo’s OpCo’s historical financial statements and the assumptions and adjustments described in the notes to the unaudited pro forma financial information below. The presentation of the unaudited pro forma financial information is prepared in conformity with Article 11 of Regulation S-X rules effective January 1, 2021.

Our historical financial information for the year ended December 27, 2020 has been derived from the audited consolidated financial statements and footnotes of Portillo’s OpCo included elsewhere in this prospectus. The historical financial information as and for the two quarters ended June 27, 2021 has been derived from Portillo’s OpCo’s unaudited consolidated financial statements and footnotes included elsewhere in this prospectus.

We based the pro forma adjustments on available information and on assumptions that we believe are reasonable under the circumstances in order to reflect, on a pro forma basis, the impact of the relevant transactions on the historical financial information of Portillo’s OpCo. See the notes to unaudited pro forma financial information below for a discussion of assumptions made. The unaudited pro forma financial information does not purport to be indicative of our results of operations or financial position had the relevant transactions occurred on the dates assumed and does not project our results of operations or financial position for any future period or date.

The Transactions Accounting Adjustments are described in the notes to the unaudited pro forma consolidated financial information and primarily include:

- adjustments for the Reorganization Transactions, the entry into the Amended LLC Agreement and the entry into the Tax Receivable Agreement;
- the recognition of a contingently redeemable non-controlling interest in Portillo’s OpCo held by the Continuing Pre-IPO LLC Members, which will be redeemable, at our election, for shares of Class A common stock on a one-for-one basis or a cash payment from the proceeds of a sale of shares of Class A common stock in accordance with the terms of the Amended LLC Agreement; and
- provision for federal and state income taxes of Portillo’s Inc. as a taxable corporation at an effective rate of _____ % for the year ended December 27, 2020 (calculated using a U.S. federal income tax rate of 21%).

The Offering Adjustments are described in the notes to the unaudited pro forma consolidated financial information and primarily include:

- the issuance of shares of our Class A common stock to the purchasers in this offering in exchange for net proceeds of approximately \$ _____, assuming that the shares are offered at \$ _____ per share (the midpoint of the price range set forth on the cover page of this prospectus), after deducting underwriting discounts and commissions but before offering expenses (and, unless otherwise indicated, assuming no exercise of the underwriters’ option to purchase additional shares);

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- the application by Portillo's Inc. of the net proceeds from this offering to acquire newly issued LLC Units from Portillo's OpCo at a purchase price per LLC Unit equal to the initial public offering price of Class A common stock net of underwriting discounts and commissions; and
- the application by Portillo's OpCo of a portion of the proceeds of the sale of LLC Units to Portillo's Inc. to (i) pay fees and expenses of approximately \$ _____ in connection with this offering and (ii) as otherwise set forth in "Use of Proceeds."

We are in the process of implementing additional procedures and processes for the purpose of addressing the standards and requirements applicable to public companies. We expect to incur additional annual expenses related to these procedures and processes and, among other things, additional directors' and officers' liability insurance, director fees, reporting requirements of the SEC, transfer agent fees, hiring additional accounting, legal, and administrative personnel, increased auditing and legal expenses, and other related costs. Due to the scope and complexity of these activities, the amount of these costs could increase or decrease materially and are based on subjective estimates and assumptions that cannot be factually supported. We have not included any pro forma adjustments related to these costs.

Because Portillo's Inc. was formed on June 8, 2021 and will have no material assets or results of operations until the completion of the IPO, its historical financial information is not included in the unaudited pro forma consolidated financial information for the year ended December 27, 2020 or two quarters ended June 27, 2021.

The unaudited pro forma consolidated financial information is provided for informational purposes only and is not necessarily indicative of the operating results that would have occurred if the Transactions had been completed as of the dates set forth above, nor is it indicative of our future results. Additionally, the unaudited pro forma consolidated financial information does not give effect to the potential impact of any anticipated synergies, operating efficiencies, or cost savings that may result from the Transactions or any integration costs.

The unaudited pro forma consolidated financial information should be read together with "Organizational Structure," "Capitalization," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our historical financial statements and related notes thereto included elsewhere in this prospectus.

**UNAUDITED PRO FORMA CONSOLIDATED
STATEMENT OF OPERATIONS**

	For the Year Ended December 27, 2020			
	Historical Portillo's OpCo	Transactions Accounting Adjustments	Pro forma before Offering Adjustments Portillo's Inc.	Pro forma Portillo's Inc.
	(in thousands, except per unit/share data)			
Revenue	\$455,471			
Cost and expenses:				
Restaurant operating expenses:				
Cost of goods sold, excluding depreciation and amortization	142,446			
Labor	115,991			
Occupancy	24,920			
Other operating expenses	50,169			
Total restaurant operating expenses	333,526			
General and administrative expenses	39,854		(4)	
Pre-opening expenses	2,209			
Depreciation and amortization	24,584			
Net income attributable to equity method investment	(459)			
Other income, net	(1,537)			
Operating income	57,294			
Interest expense	45,031		(5)	
Net income (loss)	\$ 12,263		(5)	
Less: Redeemable preferred units accretion	(20,254)			
Net income (loss) attributable to common unit holders	<u>\$ (8,261)</u>			
Income tax expense			(1)	
Net income (loss) after income tax expense				
Net income (loss) attributable to noncontrolling interests			(2)	
Net income (loss) attributable to Portillo's Inc.				
Pro forma net loss per share data (3)				
Pro forma average shares of Class A common stock outstanding (3)				
Basic				
Diluted				
Net loss per share of Class A common stock				
Basic				
Diluted				

See accompanying notes to unaudited pro forma financial information.

**UNAUDITED PRO FORMA CONSOLIDATED
STATEMENT OF OPERATIONS**

	For the Two Quarters ended June 27, 2021			
	Historical Portillo's OpCo	Transactions Accounting Adjustments	Pro forma before Offering Adjustments Portillo's Inc.	Offering Adjustments
				Pro forma Portillo's Inc.
		(in thousands, except per unit/share data)		
Revenue	\$258,041			
Cost and expenses:				
Restaurant operating expenses:				
Cost of goods sold, excluding depreciation and amortization	77,180			
Labor	65,512			
Occupancy	13,890			
Other operating expenses	28,633			
Total restaurant operating expenses	185,215			
General and administrative expenses	24,005			(4)
Pre-opening expenses	1,960			
Depreciation and amortization	12,709			
Net income attributable to equity method investment	(359)			
Other income, net	(803)			
Operating income	35,314			
Interest expense	21,441			(5)
Net income (loss)	\$ 13,873			
Less: Redeemable preferred unit accretion	(11,092)			
Net income (loss) attributable to common unit holders	<u>\$ 2,781</u>			
Income tax expense				(1)
Net income (loss) after income tax expense				
Net income (loss) attributable to noncontrolling interests				(2)
Net income (loss) attributable to Portillo's Inc.				
Pro forma net loss per share data (3)				
Pro forma average shares of Class A common stock outstanding				
(3)				
Basic				
Diluted				
Net loss per share of Class A common stock				
Basic				
Diluted				

See accompanying notes to unaudited pro forma financial information.

Notes to Unaudited Pro Forma Statement of Operations
(Year Ended December 27, 2020 and Two Quarters ended June 27, 2021)

- (1) Following the Reorganization Transactions, Portillo’s Inc. will be subject to U.S. federal and applicable state and local income taxes. As a result, the pro forma statement of operations reflects an adjustment to income tax expense for corporate income taxes to reflect a statutory tax rate of _____%, which includes a provision for U.S. federal income taxes and assumes the highest statutory rates apportioned to each state and local jurisdiction. Portillo’s OpCo is, and will continue to be, taxed as a partnership for federal income tax purposes and, as a result, its members, including Portillo’s Inc., will pay income taxes with respect to their allocable shares of its taxable income.

The pro forma adjustment for income tax expense represents tax expense on income that will be taxable in jurisdictions after our corporate reorganization that previously had not been taxable. The adjustment is calculated as pro forma income before income taxes multiplied by the ownership percentage of the controlling interest and multiplied by the effective tax rate of _____%.

	<u>Year Ended</u> <u>December 27, 2020</u>	<u>Two Quarters Ended</u> <u>June 27, 2021</u>
Pro forma income before income taxes	\$ _____	\$ _____
Ownership % of the controlling interest	_____ %	_____ %
Pro forma income attributable to the controlling interest	\$ _____	\$ _____
Pro forma effective tax rate	_____ %	_____ %
Reorganization Transactions adjustment	\$ _____	\$ _____

- (2) In connection with the Reorganization Transactions, we will become the sole managing member of Portillo’s OpCo pursuant to the Amended LLC Agreement. As a result, while we will own less than 100% of the economic interest in Portillo’s OpCo, we will have 100% of the voting power and control the management of Portillo’s OpCo. Because we will manage and operate the business and control the strategic decisions and day-to-day operations of Portillo’s OpCo and will also have a substantial financial interest in Portillo’s OpCo, we will consolidate the financial results of Portillo’s OpCo, and a portion of our net income (loss) will be allocated to the noncontrolling interest to reflect the entitlement of the Continuing Pre-IPO LLC Members to a portion of Portillo’s OpCo’s net income (loss). We will initially hold approximately _____% of Portillo’s OpCo’s outstanding LLC Units (or approximately _____% if the underwriters exercise their option to purchase additional shares of Class A common stock in full), and the remaining LLC Units of Portillo’s OpCo will be held by the Continuing Pre-IPO LLC Members. Immediately following the Reorganization Transactions, the ownership percentage held by the noncontrolling interest will be approximately _____%. Net loss attributable to the noncontrolling interest will represent approximately _____% of net loss.
- (3) Pro forma basic net loss per share of Class A common stock is computed by dividing the pro forma net loss available to Class A common stockholders by the pro forma weighted-average shares of Class A common stock outstanding during the period. Pro forma diluted net loss per share of Class A common stock is computed by adjusting the pro forma net loss available to Class A common stockholders and the pro forma weighted-average shares of Class A common stock outstanding to give effect to potentially dilutive securities.

Pro Forma loss per share of Class A common stock	Year Ended December 27, 2020	Two Quarters Ended June 27, 2021
	(in thousands)	
Numerator:		
Pro forma net loss attributable to the Issuer's Class A common stockholders (basic and diluted)	\$	\$
Denominator:		
Pro forma weighted average of shares of Class A common stock outstanding (basic)	\$	\$
Pro forma weighted average of shares of Class A common stock outstanding (diluted)		
Pro forma basic loss per share	\$	\$
Pro forma diluted loss per share		

Pro forma net loss per share of Class B common stock is not presented because Class B common stock is not entitled to economic interests in Portillo's Inc.

- (4) Reflects the increased equity-based compensation expense after giving effect to the completion of this offering. The adjustments to the unaudited pro forma consolidated statements of operations reflect the additional expense that we expect to record on the Company's operations as a result of this offering. Additional expense for awards under the 2021 Plan will be recorded in periods following this offering in accordance with the time-based and performance-based vesting criteria which can be exchanged for common stock in the Company after an initial public offering. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Estimates—Equity-Based Compensation" for additional information.
- (5) Portillo's OpCo will use a portion of the proceeds from the issuance of LLC Units to Portillo's Inc. to repay indebtedness. Our unpaid balance of our indebtedness is _____ bearing interest at a rate of _____ as of June 27, 2021. We anticipate an estimated \$ _____ in additional charges for breakage related to the repayment of such indebtedness. As such, interest expense will be reduced by \$ _____ million and \$ _____ million as a result of the lower borrowings outstanding for the year ended December 27, 2020 and two quarters ended June 27, 2021, respectively.

UNAUDITED PRO FORMA CONSOLIDATED BALANCE SHEET (AS OF JUNE 27, 2021)

	Historical Portillo's OpCo	Transactions Accounting Adjustments	Pro forma before Offering Adjustments Portillo's Inc.	Offering Adjustments	Pro forma Portillo's Inc.
(in thousands, except per share data)					
Assets					
Current Assets:					
Cash and cash equivalents	\$ 54,157			(1)	
Restricted cash	235				
Accounts receivable	4,373				
Inventory	3,573				
Other current assets	3,995				
Total current assets	66,333				
Property and equipment, net	180,907				
Other Assets:					
Goodwill	394,298				
Intangible assets-net of accumulated amortization	261,795				
Equity method investment	16,184				
Deferred tax asset					
Other assets	4,516				
Total other assets	\$ 676,793				
Total assets	\$ 924,033				
Liabilities, Redeemable Preferred Units and Common Equity					
Current Liabilities:					
Accounts payable	\$ 20,642				
Short-term debt	—				
Current portion of long-term debt	3,324				
Current deferred revenue	4,414				
Accrued expenses	37,621				
Total current liabilities	66,001				
Long-Term Liabilities:					
Long-term debt, net of current portion	466,638			(1)	
Deferred rent	28,823				
Tax receivable liability	—		(2)(4)		
Other long-term liabilities	6,795				
Total long-term liabilities	502,256				
Total liabilities	568,257				
Redeemable Preferred Units	211,663			(1)	
Stockholders' Equity:					
Class A Common Stock (shares authorized, shares issued and outstanding on a pro forma basis at , 2021)	—		(5)(6)	(1)(5)(6)	
Class B Common Stock (shares authorized, shares issued and outstanding on a pro forma basis at , 2021)	—				
Stock subscription receivable	(249)				
Additional paid-in capital	141,581		(1)(2)(3)(4)(5)(7)	(5)(7)	
Retained earnings	2,781				
Accumulated other comprehensive loss	—				
Contingently redeemable non-controlling interest	—		(5)(7)	(5)(6)(7)(8)	
Total Stockholders' Equity	144,113				
Total liabilities, redeemable preferred units and stockholders' equity	\$ 924,033				

See accompanying notes to unaudited pro forma financial information.

Notes to Unaudited Pro Forma Consolidated Balance Sheet (as of June 27, 2021)

- (1) We estimate that our net proceeds from this offering will be approximately \$ _____, after deducting underwriting discounts and commissions of approximately \$ _____, based on an assumed initial public offering price of \$ _____ per share (the midpoint of the price range set forth on the cover page of this prospectus) and assuming the underwriters' option to purchase additional shares of Class A common stock is not exercised. If the underwriters exercise their option to purchase additional shares of Class A common stock in full, we expect to receive approximately \$ _____ of net proceeds based on an assumed initial public offering price of \$ _____ per share (the midpoint of the price range set forth on the cover page of this prospectus).

We estimate that the offering expenses (other than the underwriting discount and commissions) will be approximately \$ _____. All of such offering expenses will be paid for or otherwise borne by Portillo's OpCo. See note 3 below.

We will use all of the net proceeds from this offering (including net proceeds received if the underwriters exercise their option to purchase additional shares of Class A common stock in full) to acquire (i) newly issued LLC Units from Portillo's OpCo, (ii) acquire LLC Units from certain Pre-IPO LLC Members and (iii) repurchase shares of our Class A common stock received by the Blocker Company equityholders in connection with the Mergers at a purchase price per LLC Unit and share of Class A common stock, in each case equal to the initial public offering price of Class A common stock, after deducting the underwriting discounts and commissions, collectively representing _____% of Portillo's OpCo's outstanding LLC Units (or _____%, if the underwriters exercise their option to purchase additional shares of Class A common stock in full).

Portillo's OpCo currently intends to use the proceeds from the issuance of LLC Units to Portillo's Inc. to (i) pay fees and expenses of approximately \$ _____ in connection with this offering and (ii) as otherwise set forth in "Use of Proceeds." See "Use of Proceeds."

- (2) We are subject to U.S. federal, state and local income taxes and will file income tax returns for U.S. federal and certain state and local jurisdictions. This adjustment reflects the recognition of deferred taxes in connection with the Reorganization Transaction assuming the federal rates currently in effect and the highest statutory rates apportioned to each state and local jurisdiction.

We have recorded a pro forma deferred tax liability adjustment of \$ _____ million (or \$ _____ if the underwriters exercise in full their option to purchase additional shares of Class A common stock). The deferred tax liability includes (i) \$ _____ million related to temporary differences in the book basis as compared to the tax basis of our investment in Portillo's OpCo, and (ii) \$ _____ million related to tax benefits from future deductions attributable to payments under the Tax Receivable Agreement as described further in Note (4) below (or \$ _____ if the underwriters exercise in full their option to purchase additional shares of Class A common stock).

- (3) We are deferring certain costs associated with this offering. These costs primarily represent legal, accounting and other direct costs and are recorded in other assets in our consolidated balance sheet. Upon completion of this offering, these deferred costs will be charged against the proceeds from this offering with a corresponding reduction to additional paid-in capital.

- (4) Upon the completion of this offering, we will be a party to a Tax Receivable Agreement with the TRA Parties. Under the Tax Receivable Agreement, we generally will be required to pay 85% of the applicable cash savings, if any, in U.S. federal, state and local income tax that we actually realize as a result of (i) our allocable share of tax basis, including any applicable tax basis adjustments, acquired in this offering, (ii) certain favorable tax attributes we will acquire from the Blocker Companies in the Mergers (including net operating losses and the Blocker Companies' allocable share of existing tax basis), (iii) increases in our allocable share of existing tax basis and tax basis adjustments resulting from future redemptions or exchanges of LLC Units by Continuing Pre-IPO LLC Members for cash or Class A common stock and

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(iv) certain payments made under the Tax Receivable Agreement. We will retain the benefit of the remaining 15% of these tax savings. Our obligations under the Tax Receivable Agreement will also apply with respect to any person who is issued LLC Units in the future and who becomes a party to the Tax Receivable Agreement. See “Organizational Structure—Holding Company Structure and the Tax Receivable Agreement.” No adjustment has been made to reflect future exchanges of Portillo’s OpCo units for shares of our Class A common stock or other consideration, as applicable, nor for certain future payments made under the Tax Receivable Agreement.

We estimate the Tax Receivable Agreement liability as a result of the Mergers and acquisitions by us of LLC Units in connection with this offering to be up to \$ million. Due to the uncertainty in the amount and timing of future exchanges of LLC Units by the Continuing Pre-IPO LLC Members of Portillo’s OpCo and the uncertainty of when those exchanges will ultimately result in tax savings, the unaudited pro forma consolidated financial information assumes that no exchanges of Portillo’s OpCo units have occurred and therefore no increases in tax basis in Portillo’s OpCo assets or other tax benefits that may be realized thereunder have been assumed in the unaudited pro forma consolidated financial information. However, if all of the Continuing Pre-IPO LLC Members were to exchange their Portillo’s OpCo units, we would recognize a liability of approximately \$, assuming (i) that the Continuing Pre-IPO LLC Members exchanged all of their Portillo’s OpCo units immediately after the completion of this offering at an initial public offering price of \$ per share of Class A common stock (the midpoint of the price range set forth on the cover of this prospectus), (ii) no material changes in relevant tax law, (iii) a constant combined effective income tax rate of % and (iv) that we have sufficient taxable income in each year to realize on a current basis the increased depreciation, amortization and other tax benefits that are the subject of the Tax Receivable Agreement. These amounts are estimates and have been prepared for informational purposes only. The actual amount of deferred tax assets and related liabilities that we will recognize will differ based on, among other things, the timing of the exchanges, the price of shares of our Class A common stock at the time of the exchange and the tax rates then in effect.

- (5) As described in “Organizational Structure—Effect of the Reorganization Transactions and this Offering,” upon completion of the Reorganization Transactions, this offering and the application of the net proceeds from this offering, we will become the sole managing member of Portillo’s OpCo and will hold LLC Units, constituting % of the outstanding economic interests in Portillo’s OpCo (or LLC Units, constituting % of the outstanding economic interests in Portillo’s OpCo if the underwriters exercise their option to purchase additional shares of Class A common stock in full).

Represents an adjustment to equity reflecting (i) par value for Class A common stock and (ii) a decrease in \$ of additional paid-in capital to allocate a portion of Portillo’s OpCo’s equity to the noncontrolling interests.

- (6) Represents an adjustment to stockholders’ equity reflecting (i) par value of \$0.01 for Class A common stock and \$ for Class B common stock to be outstanding following the Reorganization Transactions and the Offering Adjustments and (ii) a decrease of \$ in members’ equity to allocate a portion of Portillo’s Inc.’s equity to the noncontrolling interest.

- (7) The following table is a reconciliation of the adjustments impacting additional paid-in-capital:

Net adjustment from recognition of deferred tax asset	\$
Gross proceeds from offering of Class A common stock	
Payment of underwriting discounts and commissions in connection with this offering	
Reclassification of costs incurred in this offering from other assets to additional paid-in capital	
Adjustment for noncontrolling interest	
Total	\$

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- (8) As described in “Organizational Structure—Effect of the Reorganization Transactions and this Offering,” under the Amended LLC Agreement, holders of LLC Units, including the Continuing Pre-IPO LLC Members, will have the right, from and after the completion of this offering (subject to the terms of the Amended LLC Agreement), to require Portillo’s OpCo to exchange all or a portion of their LLC Units for newly issued shares of Class A common stock, which may consist of unregistered shares, on a one-for-one basis (subject to customary adjustments, including for stock splits, stock dividends and reclassifications) in accordance with the terms of the Amended LLC Agreement. Additionally, in the event of an exchange request from a holder of LLC Units, we may, at our option, effect a direct exchange of Class A common stock for LLC Units in lieu of such exchange. Shares of Class B common stock will be cancelled on a one-for-one basis if we, following an exchange request from a holder of LLC Units, exchange LLC Units of such holder pursuant to the terms of the Amended LLC Agreement.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following is a discussion and analysis of our financial condition and results of operations as of, and for, the periods presented. You should read the following discussion and analysis of our financial condition and results of operations together with the sections entitled "Prospectus Summary—Summary Historical and Pro Forma Consolidated Financial and Other Data," "Risk Factors," "Cautionary Note Regarding Forward-Looking Statements," "Unaudited Pro Forma Consolidated Financial Information," our audited consolidated financial statements and the related notes thereto and our unaudited condensed consolidated financial statements and the related notes thereto included elsewhere in this prospectus. This discussion and analysis contains forward-looking statements, including statements regarding industry outlook, our expectations for the future of our business and our liquidity and capital resources as well as other non-historical statements. These statements are based on current expectations and are subject to numerous risks and uncertainties, including but not limited to the risks and uncertainties described in "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements." Our actual results may differ materially from those contained in or implied by these forward-looking statements.

We use a 52- or 53-week fiscal year ending on the Sunday prior to December 31, effective beginning with the first quarter of 2019. In a 52-week fiscal year, each quarterly period is comprised of 13 weeks. The additional week in a 53-week fiscal year is added to the fourth quarter. We believe the difference in reporting periods does not have a material impact on comparability. Fiscal 2020, 2019 and 2018 each consist of 52 weeks. Results for any interim period should not be construed as an inference of what our results would be for any full fiscal year or future period.

Overview

Portillo's serves iconic Chicago street food through high-energy, multichannel restaurants designed to ignite the senses and create a memorable dining experience. Since our founding in 1963 in a small trailer which Dick Portillo called "The Dog House," Portillo's has grown to become a treasured brand with a passionate (some might say obsessed) nationwide following. We create a consumer experience like no other by combining the best attributes of fast casual and quick service concepts with an exciting energy-filled atmosphere and restaurant model capable of generating tremendous volumes. Nearly all of our restaurants were built with double lane drive-thrus and have been thoughtfully designed with a layout that accommodates a variety of access modes including dine-in, carryout / curbside, delivery and catering in order to quickly and efficiently serve our guests. As of June 27, 2021, we owned and operated 67 Portillo's restaurants across nine states. According to data gathered by the NPD Group, our restaurants generated higher AUVs and Restaurant-Level Adjusted EBITDA Margins than any other fast casual restaurant concept of \$7.7 million and 26.8% in 2020, respectively. For the twelve months ended June 27, 2021, our restaurants generated AUVs of \$7.9 million and Restaurant-Level Adjusted EBITDA Margins of 28.6%.

No matter how our guests order from us, our highly productive kitchens and team members consistently serve high-quality food and deliver a memorable guest experience. We believe the combination of our craveable food, multichannel sales model, dedication to operational excellence, and a distinctive culture driven by our team members gives us a competitive advantage and allows us to generate the highest AUVs and traffic per restaurant among fast casual and quick service restaurants. In 2019, 2020 and for the twelve months ended June 27, 2021, the average Portillo's restaurant generated:

- Drive-thru sales of \$3.4 million in 2019, \$4.6 million in 2020 and \$4.9 million in the twelve months ended June 27, 2021, more than double the throughput of McDonald's 2019 average drive thru and more than triple their 2020 and twelve months ended second quarter of 2021 average drive thru;
- Dine-in sales of \$4.4 million in 2019, \$1.9 million in 2020 and \$1.9 million in the twelve months ended June 27, 2021, greater than Chipotle's 2019 total AUV of \$2.2 million, approximately 90% of their 2020 total AUV and approximately 75% of their twelve months ended second quarter of 2021 total AUV; and

- Delivery sales of approximately \$500,000 in 2019, nearly \$800,000 in 2020 and approximately \$850,000 in the twelve months ended June 27, 2021, which is approximately 80% of Domino's 2019 average delivery volume, approximately equal to their 2020 average delivery volume and higher than their twelve months ended second quarter of 2021 delivery volume.

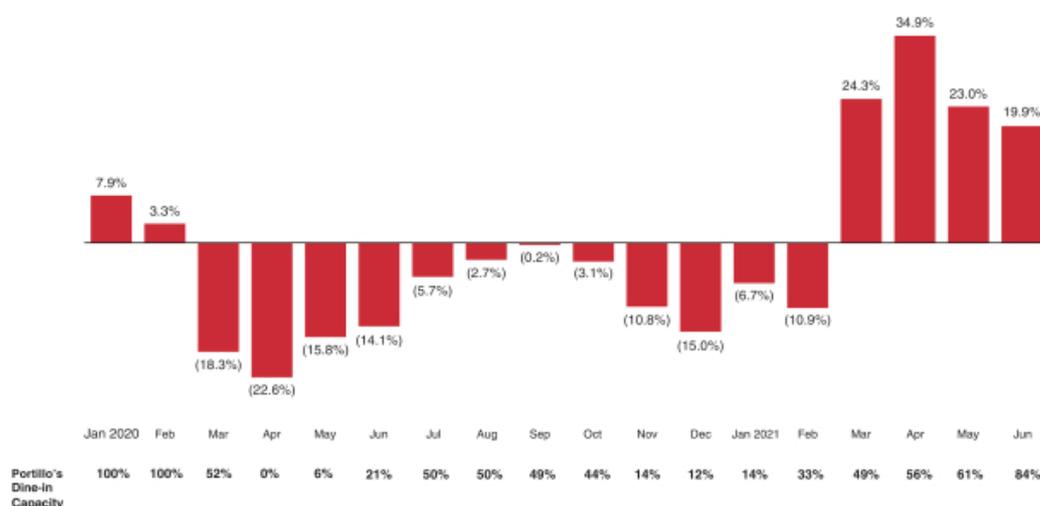
Each Portillo's location on average served approximately 800,000 guests in 2020 and approximately 825,000 guests in the twelve months ended June 27, 2021, based on our average per-guest spend of approximately \$9.60 and our AUVs of approximately \$7.7 million in 2020 and \$7.9 million in the twelve months ended June 27, 2021. Our restaurants are buzzing with the energy and excitement of our team members and guests that bring everyone together, from single diners to large groups, around great food, drinks and fun. Our restaurants have attracted a growing cult-like following that has enabled us to thrive across a variety of suburban and urban trade areas around the country. All of our restaurants are profitable, and we are proud to have never closed a restaurant in our 58-year history.

Significant Recent Developments Regarding COVID-19

The COVID-19 pandemic has significantly impacted economic conditions in the United States, where all of our restaurants are located. We first began to experience impacts from the COVID-19 pandemic during the second half of March 2020, as federal, state and local governments began to react to the public health crisis by encouraging or requiring social distancing, instituting stay-at-home orders, and requiring, in varying degrees, restaurant dine-in limitations, capacity limitations or other restrictions that largely limited restaurants to take-out, drive-thru and delivery sales. Our priority has been ensuring the health and safety of our team members and guests, and compliance with the applicable safety regulations. To protect the health and safety of our team members and guests, we implemented COVID-19 safety measures, including but not limited to COVID-19 screenings for all of our team members, utilizing and purchasing non-contact forehead thermometers for temperature checks, installing Plexiglas point of sale cashier wraps, raising the partitions between dining room booths, and limiting use of freestanding tables to meet social distancing requirements. Additionally, we purchased face coverings for all restaurant team members and offered them to our guests, purchased additional sanitation supplies and personal protective materials and introduced a new team member COVID-19 contact tracing tool for all team members in our restaurants, commissaries and restaurant support center. We implemented enhanced safety protocols in all of our locations, temporarily introduced one-time use menus in our restaurants, and developed COVID-19 training covering risks and the protocols implemented to ensure safe operations for our team members and guests. We also launched a new mobile app for self-delivery to supplement our other third-party delivery platforms. Additionally, we increased spending on healthcare and team member bonuses as a result of the COVID-19 pandemic. We temporarily paid 100% of the employer portion of premiums for active team members and team members on voluntary leaves of absence participating in our health insurance program, eliminated the team member payment for a meal provided while working and distributed a \$100 Portillo's gift card to all team members. We estimate the investments made to protect the health and safety and boost the morale of our team members was approximately \$4.5 million in fiscal 2020.

During the second quarter of fiscal 2020, we began to re-open certain dining rooms in accordance with applicable regulatory requirements. As a result of the required changes to consumer behavior to largely off-premise dining, we saw some recovery in sales at the end of the second quarter of fiscal 2020 and into the third quarter of fiscal 2020. Our most significant declines in sales were in late March through April 2020. Beginning in May, sales began to recover, remaining below the comparable period in fiscal 2019, but did have an additional negative impact during the latter part of the fourth quarter of fiscal 2020 due to declines in our seasonal catering business. We experienced a steady recovery during the two quarters ended June 27, 2021, as dine-in capacity grew, when same-restaurant sales increased 13.0% compared to the two quarters ended June 28, 2020. Same-restaurant sales declined 0.5% in the first quarter ended March 28, 2021 and increased 26.1% in the second quarter ended June 27, 2021 versus the comparable periods in 2020. The following chart outlines our dine-in capacity and our same-restaurant sales performance, by period, for fiscal 2020 and the two quarters ended June 27, 2021:

Same Restaurant Sales by Period



Our COVID-19 mitigation measures did have a positive impact on our results in fiscal 2020 and through the first two quarters of 2021. In fiscal 2020, we implemented curbside pick-up, self-delivery, simplified our menu to enhance operational efficiency and continued to invest in targeted digital advertisements that contributed to growth in our direct shipping business. Cross-training efforts were accelerated during COVID-19 to provide more staffing flexibility in restaurants, which led to enhanced productivity. Additionally, we also experienced lower operating expenses in our restaurants in fiscal 2020 as a result of the COVID-19 pandemic due primarily to reductions in our marketing, repairs and maintenance, and utilities expenses. Despite our revenues being down 5.0% in fiscal 2020 as compared to fiscal 2019, we grew our Adjusted EBITDA by 10.5% during that same period.

During the first two quarters of 2021, we benefited from lower cost of goods sold, excluding depreciation and amortization, as a percentage of revenues, and from lower labor expenses, as a percentage of revenues, versus the first two quarters of 2020, as described in more detail below. These lower expenses primarily drove a 3.2% increase in operating income margin, a 3.9% improvement in Restaurant-Level Adjusted EBITDA Margin, a 5.7% increase in net income (loss) margin and a 2.4% improvement in Adjusted EBITDA Margin. We expect to see higher expenses in both these areas during the second half of 2021 versus the first two quarters of 2021 resulting from commodity cost increases, hourly rate increases implemented in all our markets and increased staffing levels in our restaurants as dine in capacity increases. Additionally, and as described in more detail below, we saw higher other operating expenses and general and administrative expenses during the first two quarters of 2021 versus the first two quarters of 2020. The 13.0% same-restaurant sales increase during the first two quarters of 2021 versus the first two quarters of 2020, combined with the net impact of the aforementioned expenses, led to net income of \$13.9 million as compared to a net loss of \$0.7 million and Adjusted EBITDA growth of \$13.2 million.

The extent of the impact of the COVID-19 pandemic on our operations and financial results depends on future developments and is highly uncertain due to the unknown duration and severity of the outbreak, including the potential impact of the COVID-19 delta variant. The situation is changing rapidly and future impacts may materialize that are not yet known. As of the date of this filing, substantially all of our restaurants

continue to operate, with dining rooms open at varying capacities. We intend to continue to actively monitor the evolving situation and may take further actions that alter our business operations as may be required by federal, state or local authorities or that we determine are in the best interests of our team members, customers, suppliers and shareholders.

Growth Strategies and Outlook

We believe we are well-positioned to take advantage of significant growth opportunities due to our values-driven culture, highly trained and passionate team members, differentiated brand experience and AUVs and Restaurant-Level Adjusted EBITDA Margins which are higher than other fast casual restaurant concepts according to data gathered by The NPD Group, which drive impressive unit economics. We plan to expand our business by executing on the following growth strategies:

Expand Our Restaurant Base

We are in the early stages of our nationwide growth with 67 locations across nine states as of June 27, 2021. From November 2020 through the end of 2021, we are targeting opening seven new restaurants, including new locations in Illinois, Michigan, Florida and Arizona. Since 2015, we have opened new restaurants at a compound annual growth rate of approximately 9.3%. Over the long term, we plan to increase our number of restaurants by approximately 10% annually. Our near-term restaurant growth strategy is focused on leveraging our proven unit economic model primarily in adjacent and national markets outside Chicagoland with favorable macro-economic tailwinds where we already have a presence. We will also add select new restaurants in the Chicagoland market. Based on a whitespace analysis prepared for us by Forum Analytics in 2020, we believe we have a substantial runway for growth with a long-term opportunity for our brand to grow to more than 600 restaurants domestically over the next 25 years and are well-positioned for global growth in the future. While we are optimistic about our ability to expand our restaurant base, we will continue evaluating the impact of the COVID-19 pandemic, which may continue to disrupt our business and affect our ability to execute our expansion strategy. For more information, see “Risk Factors—Risks Related to Our Business, Industry and Growth Strategies—Our financial condition and results of operations have been and may continue to be adversely affected by the COVID-19 pandemic or future pandemics or disease outbreaks.”

Increase Our Same-Restaurant Sales

We aim to continue delivering an outstanding value proposition to our guests and enhance our experience to grow our volumes. We believe the following initiatives will drive same-restaurant sales growth.

Deliver a Consistently Outstanding Guest Experience. In our business, the best way to drive a return visit is to provide our guests a consistently fantastic experience when they visit our restaurants or eat our food. Therefore, our relentless focus on operational excellence enables us to drive significant throughput in our restaurants, provide a one-of-a-kind experience and a compelling everyday value proposition to our guests and thereby drive increased customer trial and frequency.

Purposeful Menu Enhancements. We are maniacal about quality and crave-ability when it comes to our menu. We are constantly studying ways to further enhance our existing offerings while thoughtfully adding new high-quality items. We are also disciplined in maintaining the number of options on our menu. When a new item earns its way onto our menu, we often replace an existing item to maintain our operational efficiency. We believe this purposeful enhancement drives increased guest frequency and reinforces our everyday value proposition that is key to our success.

Increase Brand Awareness Through Non-Traditional and Social Marketing. Portillo's does not rely on mass media advertising or promotion to drive traffic to our restaurants. We actively engage our fans and guests through a dynamic social media effort that includes email, Twitter, Instagram, TikTok, Facebook, and other platforms. Our social media activity generates significant engagement with our guests and provides our most passionate fans an opportunity to share their enthusiasm with their followers. Portillo's has dedicated Field Marketing Managers for each market that supplement our engaging social media efforts.

Enhance Our Off-Premises Guest Experience. We have always been committed to providing our guests with our delicious food however and whenever they want it. We are currently testing a third drive-thru lane for guests who have digitally pre-paid for their orders to enhance speed of service and further increase our capacity during peak times.

Leverage Our Infrastructure to Drive Profitability

Our attractive business model generates strong operating margins and cash flow. We constantly focus on restaurant-level operations while ensuring that we do not sacrifice the quality and experience for which we are known. Our investments to enhance our multichannel capabilities and drive a frictionless guest order experience are also expected to further leverage our fixed costs. We have made significant investments at the corporate level, which we believe we will leverage in the future, exclusive of the additional costs of operating as a public company.

Reorganization Transactions

The historical results of operations discussed in this “Management’s Discussion and Analysis of Financial Condition and Results of Operations” are those of Portillo’s OpCo prior to the completion of the Reorganization Transactions, including this offering, and do not reflect certain items that we expect will affect our results of operations and financial condition after giving effect to the Reorganization Transactions and the use of proceeds from this offering.

Following the completion of the Reorganization Transactions, Portillo’s Inc. will become the sole managing member of Portillo’s OpCo. We will have the sole voting interest in, and control the management of, Portillo’s OpCo. As a result, we will consolidate the financial results of Portillo’s OpCo and will report a noncontrolling interest related to the LLC Units held by the Continuing Pre-IPO LLC Members on our consolidated statements of operations and comprehensive income and balance sheet. Immediately after this offering, investors in this offering will collectively own _____% of our outstanding Class A common stock, consisting of _____ shares (or _____ shares if the underwriters exercise in full their option to purchase additional shares of Class A common stock), Portillo’s Inc. will own _____ LLC Units (or _____ LLC Units if the underwriters exercise in full their option to purchase additional shares of Class A common stock), representing _____% of the LLC Units (or _____% if the underwriters exercise in full their option to purchase additional shares of Class A common stock) and the Continuing Pre-IPO LLC Members will collectively own _____ LLC Units, representing _____% of the LLC Units (or _____% if the underwriters exercise in full their option to purchase additional shares of Class A common stock). Accordingly, net income attributable to equity method investment will represent _____% of the income before income tax benefit (expense) of Portillo’s Inc. (or _____% if the underwriters exercise in full their option to purchase additional shares of Class A common stock). Portillo’s Inc. is a holding company that conducts no operations and, as of the consummation of this offering, its principal asset will be LLC Units we purchase from Portillo’s OpCo.

After consummation of this offering, Portillo’s Inc. will become subject to U.S. federal, state and local income taxes with respect to our allocable share of any taxable income of Portillo’s OpCo and will be taxed at the prevailing corporate tax rates. In addition to tax expenses, we also will incur public company expenses related to our operations, plus payment obligations under the Tax Receivable Agreement, which we expect to be significant. We intend to cause Portillo’s OpCo to make distributions to us in an amount sufficient to allow us to pay our tax obligations and operating expenses, including distributions to fund any payments due under the Tax Receivable Agreement. See “Certain Relationships and Related Party Transactions—Amended Portillo’s OpCo Agreement.”

Key Performance Indicators

In addition to the measures presented in our financial statements, we use the following key performance indicators to evaluate our business, measure our performance, develop financial forecasts and make strategic decisions. These key measures include same-restaurant sales, new restaurant openings, average unit

volume (AUV), Adjusted EBITDA, Adjusted EBITDA Margin, Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin. The Company includes these non-GAAP measures because management believes that they are important to day-to-day operations and overall strategy and are useful to investors in that they provide for greater transparency with respect to supplemental information used by management in its financial and operational decision-making.

Selected Operating Data:

	Year Ended		Two Quarters Ended	
	December 27, 2020	December 29, 2019	June 27, 2021	June 28, 2020
Total Restaurants ⁽¹⁾	64	62	67	62
Change in same-restaurant sales ⁽¹⁾	(8.3)%	3.2%	13.0%	(10.5)%
AUV (in millions) ⁽¹⁾	\$ 7.7	\$ 8.7	\$ 7.9	\$ 8.1
Adjusted EBITDA (in thousands) ⁽²⁾	\$ 87,804	\$ 79,495	\$ 51,073	\$ 37,863
Adjusted EBITDA Margin	19.3%	16.6%	19.8%	17.4%
Restaurant-Level Adjusted EBITDA (in thousands) ⁽³⁾	\$ 121,945	\$ 117,070	\$ 72,826	\$ 52,761
Restaurant-Level Adjusted EBITDA Margin	26.8%	24.4%	28.2%	24.3%

- (1) Includes a restaurant that is owned by C&O of which Portillo's owns 50% of the equity, as described in Note 6 – Equity Method Investment in the notes to the audited consolidated financial statements. In the table above, AUVs for the Two Quarters Ended June 27, 2021 and June 28, 2020 represent AUVs for the Twelve Months Ended June 27, 2021 and June 28, 2020, respectively.
- (2) For a discussion of Adjusted EBITDA and Adjusted EBITDA Margin and a reconciliation from net income (loss), the most comparable GAAP measure to Adjusted EBITDA, please see “Prospectus Summary—Summary Historical and Pro Forma Consolidated Financial and Other Data.”
- (3) For a discussion of Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin and a reconciliation from operating income, the most comparable GAAP measure to Restaurant-Level Adjusted EBITDA, please see “Prospectus Summary—Summary Historical and Pro Forma Consolidated Financial and Other Data.”

Change in Same-Restaurant Sales

The change in same-restaurant sales is the percentage change in year-over-year revenue (excluding gift card breakage) for the Comparable Restaurant Base. At the end of fiscal 2020 and the two quarters ended June 27, 2021, there were 57 and 60 restaurants in our Comparable Restaurant Base, respectively.

An increase or decrease in same-restaurant sales is the result of changes in restaurant traffic and average guest check. We gather daily sales data and regularly analyze the restaurant traffic counts and the mix of menu items sold to aid in developing menu pricing, product offerings and promotional strategies designed to produce sustainable same-restaurant sales. This measure highlights, and allows us and investors to assess, the performance of existing restaurants, as the impact of new restaurant openings is excluded.

New Restaurant Openings

New restaurant openings constitute new restaurants that open for business during the period being reported. New restaurant openings are central to growing our footprint and executing our growth strategy. We have never closed a restaurant in our 58-year history.

Potential new restaurant sites are typically identified and evaluated at least 18 months prior to opening. New restaurant opening dates trigger advance staff recruiting and training, in addition to the relocation of experienced general managers from existing restaurants and other pre-opening expenses.

The total number of new restaurants per year and the timing of new restaurant openings has, and will continue to have, an impact on our results of operations. We monitor new restaurant openings as a metric that informs the growth of our restaurant base and tracks our nationwide presence and believe that this metric is useful to investors to understand our growing footprint and growth strategy.

Average Unit Volume (AUV)

Average unit volume (“AUV”) is the total revenue (excluding gift card breakage) recognized in the Comparable Restaurant Base, divided by the number of restaurants in the Comparable Restaurant Base during the period. This measurement allows us to assess, and our investors to understand, changes in guest spending patterns at restaurants in our Comparable Restaurant Base and the overall performance of our Comparable Restaurant Base.

An increase or decrease in AUV is the result of changes in restaurant traffic, average guest check and the mix of restaurants entering the Comparable Restaurant Base. We gather daily sales data and regularly analyze the restaurant traffic counts and the mix of menu items sold to aid in developing menu pricing, product offerings and promotional strategies designed to produce sustainable AUV. Historically, when opening restaurants in new markets outside of Chicagoland, we experience higher revenues in the first year of operation with a decline in revenues in the second year. After the second year, we have experienced growth in revenues in the third year and beyond as the restaurant and brand continue to grow awareness in those markets. We expect this trend to continue in the future.

Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin

Restaurant-Level Adjusted EBITDA is defined as revenue, less restaurant operating expenses, which include cost of goods sold, excluding depreciation and amortization, labor expenses, occupancy expenses and other operating expenses. Restaurant-Level Adjusted EBITDA excludes corporate level expenses, pre-opening expenses and depreciation and amortization on restaurant property and equipment. Restaurant-Level Adjusted EBITDA Margin represents Restaurant-Level Adjusted EBITDA as a percentage of revenue. Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin are not required by, nor presented in accordance with GAAP. Rather, Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin are supplemental measures of operating performance of our restaurants. You should be aware that Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin are not indicative of overall results for the Company, and Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin do not accrue directly to the benefit of stockholders because of corporate-level expenses excluded from such measures. In addition, our calculations thereof may not be comparable to similar measures reported by other companies. We believe that Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin are important measures to evaluate the performance and profitability of our restaurants, individually and in the aggregate. Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin have limitations as analytical tools and should not be considered as a substitute for analysis of our results as reported under GAAP. We use Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin to develop internal budgets and forecasts and assess the performance of our restaurants relative to budgets, forecasts and versus prior periods. For a reconciliation of operating income, the most directly comparable GAAP measure, to Restaurant-Level Adjusted EBITDA, see “Prospectus Summary—Summary Historical and Pro Forma Consolidated Financial and Other Data.”

Adjusted EBITDA and Adjusted EBITDA Margin

Adjusted EBITDA represents net income (loss) before depreciation and amortization, interest expense and income taxes, adjusted for the impact of certain non-cash and other items that we do not consider in our evaluation of ongoing core operating performance as identified in the reconciliation of net income (loss), the most directly comparable GAAP measure, to Adjusted EBITDA, included in “Prospectus Summary—Summary Historical and Pro Forma Consolidated Financial and Other Data.” Adjusted EBITDA Margin represents Adjusted EBITDA as a percentage of total revenues. We use Adjusted EBITDA and Adjusted EBITDA Margin (i) to evaluate our operating results and the effectiveness of our business strategies, (ii) internally as benchmarks to compare our performance to that of our competitors and (iii) as factors in evaluating management’s performance when determining incentive compensation.

We believe that Adjusted EBITDA and Adjusted EBITDA Margin are important measures of operating performance because they eliminate the impact of expenses that do not relate to our core operating performance. Adjusted EBITDA and Adjusted EBITDA Margin are supplemental measures of operating performance and our calculations thereof may not be comparable to similar measures reported by other companies. Adjusted EBITDA and Adjusted EBITDA Margin have important limitations as analytical tools and should not be considered in isolation as substitutes for analysis of our results as reported under GAAP.

Components of our Results of Operations

Revenues

Revenues primarily represent the aggregate sales of food and beverages, net of discounts. Sales taxes collected from customers are excluded from revenues. Revenues in any period are directly influenced by the number of operating weeks in the period, the number of open restaurants, restaurant traffic, our menu prices and product mix.

Cost of Goods Sold, Excluding Depreciation and Amortization

Cost of goods sold, excluding depreciation and amortization includes the direct costs associated with food and beverages, including paper products. The components of cost of goods sold, excluding depreciation and amortization are variable by nature, change with sales volume, are impacted by product mix and are subject to increases or decreases in commodity costs.

Labor Expenses

Labor expenses include hourly and management wages, bonuses, payroll taxes, workers' compensation expense and team member benefits. Factors that influence labor costs include minimum wage and payroll tax legislation, health care costs and the performance of our restaurants.

Occupancy Expenses

Occupancy expenses primarily consist of rent, property insurance, common area expenses and property taxes.

Other Operating Expenses

Other operating expenses consist of direct marketing expenses, utilities and other operating expenses incidental to operating our restaurants, such as credit card fees and repairs and maintenance.

General and Administrative Expenses

General and administrative expenses primarily consist of costs associated with our corporate and administrative functions that support restaurant development and operations, including marketing and advertising costs incurred as well as legal and professional fees. General and administrative expenses also include unit-based compensation expense. General and administrative expenses are impacted by changes in our team member count and costs related to strategic and growth initiatives. In preparation for and after the consummation of this offering, we have incurred and we expect to incur in the future significant additional legal, accounting and other expenses associated with being a public company, including costs associated with our compliance with the Sarbanes-Oxley Act. In addition, as a result of new equity awards that will take place at or after the consummation of this offering, we anticipate that our equity-based compensation will be higher in 2021 and beyond.

Pre-Opening Expenses

Pre-opening expenses consist primarily of occupancy expenses, which represent rent expense recognized during the period between the date of possession of the restaurant facility and the restaurant opening date, wages, travel for the opening team, food, beverage, and the initial stocking of operating supplies. All such costs incurred prior to the opening are expensed in the period in which the expense was incurred. Pre-opening expenses can fluctuate significantly from period to period, based on the number and timing of openings and the specific pre-opening expenses incurred for each restaurant. Additionally, restaurant openings in new geographic market areas will initially experience higher pre-opening expenses than our established geographic market areas, such as the Chicagoland area, where we have greater economies of scale and incur lower travel and lodging costs for our training team.

Depreciation and Amortization Expenses

Depreciation and amortization expenses consist of the depreciation of fixed assets, including leasehold improvements, fixtures and equipment and the amortization of definite-lived intangible assets, which are primarily comprised of recipes, non-compete agreements and favorable leasehold positions.

Net Income Attributable to Equity Method Investment

Net income attributable to equity method investment consists of a 50% interest in C&O, which runs a single restaurant located within the Chicagoland market. We account for the investment and financial results in the consolidated financial statements under the equity method of accounting as we have significant influence but do not have control.

Other Income, Net

Other income, net includes among other items, income resulting from discounts received for timely filing of sales tax returns, management fee income associated with our investment in C&O, and gains or losses on asset disposals.

Interest Expense

Interest expense primarily consists of interest and fees on our Credit Facilities and the amortization expense for debt discount and deferred issuance costs. We expect to pay down a portion of our outstanding debt using the proceeds of this offering. Additionally, the amount of proceeds, if any, used to pay down our outstanding debt may result in a decrease of the interest rate on our Revolving Facility. We expect that these changes will reduce our annual interest expense by \$ million following this offering. See "Use of Proceeds" and "Description of Material Indebtedness."

Results of Operations

The following table summarizes our results of operations for the years ended December 27, 2020 and December 29, 2019 and the two quarters ended June 27, 2021 and June 28, 2020:

(\$ in thousands)	Year Ended				Two Quarters Ended			
	December 27, 2020		December 29, 2019		June 27, 2021		June 28, 2020	
Revenues	\$455,471	100.0%	\$479,417	100.0%	\$258,041	100.0%	\$217,260	100.0%
Costs and expenses								
Cost of goods sold, excluding depreciation and amortization	142,446	31.3%	149,063	31.1%	77,180	29.9%	69,523	32.0%
Labor	115,991	25.5%	134,206	28.0%	65,512	25.4%	58,080	26.7%
Occupancy	24,920	5.5%	24,538	5.1%	13,890	5.4%	12,349	5.7%
Other operating expenses	50,169	11.0%	54,540	11.4%	28,633	11.1%	24,547	11.3%
Total operating expenses	333,526	73.2%	362,347	75.6%	185,215	71.8%	164,499	75.7%
General and administrative expenses	39,854	8.8%	43,118	9.0%	24,005	9.3%	18,212	8.4%
Pre-opening expenses	2,209	0.5%	2,834	0.6%	1,960	0.8%	294	0.1%
Depreciation and amortization	24,584	5.4%	24,364	5.1%	12,709	4.9%	12,266	5.6%
Net income attributable to equity method investment	(459)	(0.1)%	(766)	(0.2)%	(359)	(0.1)%	(232)	(0.1)%
Other income, net	(1,537)	(0.3)%	(1,402)	(0.3)%	(803)	(0.3)%	(578)	(0.3)%
Operating income	57,294	12.6%	48,922	10.2%	35,314	13.7%	22,799	10.5%
Interest expense	45,031	9.9%	43,367	9.0%	21,441	8.3%	23,532	10.8%
Net income (loss)	\$ 12,263	2.7%	\$ 5,555	1.2%	\$ 13,873	5.4%	\$ (733)	(0.3)%

Revenues

Revenues in fiscal 2020 were \$455.5 million compared to \$479.4 million in fiscal 2019, a decrease of \$23.9 million or 5.0%. The decrease in revenues was primarily attributed to a decline in guest traffic as a result of the COVID-19 pandemic, partially offset by an increase in our average check, the opening of three new restaurants in May through November 2019 and two new restaurants opened during the fourth quarter of 2020. The three new restaurants opened in May through November 2019 and the two new restaurants opened during fiscal 2020 positively impacted revenues in fiscal 2020 by approximately \$7.6 million. We operated on an off-premise and drive-thru only operating model beginning in the second half of March 2020. Since May 2020, we reopened and operated in-restaurant dining in varying degrees of capacity. Same-restaurant sales decreased 8.3% during fiscal 2020, which was attributable to a 17.1% decline in guest traffic, partially offset by an 8.8% increase in the average check. The higher average check was driven by both an increase in items per order and menu prices. For the purpose of calculating same-restaurant sales for fiscal 2020, sales for 57 restaurants were included in the Comparable Restaurant Base as of the end of fiscal 2020.

Revenues for the two quarters ended June 27, 2021 were \$258.0 million compared to \$217.3 million for the two quarters ended June 28, 2020, an increase of \$40.8 million or 18.8%. The increase in revenues was primarily attributed to an increase in guest traffic as a result of the recovery from the COVID-19 pandemic, an increase in our average check, and the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants opened during the two quarters ended June 27, 2021. The five new restaurants opened in fiscal 2020

and the first half of 2021 positively impacted revenues in the two quarters ended June 27, 2021 by approximately \$14.0 million. We operated on an off-premise and drive-thru only operating model beginning in the second half of March 2020. Since May 2020, we reopened and operated in-restaurant dining in varying degrees of capacity. Same-restaurant sales increased 13.0% during the two quarters ended June 27, 2021, which was attributable to a 6.2% increase in guest traffic and a 6.8% increase in the average check. The higher average check was driven by both an increase in items per order and menu prices. For the purpose of calculating same-restaurant sales for June 27, 2021, sales for 60 restaurants were included in the Comparable Restaurant Base versus 55 as of the end of the second quarter of 2020.

Cost of Goods Sold, Excluding Depreciation and Amortization

Cost of goods sold, excluding depreciation and amortization in fiscal 2020 was \$142.4 million compared to \$149.1 million in fiscal 2019, a decrease of \$6.6 million or 4.4%. This decrease was primarily driven by a decline in revenues related to the COVID-19 pandemic, partially offset by the opening of three new restaurants in May through November 2019 and two new restaurants opened during the fourth quarter of 2020. As a percentage of revenues, the cost of goods sold, excluding depreciation and amortization increased 0.2% in fiscal 2020. This increase was primarily due to inflation in commodity prices, primarily ground beef and beef flats used in our Italian beef sandwiches, partially offset by an increase in our average check.

Cost of goods sold, excluding depreciation and amortization for the two quarters ended June 27, 2021 was \$77.2 million compared to \$69.5 million for the two quarters ended June 28, 2020, an increase of \$7.7 million or 11.0%. This increase was primarily driven by an increase in items per order and the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants opened during the two quarters ended June 27, 2021, partially offset by a reduction in commodity prices, primarily ground beef and beef flats used in our Italian beef sandwiches. As a percentage of revenues, cost of goods sold, excluding depreciation and amortization decreased 2.1% during the two quarters ended June 27, 2021. This decrease was primarily due to a reduction in commodity prices, primarily ground beef and beef flats used to make our Italian beef sandwiches, and an increase in our average check.

Labor Expenses

Labor expenses in fiscal 2020 were \$116.0 million compared to \$134.2 million in fiscal 2019, a decrease of \$18.2 million or 13.6%. This decrease was primarily driven by the deployment of a leaner labor model due to COVID-19 related dining room closures and reduction of restaurant hours, including a significant reduction in overtime hours. These decreases were partially offset by the opening of three new restaurants in May through November 2019 and two new restaurants opened during the fourth quarter of 2020, and several incremental investments to support our team members, including training costs and discretionary bonuses. As a percentage of revenues, labor expenses decreased 2.5% due primarily to the aforementioned reduction in labor hours.

Labor expenses for the two quarters ended June 27, 2021 were \$65.5 million compared to \$58.1 million for the two quarters ended June 28, 2020, an increase of \$7.4 million or 12.8%. This increase was primarily driven by the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants during the two quarters ended June 27, 2021 and several incremental investments to support our team members, including hourly rate increases, training costs and discretionary bonuses. As a percentage of revenues, labor expenses decreased 1.3% due primarily to deployment of a leaner labor model due to COVID-19 related dining room capacity limitations and the reduction of restaurant hours combined with an increase in our average check, partially offset by hourly rate increases and discretionary bonuses.

Occupancy Expenses

Occupancy expenses in fiscal 2020 were \$24.9 million compared to \$24.5 million in fiscal 2019, an increase of \$0.4 million or 1.6%. This increase was primarily driven by increased costs associated with the opening of three new restaurants in May through November 2019 and two new restaurants opened during the fourth quarter of 2020.

Occupancy expenses for the two quarters ended June 27, 2021 were \$13.9 million compared to \$12.3 million for the two quarters ended June 28, 2020, an increase of \$1.5 million or 12.5%. This increase was primarily driven by the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants during the two quarters ended June 27, 2021.

Other Operating Expenses

Other operating expenses in fiscal 2020 were \$50.2 million compared to \$54.5 million in fiscal 2019, a decrease of \$4.4 million or 8.0%. This decrease was primarily driven by a reduction in our expenses impacted by the COVID-19 pandemic, including reduced utilities, repair and maintenance expenses, as well a reduction in advertising and variable credit card fees. These decreases were partially offset by higher technology-related expenses and higher equipment rental expenses.

Other operating expenses for the two quarters ended June 27, 2021 were \$28.6 million compared to \$24.5 million for the two quarters ended June 28, 2020, an increase of \$4.1 million or 16.6%. This increase was primarily driven by the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants during the two quarters ended June 27, 2021 and incremental costs associated with cleaning and utilities as a result of continued expansion of our dine in capacity as a result of the recovery from the COVID-19 pandemic.

General and Administrative Expenses

General and administrative expenses in fiscal 2020 were \$39.9 million compared to \$43.1 million in fiscal 2019, a decrease of \$3.3 million or 7.6%. This decrease was primarily driven by disciplined cost reduction across the majority of discretionary spend categories including travel and advertising. This decrease was partially offset by an increase in training program costs for future restaurant managers. As of December 27, 2020, the unrecognized unit-based compensation expense was \$6.2 million, of which \$0.8 million will be recognized through fiscal year 2025.

General and administrative expenses for the two quarters ended June 27, 2021 were \$24.0 million compared to \$18.2 million for the two quarters ended June 28, 2020, an increase of \$5.8 million or 31.8%. This increase was primarily driven by an increase in salaries and wages attributable to annual rate increases and filling open positions and training program costs for future restaurant managers. In 2020, the lower costs were driven by a disciplined cost reduction strategy across the majority of discretionary spend categories including travel and advertising.

Pre-Opening Expenses

Pre-opening expenses in fiscal 2020 were \$2.2 million compared to \$2.8 million in fiscal 2019, a decrease of \$0.6 million or 22.1%. This decrease was due to the lower number of restaurants opened during fiscal 2020 compared to fiscal 2019 as a result of the COVID-19 pandemic.

Pre-opening expenses for the two quarters ended June 27, 2021 were \$2.0 million compared to \$0.3 million for the two quarters ended June 28, 2020, an increase of \$1.7 million or 566.7%. This increase was due to three new restaurants opened in the two quarters ended June 27, 2021 compared to no new restaurants opened in the two quarters ended June 28, 2020.

Depreciation and Amortization Expenses

Depreciation and amortization expenses in fiscal 2020 were \$24.6 million compared to \$24.4 million in fiscal 2019, an increase of \$0.2 million or 0.9%. This increase was primarily due to incremental depreciation of capital expenditures related to the opening of new restaurants in the second half of 2019 and fiscal 2020.

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Depreciation and amortization expenses for the two quarters ended June 27, 2021 were \$12.7 million compared to \$12.3 million for the two quarters ended June 28, 2020, an increase of \$0.4 million or 3.6%. This increase was primarily due to incremental depreciation of capital expenditures related to the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants during the two quarters ended June 27, 2021.

Net Income Attributable to Equity Method Investment

Net income attributable to equity method investment in fiscal 2020 was \$0.5 million compared to \$0.8 million in fiscal 2019. This decrease was primarily driven by decreased revenues due to a decline in guest traffic as a result of the COVID-19 pandemic.

Net income attributable to equity method investment for the two quarters ended June 27, 2021 was \$0.4 million compared to \$0.2 million for the two quarters ended June 28, 2020. This increase was primarily driven by increased revenues due to an increase in guest traffic as a result of the recovery from the COVID-19 pandemic.

Other Income, Net

Other income, net in fiscal 2020 was \$1.5 million compared to \$1.4 million in fiscal 2019, an increase of \$0.1 million or 9.6%. This increase was primarily due to refundable employee retention credits provided by the Coronavirus Aid, Relief and Economic Security (“CARES”) Act signed on March 27, 2020. The CARES Act provides refundable employee retention credits, which can be used to offset payroll tax liabilities. For the year ended December 27, 2020, the Company recorded a benefit of \$0.3 million. This is partially offset by a decrease in management fee income related to our investment in C&O.

Other income, net for the two quarters ended June 28, 2021 was \$0.8 million compared to \$0.6 million for the two quarters ended June 28, 2020, an increase of \$0.2 million or 38.9%. This increase was primarily due to an increase in trading gains in our deferred compensation plan.

Interest Expense

On December 6, 2019, we entered into the Third Amendment to First Lien Credit Agreement (as defined herein) whereby the aggregate principal amount of the First Lien Term B-3 Loans as of the effective date of such amendment was \$332.4 million, and the Revolving Facility was increased by \$5 million to \$50 million. The maturity date of the First Lien Term B-3 Loans was extended to September 6, 2024 and the Revolving Facility maturity date was further extended to June 6, 2024.

On December 6, 2019, we also entered into the Second Amendment to Second Lien Credit Agreement (as defined herein) whereby the aggregate principal amount of the Second Lien Term B-3 Loans as of the effective date of such amendment was \$155 million. The maturity date was extended to December 6, 2024. In addition to the increased principal amount, the interest rates spread for LIBOR loans increased by 150 basis points to 9.50%.

Interest expense in fiscal 2020 was \$45.0 million compared to \$43.4 million in fiscal 2019, an increase of \$1.7 million or 3.8%. This increase was primarily driven by the above-described transactions and increased borrowings under the Revolving Facility due to the COVID-19 pandemic. All borrowings under the Revolving Facility were repaid as of December 27, 2020.

Interest expense for the two quarters ended June 27, 2021 was \$21.4 million compared to \$23.5 million for the two quarters ended June 28, 2020, a decrease of \$2.1 million or 8.9%. This decrease was primarily driven by decreased borrowings under the Revolving Facility during the two quarters ended June 27, 2021. There were no outstanding borrowings or repayments under the Revolving Facilities during the first two quarters of 2021.

Selected Quarterly Financial Information

The following tables present the unaudited quarterly historical consolidated financial and other data of Portillo's OpCo for each of the quarters ended June 27, 2021, March 28, 2021, December 27, 2020, September 27, 2020, June 28, 2020, March 29, 2020, December 29, 2019 and September 29, 2019. The unaudited quarterly historical consolidated financial and other data have been prepared on the same basis as the audited consolidated financial statements of Portillo's OpCo and its subsidiaries included elsewhere in this prospectus. In our opinion, the unaudited quarterly historical consolidated financial information includes all adjustments, which include normal recurring adjustments necessary to present fairly in all material respects our financial position and results of operations for these periods. This information should be read in conjunction with the consolidated financial statements of Portillo's OpCo and the related notes included elsewhere in this prospectus. The results of historical periods are not necessarily indicative of the results in any future period and the results of a particular quarter or other interim period are not necessarily indicative of the results for a full year.

(\$ in thousands)	Quarter Ended June 27, 2021	Quarter Ended March 28, 2021	Quarter Ended December 27, 2020	Quarter Ended September 27, 2020	Quarter Ended June 28, 2020	Quarter Ended March 29, 2020	Quarter Ended December 29, 2019	Quarter Ended September 29, 2019
Total restaurants	67	65	64	62	62	62	62	61
Change in same-restaurant sales	26.1%	0.5%	(9.4)%	(3.2)%	(17.7)%	(2.2)%	5.2%	2.8%
Revenues	\$ 140,734	\$ 117,307	\$ 118,511	\$ 119,700	\$ 106,983	\$ 110,277	\$ 125,543	\$ 121,572
Pre-opening expenses	\$ 671	\$ 1,289	\$ 1,371	\$ 544	\$ 236	\$ 58	\$ 573	\$ 574
Net income (loss)	\$ 13,749	\$ 124	\$ 4,892	\$ 8,104	\$ 2,013	\$ (2,746)	\$ 3,184	\$ 1,730
Adjusted EBITDA	\$ 32,539	\$ 18,534	\$ 23,507	\$ 26,434	\$ 21,195	\$ 16,668	\$ 22,526	\$ 19,690
Adjusted EBITDA Margin	23.1%	15.8%	19.8%	22.1%	19.8%	15.1%	17.9%	16.2%
Operating income	\$ 24,461	\$ 10,853	\$ 15,625	\$ 18,870	\$ 13,637	\$ 9,162	\$ 14,703	\$ 12,045
Restaurant-Level Adjusted EBITDA	\$ 43,065	\$ 29,761	\$ 34,561	\$ 34,623	\$ 28,168	\$ 24,593	\$ 33,191	\$ 28,375
Restaurant-Level Adjusted EBITDA margin	30.6%	25.4%	29.2%	28.9%	26.3%	22.3%	26.4%	23.3%

Adjusted EBITDA

(\$ in thousands)	Quarter Ended June 27, 2021	Quarter Ended March 28, 2021	Quarter Ended December 27, 2020	Quarter Ended September 27, 2020	Quarter Ended June 28, 2020	Quarter Ended March 29, 2020	Quarter Ended December 29, 2019	Quarter Ended September 29, 2019
Net income (loss)	\$13,749	\$ 124	\$ 4,892	\$ 8,104	\$ 2,013	\$ (2,746)	\$ 3,184	\$ 1,730
Depreciation and amortization	6,420	6,289	6,180	6,138	6,133	6,133	6,112	6,067
Interest expense	10,712	10,729	10,733	10,766	11,624	11,908	11,519	10,315
EBITDA	30,881	17,142	21,805	25,008	19,770	15,295	20,815	18,112
Deferred rent (1)	798	796	721	738	683	629	625	631
Unit-based compensation and consulting fees(2)	668	605	896	687	696	681	947	801
Other income(3)	141	(9)	85	(7)	32	20	110	78
Transaction-related fees & expenses(4)	51	—	—	8	14	43	29	68
Adjusted EBITDA	\$32,539	\$ 18,534	\$ 23,507	\$ 26,434	\$21,195	\$ 16,668	\$ 22,526	\$ 19,690
Adjusted EBITDA margin	23.1%	15.8%	19.8%	22.1%	19.8%	15.1%	17.9%	16.2%

- (1) Represents the difference between cash rent payments and the recognition of straight-line rent expense recognized over the lease term.
(2) Represents unit-based compensation and consulting fees related to our former owner.
(3) Represents loss on disposal of property and equipment.
(4) Represents fees and expenses associated with public company readiness.

Restaurant-Level Adjusted EBITDA

(\$ in thousands)	Quarter Ended June 27, 2021	Quarter Ended March 28, 2021	Quarter Ended December 27, 2020	Quarter Ended September 27, 2020	Quarter Ended June 28, 2020	Quarter Ended March 29, 2020	Quarter Ended December 29, 2019	Quarter Ended September 29, 2019
Operating income	\$24,461	\$ 10,853	\$ 15,625	\$ 18,870	\$13,637	\$ 9,162	\$ 14,703	\$ 12,045
Plus:								
General and administrative expenses	12,170	11,835	11,936	9,706	9,030	9,182	12,254	10,195
Pre-opening expenses	671	1,289	1,371	544	236	58	573	574
Depreciation and amortization	6,420	6,289	6,180	6,138	6,133	6,133	6,112	6,067
Net income attributable to equity method investment	(295)	(64)	(106)	(121)	(135)	(97)	(199)	(250)
Other income, net	(362)	(441)	(445)	(514)	(733)	155	(252)	(256)
Restaurant-Level Adjusted EBITDA	\$43,065	\$ 29,761	\$ 34,561	\$ 34,623	\$28,168	\$ 24,593	\$ 33,191	\$ 28,375
Restaurant-Level Adjusted EBITDA margin	30.6%	25.4%	29.2%	28.9%	26.3%	22.3%	26.4%	23.3%

Liquidity and Capital Resources

Our primary sources of liquidity are, and after the completion of this offering are expected to continue to be, cash flow from operations, cash and cash equivalents, credit capacity under our Credit Facilities, and proceeds from equity offerings, including this offering. We experienced significantly lower labor costs in fiscal 2020, which we attribute to the limitations on our dining rooms, our COVID-19 mitigation efforts, and enhanced team member engagement. Additionally, we opened two new restaurants in the fourth quarter of 2020 and three new restaurants in the first two quarters of 2021. These factors contributed to our continued ability to generate positive operating cash flows. As of December 27, 2020 and June 27, 2021, we had cash and cash equivalents of \$41.2 million and \$54.2 million, respectively, and availability under our Credit Facilities of \$44.2 million and \$44.7 million, respectively, net of letters of credit issued of \$5.8 million and \$5.3 million, respectively. Our total indebtedness was \$484.1 million as of December 27, 2020 and \$482.4 million as of June 27, 2021, excluding unamortized debt discount and deferred issuance costs. See “Description of Material Indebtedness.” After giving effect to the application of the estimated net proceeds from this offering, our total indebtedness will be \$ million.

Our principal uses of cash include capital expenditures primarily for developing new restaurants, lease obligations, principal and interest payments on our debt and investments in technology. Our requirements for working capital are not significant because our guests pay for their food and beverage purchases in cash or on debit or credit cards at the time of the sale and we are able to sell many of our inventory items before payment is due to the supplier of such items.

We estimate that our capital expenditures will total approximately \$30 million to \$35 million in fiscal 2021. The primary expenditures will be in connection with openings of new restaurants. We have been, and plan to continue to, fund our capital expenditures primarily with cash generated from our operating activities as well as with borrowings under the undrawn portions of our Credit Facilities.

We believe that our cash flow from operations, availability under our Credit Facilities and available cash and cash equivalents will be sufficient to meet our liquidity needs for at least the next 12 months. We anticipate that to the extent that we require additional liquidity, it will be funded through the incurrence of additional indebtedness, the issuance of equity, or a combination thereof. We cannot assure you that we will be able to obtain this additional liquidity on reasonable terms, or at all. Additionally, our liquidity and our ability to meet our obligations and fund our capital requirements are also dependent on our future financial performance, which is subject to general economic, financial and other factors described in “Risk Factors” that are beyond our control. Accordingly, we cannot assure you that our business will generate sufficient cash flow from operations or that future borrowings will be available from additional indebtedness or otherwise to meet our liquidity needs. Although we have no specific current plans to do so, if we decide to pursue one or more significant acquisitions, we may incur additional debt or sell additional equity to finance such acquisitions, which would result in additional expenses or dilution.

Credit Facilities and Unused Borrowing Capacity

The First Lien Term B-3 Loans mature on September 6, 2024 and the Revolving Facility matures on June 6, 2024. The Second Lien Term B-3 Loans mature on December 6, 2024. We have pledged substantially all our assets to secure our obligations under our Credit Facilities. For the First Lien Term B-3 Loans, 0.25% of the original aggregate principal amount of First Lien Term B-3 Loans is required to be repaid on the last business day of the end of each fiscal quarter, with the remainder of principal and unpaid interest due at maturity. Our Revolving Facility includes a commitment fee at a rate of (i) if the first lien net leverage ratio is greater than 4.25:1.00, 0.500%, (ii) if the first lien net leverage ratio is less than or equal to 4.25:1.00 or greater than 3.75:1.00, 0.375% or (iii) if the first lien net leverage ratio is less than or equal to 3.75:1.00, 0.250%, per annum. The Credit Facilities contain covenants that provide for, among other things, (x) under the First Lien Credit Agreement, subject to the occurrence of certain conditions, maintenance of a financial covenant and (y) under the Credit Facilities, restrictions on additional indebtedness. We were in compliance with the covenants as of December 27, 2020 and June 27, 2021.

The following table summarizes our available liquidity as of the period presented:

<i>(in thousands)</i>	<u>As of</u> <u>December 27, 2020</u>	<u>As of</u> <u>June 27, 2021</u>
Cash and cash equivalents	\$ 41,211	\$ 54,157
Undrawn revolving facility	44,150	44,710
Undrawn initial delayed draw term facility	—	—
Total available liquidity	<u>\$ 85,361</u>	<u>\$ 98,864</u>

Statement of Cash Flows

The following table presents a summary of our cash flows provided by (used in) operating, investing and financing activities for the period presented:

<i>(in thousands)</i>	<u>Year Ended</u>		<u>Two Quarters Ended</u>	
	<u>December 27,</u> <u>2020</u>	<u>December 29,</u> <u>2019</u>	<u>June 27,</u> <u>2021</u>	<u>June 28,</u> <u>2020</u>
Net cash provided by operating activities	\$ 58,271	\$ 43,325	\$ 32,817	\$ 21,299
Net cash used in investing activities	(21,420)	(22,012)	(18,545)	(3,515)
Net cash used in financing activities	(18,048)	(11,721)	(1,312)	(16,412)
Net increase in cash and cash equivalents and restricted cash	<u>\$ 18,803</u>	<u>\$ 9,592</u>	<u>\$ 12,960</u>	<u>\$ 1,372</u>

Net cash provided by operating activities in fiscal 2020 was \$58.3 million compared to net cash provided by operating activities of \$43.3 million for fiscal 2019, an increase of \$14.9 million or 34.5%. The increase was primarily due to an increase in net income (loss) of \$6.7 million, and a change in operating assets and liabilities of \$6.8 million, partially offset by the impact of non-cash charges of \$1.5 million.

The \$6.8 million change in our operating asset and liability balances was primarily driven by other assets and liabilities being a source of net cash of \$5.5 million in fiscal 2020, compared to a use of net cash of \$1.1 million in fiscal 2019 driven by the deferral of employer social security taxes of \$5.4 million pursuant to the CARES Act. The CARES Act also allowed eligible employers to defer the remittance of certain FICA taxes otherwise payable during calendar year 2020 and remit half of such deferred amounts on or before December 31, 2021 and half on or before December 31, 2022.

Net cash provided by operating activities for the two quarters ended June 27, 2021 was \$32.8 million compared to net cash provided by operating activities of \$21.3 million for the two quarters ended June 28, 2020, an increase of \$11.5 million or 54.1%. The increase was primarily due to an increase in net income of \$14.6 million and a change in non-cash charges of \$0.8 million, partially offset by the impact of the change in operating assets and liabilities of \$3.9 million. The change in our operating asset and liability balances was primarily driven by other assets and liabilities being a source of net cash of \$2.5 million in the two quarters ended June 27, 2021, compared to a source of net cash of \$6.4 million for the two quarters ended June 28, 2020 driven by an increase in receipt of deferred lease incentives in and the deferral of employer social security taxes of \$1.7 million in the two quarters ended June 28, 2020. The CARES Act also allowed eligible employers to defer the remittance of certain FICA taxes otherwise payable during calendar year 2020 and remit half of such deferred amounts on or before December 31, 2021 and half on or before December 31, 2022.

Net cash used in investing activities in fiscal 2020 was \$21.4 million compared to net cash used in investing activities of \$22.0 million in fiscal 2019, a decrease of \$0.6 million or 2.7%. The decrease was primarily due to a decrease in capital expenditures in fiscal 2020 due to the deferral of new restaurant openings.

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Net cash used in investing activities for the two quarters ended June 27, 2021 was \$18.5 million compared to net cash used in investing activities of \$3.5 million for the two quarters ended June 28, 2020, an increase of \$15.0 million or 427.6%. The increase was primarily to an increase in capital expenditures in the two quarters ended June 27, 2021 due to the opening of three new restaurants and the deferral of restaurant openings in 2020 to the fourth quarter.

Net cash used in financing activities in fiscal 2020 was \$18.0 million compared to net cash used in financing activities of \$11.7 million in fiscal 2019, an increase of \$6.3 million or 54.0%. The increase was primarily related to the repayment of borrowings under the Revolving Facility.

Net cash used in financing activities for the two quarters ended June 27, 2021 was \$1.3 million compared to net cash used in financing activities of \$16.4 million for the two quarters ended June 28, 2020, a decrease of \$15.1 million or 92.0%. The decrease was primarily related to the repayment of borrowings under the Revolving Facility during the two quarters ended June 28, 2020.

Contractual Obligations

The following table sets forth certain contractual obligations, debt obligations and commitments as of December 27, 2020, whether they appear on our consolidated balance sheet. All amounts in the table may reflect rounding.

<i>(in thousands)</i>	<u>Total</u>	<u>Less than 1 year</u>	<u>1-3 years</u>	<u>3-5 years</u>	<u>More than 5 years</u>
Operating lease obligations	\$ 588,808	\$19,155	\$ 59,733	\$40,420	\$469,500
Long-term debt	484,076	3,324	480,752	—	—
Other long-term liabilities	5,475	2,732	2,713	—	30
Liabilities under tax receivable agreement	—	—	—	—	—
Purchase obligations	—	—	—	—	—
	<u>\$1,078,359</u>	<u>\$25,211</u>	<u>\$543,198</u>	<u>\$40,420</u>	<u>\$469,530</u>

The table above excludes short-term, exclusive contracts we enter into with certain vendors to supply us with food, beverages and paper goods, obligating us to purchase specified quantities and/or products at fixed prices. These commitments are cancellable and there are no material financial penalties associated with these agreements in the event of early termination. We also enter into purchase commitments related to construction, marketing and other service-related arrangements that occur in the normal course of business. Such commitments are excluded from the above table as they are typically short-term in nature and are not material as of December 27, 2020.

Off-Balance Sheet Arrangements

Except for operating leases entered into in the normal course of business, certain letters of credit entered into as security under the terms of several of our leases and the unrecorded contractual obligations set forth above, we did not have any off-balance sheet arrangements as of December 27, 2020 and June 27, 2021.

Critical Accounting Policies

Our discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements and related notes included elsewhere in this prospectus, which have been prepared in accordance with GAAP. The preparation of these financial statements and related notes requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses.

Certain of our accounting policies require the application of significant judgment by management in selecting the appropriate assumptions for calculating financial estimates. By their nature, these judgments are subject to an inherent degree of uncertainty. These judgments are based on our historical experience, terms of existing contracts, our evaluation of trends in the industry, information provided by our clients and information available from other outside sources, as appropriate. We evaluate our estimates and judgments on an on-going basis. Our actual results may differ from these estimates. Judgments and uncertainties affecting the application of those policies may result in materially different amounts being reported under different conditions or using different assumptions. The accounting policies that we believe to be the most critical to an understanding of our financial condition and results of operations and that require the most complex and subjective management judgments are discussed below.

Impairment of Long-Lived Assets

We review our long-lived assets, including property and equipment and definite-lived intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset or asset group might not be recoverable. Recoverability is measured by a comparison of the carrying amount to future undiscounted cash flows that are expected to be generated by the asset or asset group. If the carrying amount exceeds its estimated future cash flows, an impairment charge is recognized in the amount by which the carrying value exceeds the estimated fair value. Restaurant-level assets are grouped by restaurant for the purpose of the impairment assessment, which is the lowest level of identifiable cash flows. No impairment charge was recorded for any period presented.

Our impairment assessment process requires the use of estimates and assumptions regarding future cash flows and operating outcomes, which are based upon a significant degree of management judgment. Changes in the economic environment, real estate markets, capital spending, overall operating performance and underlying assumptions could impact these estimates and result in future impairment charges.

Goodwill and Indefinite-Lived Intangible Assets

Goodwill and indefinite-lived intangible assets are assessed for impairment annually or more frequently if events and circumstances indicate that it is more likely than not that the fair value of a reporting unit or an intangible asset is less than its carrying value. We have one reporting unit which is evaluated for impairment annually. Fair value of the reporting unit is estimated using the income approach and the market approach. Under the income approach, fair value is based on the present value of estimated future cash flows. The market approach is based upon both the price-earnings multiples of comparable public companies, as well as transactional data from similar companies that were recently sold. If the fair value of the reporting unit is less than its carrying value, an impairment loss is recorded for the difference between the fair value of the reporting unit and the carrying value of the reporting unit. As of December 27, 2020, the fair value of the reporting unit exceeded its carrying value by greater than 25%. No impairment charge was recorded for any period presented.

Our indefinite-lived intangible assets consist of trade names and trade marks (collectively “trade names”). We estimate the fair value of our trade names using a relief-from-royalty income approach. If the fair value of the trade name is less than its carrying value, an impairment loss is recorded for the difference between the estimated fair value and carrying value of the intangible assets. As of December 27, 2020, the fair value of our trade names exceeded its carrying value by greater than 25%. No impairment charge was recorded for any period presented.

Income Taxes

Portillo’s OpCo is currently, and will be through the consummation of this offering, taxed as a partnership under the appropriate provisions of the Internal Revenue Code. Therefore, federal and state income taxes on the net earnings will be payable by the unit-holders and no provisions are made for federal and state income taxes in the consolidated financial statements.

After the consummation of this offering, we will become subject to U.S. federal, state and local income taxes with respect to our allocable share of any taxable income of Portillo's OpCo and will be taxed at the prevailing corporate tax rates. In addition to tax expenses, we also will incur expenses related to our operations, plus payments under the Tax Receivable Agreement, which will be significant. We intend to cause Portillo's OpCo to make distributions in an amount sufficient to allow us to pay our tax obligations and operating expenses, including distributions to fund any ordinary course payments due under the Tax Receivable Agreement. See "Certain Relationships and Related Party Transactions—Amended Portillo's OpCo Agreement." We anticipate that we will account for the income tax effects and corresponding Tax Receivable Agreement's effects resulting from future taxable exchanges or redemptions of LLC Units of Continuing Pre-IPO LLC Members by us or Portillo's OpCo by recognizing an increase in our deferred tax assets, based on enacted tax rates at the date of the purchase or redemption.

Further, we will evaluate the likelihood that we will realize the benefit represented by the deferred tax asset and, to the extent that we estimate that it is more likely than not that we will not realize the benefit, we will reduce the carrying amount of the deferred tax asset with a valuation allowance. The amounts to be recorded for both the deferred tax assets and the liability for our obligations under the Tax Receivable Agreement will be estimated at the time of any purchase or redemption as a reduction to shareholders' equity, and the effects of changes in any of our estimates after this date will be included in net income (loss). Similarly, the effect of subsequent changes in the enacted tax rates will be included in net income (loss). In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some or all of the deferred tax assets will be realized and, when necessary, a valuation allowance is established. The ultimate realization of the deferred tax assets is dependent upon the generation of future taxable income during the periods in which temporary differences become deductible. A change in the assessment of such consequences, such as realization of deferred tax assets, changes in tax laws or interpretations thereof could materially impact our results.

Under the provisions of ASC 740—*Income Taxes*, as it relates to accounting for uncertainties in tax positions, we recognize the tax benefit of tax positions to the extent that the benefit will more likely than not be realized. The determination as to whether the tax benefit will more likely than not be realized is based upon the technical merits of the tax position as well as consideration of the available facts and circumstances. For the tax years ended December 31, 2020 and 2019, we did not have any uncertain tax positions.

Unit-based Compensation

We have granted unit-based awards consisting of unit options to team members, officers and directors. We recognize compensation expense for equity awards over the requisite service period, which is generally five years, based on the grant date fair value of the awards. The awards granted are generally exercisable within a 10-year period from the date of the grant. We have issued unit options with time-based vesting, and other unit options with time and performance vesting. Our performance condition restricts certain option holders' ability to exercise vested options until a liquidity event and payback criteria are both met. Because these events, conditions or criteria are not considered probable, no compensation cost related to these unit options was recognized. For unit options granted without performance conditions, we record unit compensation expense on a graded-vesting, straight-line basis over the vesting period based on the grant-date fair value of the option, determined using the Black-Scholes option pricing model. The Black-Scholes option pricing model requires the input of highly subjective assumptions, including the fair value of the underlying common unit, the risk-free interest rate, the expected volatility of the price of our common units, the expected dividend yield of our common units and the expected term of the option. During the period covered by the financial statements included in this prospectus, we were a privately held company with no active public market for our common units. Therefore, the fair value of the Company's common units was estimated using a two-step process. First, the Company's enterprise value was established using generally accepted valuation methodologies, including discounted cash flow analysis, comparable public company analysis, and comparable acquisition analysis. Second, the enterprise value was allocated among the securities that comprise the capital structure of the Company using the option-pricing method. The assumptions used to determine the fair value of the option awards represent management's best

estimates. These estimates involve inherent uncertainties and the application of management's judgment. Unit-based compensation expense is based on awards ultimately expected to vest and is reduced for estimated forfeitures. If factors change and different assumptions are used, our unit-based compensation expense could be materially different in the future. We record unit-based compensation expense within general and administrative expenses in the consolidated statements of operations. For additional information regarding unit-based compensation and the assumption used for determining fair value of unit awards see Note 10 – Common Units and Unit-Based Compensation in the notes to the audited consolidated financial statements included elsewhere in this prospectus.

Qualitative and Quantitative Disclosure About Market Risk

Commodity and Food Price Risks

Our profitability is dependent on, among other things, our ability to anticipate and react to changes in the costs of key operating resources, including food and beverage, energy and other commodities. We have been able to partially offset cost increases resulting from a number of factors, including market conditions, shortages or interruptions in supply due to weather or other conditions beyond our control, governmental regulations and inflation, by increasing our menu prices, as well as making other operational adjustments that increase productivity. However, substantial increases in costs and expenses could impact our results of operations to the extent that such increases cannot be offset by menu price increases.

Interest Rate Risk

Our Credit Facilities incur interest at a floating rate. We seek to manage exposure to adverse interest rate changes through our normal operating and financing activities. As of December 27, 2020 and June 27, 2021, we had \$484.1 million and \$484.4 million, respectively, in outstanding borrowings under our Credit Facilities, excluding unamortized debt discount and deferred issuance costs. Based on the amount outstanding under our Credit Facilities as of December 27, 2020 and June 27, 2021, a change of one hundred basis points in the applicable interest rate would cause an increase or decrease in interest expense of approximately \$4.9 million on an annual basis.

Effects of Inflation

Inflation impacts all our restaurant operating expenses. While we have been able to partially offset inflation and other changes in operating expenses by gradually increasing menu prices, coupled with more efficient purchasing practices, productivity improvements and greater economies of scale, there can be no assurance that we will be able to continue to do so in the future. From time to time, competitive conditions could limit our menu pricing flexibility. In addition, macroeconomic conditions could make additional menu price increases imprudent. We anticipate cost pressure on several commodities for the fourth quarter of fiscal 2021 and for fiscal 2022. We are planning moderate price increases in the fourth quarter of fiscal 2021, which may or may not be enough to recover increased operating expenses. There can be no assurance that future cost increases can be offset by increased menu prices or that increased menu prices will be fully absorbed without any resulting change to their visit frequencies or purchasing patterns. In addition, there can be no assurance that we will generate same-restaurant sales growth in an amount sufficient to offset inflationary or other cost pressures. However, we anticipate our cost of goods sold, excluding depreciation and amortization as a percentage of revenue will remain consistent with fiscal 2020 from a combination of price increases, product mix changes and recipe modifications.

The restaurant industry and we typically attempt to offset the effect of inflation, at least in part, through periodic menu price increases and various cost reduction programs. A portion of the leases for our restaurants provide for contingent rent obligations based on a percentage of sales. As a result, an increase in occupancy and related expenses will offset a proportionate share of any menu price increases at our restaurants.

Labor Costs

Wages paid in our restaurants are impacted by changes in federal and state hourly minimum wage rates. Accordingly, changes in the federal and state hourly minimum wage rates directly affect our labor costs. Wages and benefits are also affected by supply and demand forces in specific regions.

Recently Issued Accounting Pronouncements

For a discussion of recently issued accounting pronouncements, see Note 2 – *Summary of Significant Accounting Policies* in the notes to the audited consolidated financial statements included elsewhere in this prospectus.

Jumpstart Our Business Startups Act of 2012

The JOBS Act permits us, as an emerging growth company, to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We have elected to avail ourselves of this provision and, therefore, we can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies.

Seasonality and Quarterly Results

Our business is subject to seasonal fluctuations in that our revenues are typically nominally higher during the second, third and fourth quarters of the fiscal year. Our quarterly results have been and will continue to be affected by the timing of new restaurant openings and their associated pre-opening expenses. As a result of these factors, our financial results for any single quarter or for periods of less than a year are not necessarily indicative of the results that may be achieved for a full fiscal year.

A NOTE FROM MICHAEL OSANLOO, CEO OF PORTILLO'S

Portillo's is a truly special brand. Growing up in Naperville, Illinois, my father and I would frequently eat at Portillo's, and it became a cherished part of my formative years. In fact, upon receiving my driver's license, the very first thing I did was pick up my friends in my parent's Pontiac Bonneville station wagon (with the sweet wood paneling) and drive to Portillo's for Italian Beef sandwiches. In 2018, when I had the opportunity to "come home" to join Portillo's as its new CEO, it was truly a dream come true.

Our story is a real American success story. It all started in 1963, when Dick Portillo invested \$1,100 into a small trailer to open the first Portillo's hot dog stand in Villa Park, Illinois, which he called "The Dog House." After incredible success, he decided to open his first restaurant in 1967. When envisioning that restaurant, Dick's goal was to create lifelong memories by igniting the senses with unrivaled food and experiences. Over the course of our 58 year history, Portillo's has become a Chicagoland institution and for good reason. Some of our oldest restaurants have seen multiple generations of fans pass through their doors and fall in love with our delicious food, outstanding service and differentiated experience—all of which has led to truly impressive financial results. After Dick sold the business to Berkshire Partners in 2014, our nationwide growth accelerated, and we now have 67 restaurants across nine states. As we have grown, we have been humbled by the amazing response we have seen as well as the countless messages from guests each week asking us to bring a Portillo's to their hometown.

We realized early on that our success has everything to do with our incredible people, amazing food and our one-of-a-kind experience. In 58 years, we have never closed a restaurant – a remarkable feat that is a testament to the longevity, durability and success of our concept. When one of our guests comes to Portillo's, they can see the buzz of our open kitchens, smell our craveable food being made to order and hear the rocking and rhyming of our team members. I believe that whether you're being escorted through one of our drive-thru lanes or enjoying a meal in our dining room, you can truly sense that the experience at Portillo's is different than your typical fast casual restaurant.

I am inspired by our talented and passionate team members who work hard every day to make Portillo's the success story it is. People truly are the heart of Portillo's, and I am so proud of the hard work and dedication of our team at all levels. Particularly over the last 18 months, as our industry has seen so much change and uncertainty, our team has demonstrated incredible resolve and delivered outstanding results while living our values of Family, Greatness, Energy and Fun.

Looking ahead, I am excited by the opportunity to bring this amazing brand to people all over the United States. As I visit restaurants and talk with our guests and team members of all ages and backgrounds, I am reminded of the passion and love for this brand. Hearing their stories, I am humbled to be working for a company that means so much to so many, and I remain committed to fulfilling our founder's original vision of creating lifelong memories and delivering unrivaled food and experiences as we take Portillo's to the next level.

If you have not yet had the opportunity to visit a Portillo's, let me take this opportunity to formally invite you to one of our restaurants. I would love for you to try some of our delicious food and to let me know about your experience. I hope you will join us on this next big step of our journey, and I look forward to welcoming you to a Portillo's soon.

Sincerely,

Michael Osanloo

BUSINESS

Portillo's serves iconic Chicago street food through high-energy, multichannel restaurants designed to ignite the senses and create a memorable dining experience. Since our founding in 1963 in a small trailer which Dick Portillo called "The Dog House," Portillo's has grown to become a treasured brand with a passionate (some might say obsessed) nationwide following. Our diverse menu features all-American favorites such as Chicago-style hot dogs and sausages, Italian beef sandwiches, chopped salads, burgers, crinkle-cut french fries, homemade chocolate cake and milkshakes. We create a consumer experience like no other by combining the best attributes of fast casual and quick service concepts with an exciting energy-filled atmosphere and restaurant model capable of generating tremendous volumes. Nearly all of our restaurants were built with double lane drive-thrus and have been thoughtfully designed with a layout that accommodates a variety of access modes including dine-in, carryout / curbside, delivery and catering in order to quickly and efficiently serve our guests. As of June 27, 2021, we owned and operated 67 Portillo's restaurants across nine states. According to data gathered by The NPD Group, our restaurants generated higher AUVs and Restaurant-Level Adjusted EBITDA Margins than any other fast casual restaurant concept of \$7.7 million and 26.8% in 2020, respectively. For the twelve months ended June 27, 2021, our restaurants generated AUVs of \$7.9 million and Restaurant-Level Adjusted EBITDA Margins of 28.6%.

No matter how our guests order from us, our highly productive kitchens and team members consistently serve high-quality food and deliver a memorable guest experience. We believe the combination of our craveable food, multichannel sales model, dedication to operational excellence, and a distinctive culture driven by our team members gives us a competitive advantage and allows us to generate the highest AUVs and traffic per restaurant among fast casual and quick service restaurants. In 2019, 2020 and for the twelve months ended June 27, 2021, the average Portillo's restaurant generated:

- Drive-thru sales of \$3.4 million in 2019, \$4.6 million in 2020 and \$4.9 million in the twelve months ended June 27, 2021, more than double the throughput of McDonald's 2019 average drive thru and more than triple their 2020 and twelve months ended second quarter of 2021 average drive thru;
- Dine-in sales of \$4.4 million in 2019, \$1.9 million in 2020 and \$1.9 million in the twelve months ended June 27, 2021, greater than Chipotle's 2019 total AUV of \$2.2 million, approximately 90% of their 2020 total AUV and approximately 75% of their twelve months ended second quarter of 2021 total AUV; and
- Delivery sales of approximately \$500,000 in 2019, nearly \$800,000 in 2020 and approximately \$850,000 in the twelve months ended June 27, 2021, which is approximately 80% of Domino's 2019 average delivery volume, approximately equal to their 2020 average delivery volume and higher than their twelve months ended second quarter of 2021 delivery volume.

Each Portillo's location on average served approximately 800,000 guests in 2020 and approximately 825,000 guests in the twelve months ended June 27, 2021, based on our average per-guest spend of approximately \$9.60 and our AUVs of approximately \$7.7 million in 2020 and \$7.9 million in the twelve months ended June 27, 2021. Our restaurants are buzzing with the energy and excitement of our team members and guests that bring everyone together, from single diners to large groups, around great food, drinks and fun. Our restaurants have attracted a growing cult-like following that has enabled us to thrive across a variety of suburban and urban trade areas around the country. All of our restaurants are profitable, and we are proud to have never closed a restaurant in our 58-year history.



I'm gonna baptize my first born child in Portillo's melted cheese

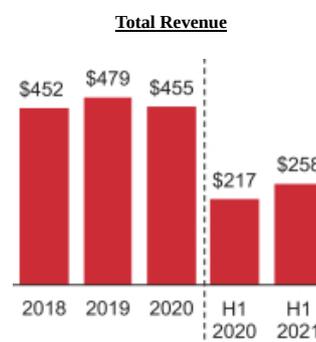
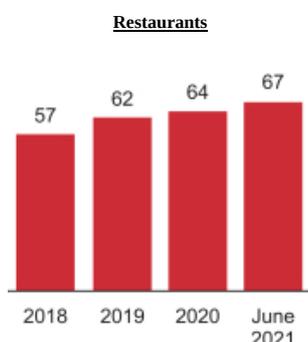
We believe our unique brand experience, passionate following, and compelling everyday value proposition drive strong operating results, as illustrated by the following:

- Opened 15 new restaurants across 8 states from January 1, 2018 through June 27, 2021

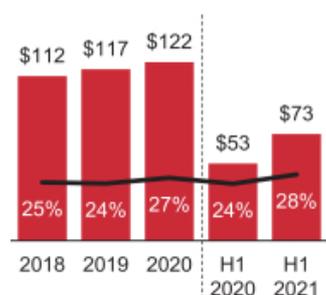
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- Grew our industry-leading Restaurant-Level Adjusted EBITDA Margin by 190 basis points from 24.9% in fiscal 2018 to 26.8% in fiscal 2020 (our Restaurant-Level Adjusted EBITDA Margin was 28.2% for the two quarters ended June 27, 2021 compared to 24.3% for two quarters ended June 28, 2020)
- Grew net income from \$5 million in fiscal 2018 to \$12 million in fiscal 2020 (net income for the two quarters ended June 27, 2021 was \$14 million as compared to a net loss of \$733 thousand for the two quarters ended June 28, 2020)
- Grew Adjusted EBITDA from \$75 million in fiscal 2018 to \$88 million in fiscal 2020 (our Adjusted EBITDA was \$51 million for the two quarters ended June 27, 2021 compared to \$38 million for the two quarters ended June 28, 2020)

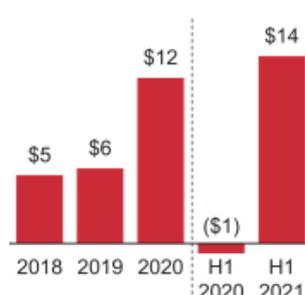
(\$ in Millions)



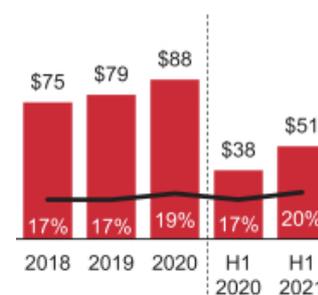
Restaurant-Level Adjusted EBITDA (Margin)*



Net Income



Adjusted EBITDA (Margin)*



(*) Please see “Prospectus Summary—Summary Historical and Pro Forma Consolidated Financial and Other Data” for a reconciliation of the above non-GAAP financial measures to their most directly comparable GAAP measure.

Our Competitive Strengths

We believe the following strengths separate us from our competitors and serve as the foundation for our continued growth:

Values-Driven, People-Centered Culture. People are the heart of Portillo’s. We hire and train great people who can turn their obsession into a profession. Our team members are passionate about our food, love our guests, and call their teammates “family.” Our people-centric culture is about working together to deliver an

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exceptional experience for our guests, while operating with the fun-loving energy that drives the exciting atmosphere within our busy restaurants. Our Portillo's team members bring our brand to life through their commitment to our values:

"Family" – We work together to make everyone feel at home, and we step up when someone needs help

"Greatness" – We are obsessed with being the best and work hard to continuously improve. Our greatness is rooted in Quality, Service, Attitude and Cleanliness ("QSAC")

"Energy" – We move with urgency and passion, while maintaining attention to detail

"Fun" – We entertain our guests, we connect authentically, and we make each other smile

During the COVID-19 pandemic, we prioritized the health and safety of our team members who in turn helped our business not only survive but thrive. We chose to not lay off or furlough any team members, and instead invested in them with a focus on cross-training additional skills, which enabled us to increase capacity in our off-premises channels and drive operating efficiencies. We acted quickly to provide paid leave, personal protective equipment and setup a "Wellness Team" to advise on and monitor the well-being of our teams. Additionally, we provided 100% meal discounts and gift cards to every team member throughout the COVID-19 pandemic and funded bonuses to field managers. We also launched a Company foundation called "The Heart of Portillo's Fund" to support team members facing challenging personal situations.

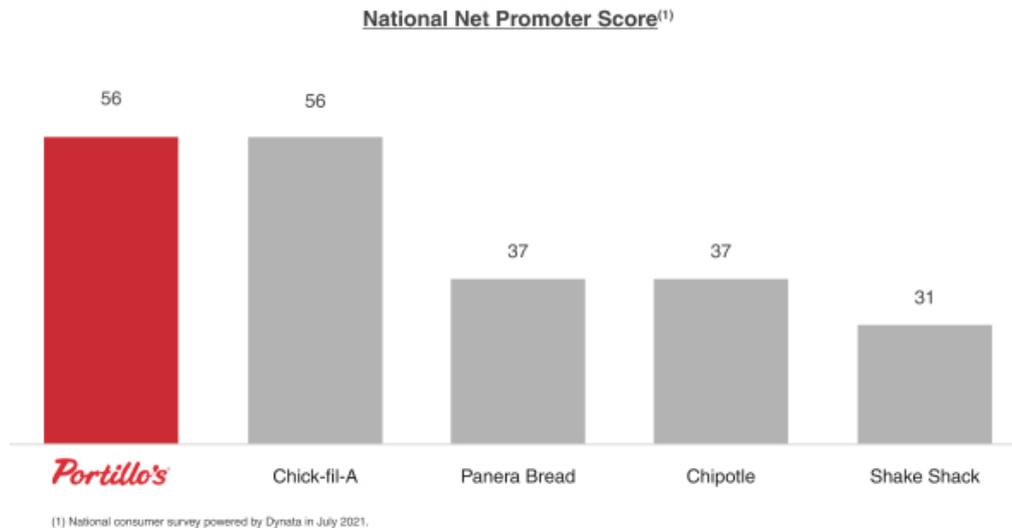
We work with each team member to build a personal development plan and a corresponding training plan to support their professional development at Portillo's. We view this investment as a fundamental aspect of our company and key to our growth as it enables us to deliver a consistently memorable experience for our guests and build a pipeline of leaders to drive the success of our future restaurant openings.

We are proud that Portillo's was recently ranked the #1 restaurant company on America's 2021 Best Midsized Employers by Forbes magazine and #99 out of the 500 companies surveyed.



An Iconic and Beloved Brand with Obsessed, Lifelong Fans. Portillo’s captures the hearts, minds and stomachs of its guests with every meal. In the 58 years since Dick Portillo opened his first hot dog stand, Portillo’s has grown to become an iconic restaurant brand with a national following. Our menu features something for everyone and appeals to a broad demographic that enables our restaurants to thrive across diverse trade areas and generate strong and balanced volumes across multiple dayparts, weekdays and occasions. Our new restaurant openings draw massive crowds of passionate fans who line up overnight with lines stretching around the block. Additionally, we have received numerous accolades, including recognition as the “#1 Fast Casual Restaurant in the U.S.” by *Trip Advisor*.

We have a very engaged and passionate following on social media. As of June 8, 2021, our average Facebook post generates 10x more engagement than the average restaurant brand post, while our average Twitter post generates 40x more engagement than the average restaurant brand post based on a social media benchmarks study conducted by Socialinsider in 2021. Many of our fans beg us through social media to bring a Portillo’s restaurant to their city (and we have received similar pleas from mayors), which we believe is indicative of the passion of our guests and the demand for more Portillo’s locations across the country. In a similar vein, we have operated a direct shipping business for over 20 years, shipping a select menu of our most popular offerings to all 50 states, which provides us with an additional channel to build our national brand presence. In the past five years we have shipped 2.7 million sandwiches (Italian beef, sausages and hot dogs) via our own direct-to-consumer direct shipping channel across all 50 states, creating fans all over the country. Based on a recent national survey powered by Dynata, our nationwide net promoter score exceeded that of many notable national fast casual competitors.



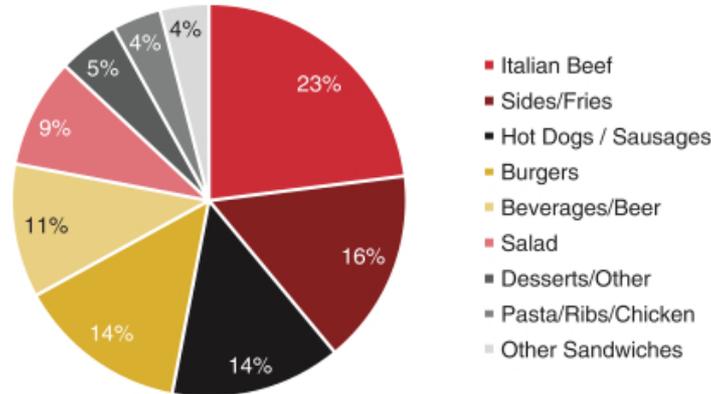
Distinctive, Diverse High-Quality Menu. Our menu offers something for everyone. We obsess over each and every ingredient and curate our menu to ensure that each item receives high marks from our guests and meets our rigorous quality standards. Our Italian beef sandwiches feature high-quality beef slow roasted for four hours, thinly sliced, served on freshly baked Turano French bread and dipped in hot gravy with a proprietary blend of spices perfected over 50 years and designed to deliver an amazing flavor. Our Chicago-style hot dogs feature mustard, relish, freshly chopped onion, sliced red ripe tomatoes, a kosher pickle and sport peppers piled high onto a perfectly steamed poppy seed bun, all finished with a few shakes of savory celery salt. Guests also love our craveable crinkle-cut french fries that are cooked in beef tallow resulting in a perfectly salted, crispy outside with a soft inside. Lastly, for those craving something sweet, our famous homemade fluffy chocolate cakes are baked with love each morning in every restaurant and generously iced with rich chocolate frosting.



My healthiest and most stable relationship is with an Italian beef sandwich from Portillo's

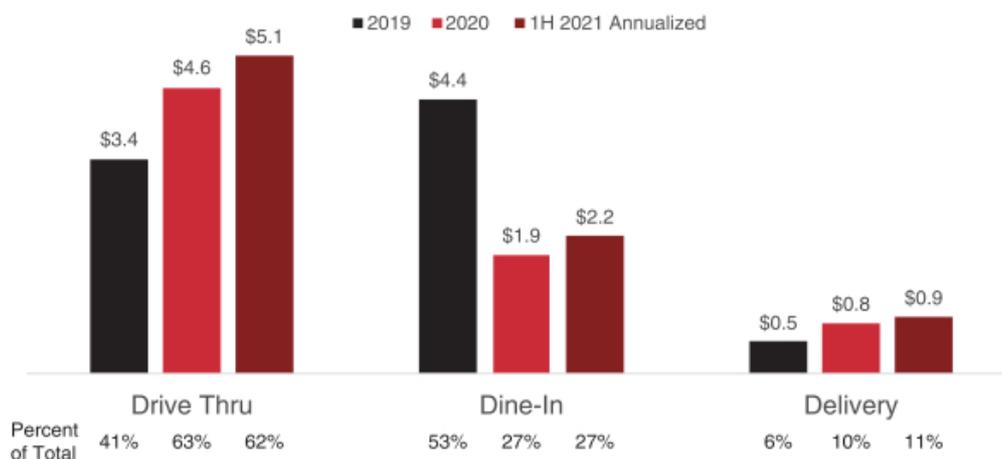
Everyone can be satisfied with a visit to one of our restaurants as demonstrated by our sales mix with no single menu category accounting for more than 23% of sales in 2020. As an example of how our guests order across our menu, we sold on average more than \$600,000 worth of salad per restaurant in 2020. Menu variety is a major motivator for guests and the difference with Portillo's is, no matter what someone is craving, we have something for them.

2020 Sales Mix



Robust Multichannel Sales Capabilities. Our restaurants are designed to provide speed and convenience across multiple sales channels including drive-thru, dine-in, carryout/curbside, delivery and catering. We also serve guests outside our footprint through our website for direct shipping. In each restaurant, our high-energy, passionate team members deliver exceptional customer service to our guests whether they dine in one of our restaurants or order through the drive-thru where team members personally take and deliver orders car-side. At the onset of the COVID-19 pandemic, we quickly adapted to sales shifts and cross-trained our team members to allow us to significantly increase our drive-thru sales from \$3.4 million per restaurant in 2019 to \$4.6 million in 2020 and \$4.9 million in the twelve months ended June 27, 2021 and enhance our third-party delivery and self-delivery channels and capabilities. Our app and website, combined with our third-party delivery partnerships, resulted in over 20% of our sales being placed digitally during fiscal 2020 and the twelve months ended June 27, 2021. Since nearly all of our restaurants were purpose built with a double lane drive-thru and sizable parking areas to handle our large volumes, we were able to quickly respond to sales shifts without structural changes to our sites. Our ability to execute high sales volumes through our double drive-thrus combined with our robust digital capabilities enabled us to generate over 80% of our revenue through these order methods in fiscal 2020 and the first two quarters of 2021. In a world where customers increasingly value convenience and optionality, our longstanding multichannel expertise positions Portillo's to continue to succeed and grow market share.

Average Restaurant Sales by Channel (\$ Millions)



Note: Excludes direct shipping sales.

Energetic Restaurant Atmosphere that Engages the Senses. While our operating model is focused on getting delicious, made-to-order food to our guests quickly, the Portillo’s atmosphere makes the experience even more than a delicious meal. When guests walk into a Portillo’s, they get an experience completely different than a typical chain restaurant visit. Our restaurants engage all the senses to create a fun, relaxed and memorable occasion.

Our dining areas evoke nostalgia and local influences. No two Portillo’s are alike. Each of our restaurants has its own themed décor ranging from a 1930’s prohibition motif to a 1950’s jukebox, to a 1970’s hippie bus. The period music ties to the theme, from ragtime to doo wop to disco. No detail is too small, be it lighting, signage or even the stars subtly sparkling on the ceiling. Each restaurant also draws design elements from the community. The layouts create spaces comfortable for individual diners, families, large groups, and even wedding parties.

Beyond the space itself, the energy of a Portillo’s is unique. Our guests can see into our huge, open kitchens, where their meals are prepared right before their eyes. The smells of burgers broiling, french fries frying, and beef simmering emanate from the kitchen. Each completed meal is announced with a fun rhyme (“Number two, we got you”; “Number seven, welcome to Portillo’s heaven”). But the most important element of the energy is the enthusiasm of the scores of other guests who are all excited to be there and enjoying their Portillo’s. We want every guest that visits Portillo’s to leave with a memorable experience, a satiated appetite and a desire to return.



Mishawaka, IN
Theme: 30's Prohibition



Sterling Heights, MI
Theme: Garage Style



Orlando, FL
Theme: Diner/Entertainment



Glendale, AZ
Theme: Diner/Music



Springfield, IL
Theme: Diner - Route 66

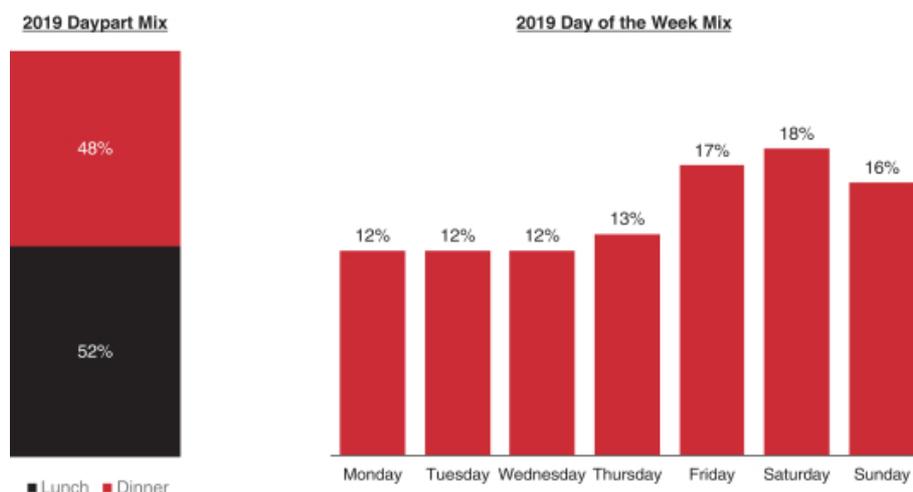


Villa Park, IL
Theme: '50s-'60s

An Incredible, Everyday Value Proposition. Portillo's redefined the fast casual and quick service value propositions by combining high-quality, craveable food served at incredible speed with multichannel convenience all inside a differentiated, energy-filled atmosphere. We do not discount and rarely engage in price promotion of our products. Instead, we provide an exceptional value to our guests every day. We believe the combination of our craveable food made with high-quality ingredients, served fast however you want it, in an engaging atmosphere by our passionate team members—all at an affordable per-person spend of approximately \$9.30—will continue to sustain and grow our volumes.



Proven Portability and Strong Unit Economics. Our concept is successful across diverse markets throughout the United States. As of June 27, 2021, we had 67 restaurants open across nine states including Illinois, Arizona, Indiana, Florida, Iowa, Minnesota, Wisconsin, Michigan and California in a variety of urban and suburban trade areas. Our broadly appealing menu and everyday value caters to a variety of customers and occasions as evidenced by our balanced daypart mix with nearly equal lunch and dinner revenues, as well as a balanced weekday sales mix.



As we increase our brand awareness and guest following outside Chicagoland, we believe our restaurants will be even better positioned to consistently grow volumes over time, as evidenced by the performance of our Chicagoland restaurants.

Our team members' focus on operational excellence enables our restaurants to drive exceptional throughput, creating substantial volumes and profitability. Restaurants in our Chicagoland market had AUVs of approximately \$9.6 million in 2019, \$8.7 million in 2020 and \$9.1 million in the twelve months ended June 27, 2021 and Restaurant-Level Adjusted EBITDA Margins of 28% in 2019, 31% in 2020 and 32% in the twelve months ended June 27, 2021. Restaurants outside of Chicagoland had AUVs of approximately \$6.3 million in 2019, \$5.6 million in 2020 and \$5.8 million in the twelve months ended June 27, 2021 and Restaurant-Level Adjusted EBITDA Margins of 22% in 2019, 25% in 2020 and 26% in the twelve months ended June 27, 2021. When considering new restaurant locations each year as part of our growth strategy, we target AUVs of approximately \$5.8 million and average Restaurant-Level Adjusted EBITDA Margins of approximately 22%, each in the third year of operation, with targeted cash-on-cash returns of approximately 25%, which we calculate by dividing our Restaurant-Level Adjusted EBITDA in the third year of operation by our initial investment costs (net of tenant allowances and excluding pre-opening expenses).

Visionary Leadership Team. Our iconic brand, values-driven culture and growth strategies are guided by our highly experienced senior management team, led by our Chief Executive Officer Michael Osanloo. Mr. Osanloo joined Portillo's in 2018 and has over 25 years of leadership experience, having previously served as CEO of P.F. Chang's and EVP of Kraft Foods. In addition to Mr. Osanloo, we have a talented team of industry veterans leading the organization including Chief Financial Officer, Michelle Hook, previously VP of Finance, FP&A and IR at Domino's; Chief Operating Officer, Derrick Pratt whose prior experience includes VP-level operations roles at McDonald's and Starbucks; Chief Human Resource Officer, Jill Waite, former executive at 24 Hour Fitness and Sephora; and Chief Development and Supply Chain Officer, Sherri Abruscato, a 43-year Portillo's veteran. Under Mr. Osanloo and the executive team's leadership, we have made significant investments in our brand, people, culture, systems, and infrastructure. We believe our experienced management team is a key driver of our success and positions us well for long-term growth.

Our Growth Strategies

We believe we are well-positioned to take advantage of significant growth opportunities due to our values-driven culture, highly trained and passionate team members, differentiated brand experience and AUVs and Restaurant-Level Adjusted EBITDA Margins which are higher than other fast casual restaurant concepts according to data gathered by The NPD Group, which drive impressive unit economics. We plan to expand our business by executing on the following growth strategies:



Expand Our Restaurant Base. We are in the early stages of our nationwide growth with 67 locations across nine states as of June 27, 2021. From November 2020 through the end of 2021, we are targeting opening seven new restaurants, including new locations in Illinois, Michigan, Florida and Arizona. Since 2015, we have opened new restaurants at a compounded annual growth rate of approximately 9.3%. Over the long term, we plan to increase our number of restaurants by approximately 10%. Our near-term restaurant growth strategy is focused on leveraging our proven unit economic model primarily in adjacent and national markets outside Chicagoland with favorable macro-economic tailwinds where we already have a presence. We will also add select new restaurants in the Chicagoland market. We utilize a data driven approach with our real estate team to identify optimal sites and curate a high-quality restaurant pipeline. Given our leading volumes and the size of our restaurants, we typically do not compete for real estate with quick service or fast casual concepts and tend to be a tenant of choice by landlords due to the significant traffic going through our restaurants. People are key to our growth, which is why we have invested in creating professional development plans for our team members to ensure a steady flow of Portillo's trained managers who are ready to staff our new restaurants. Additionally, we have established multiple new restaurant opening teams, which allow us to support our future pace of openings while driving new restaurant opening success. Based on a whitespace analysis prepared for us by Forum Analytics in 2020, we believe we have a substantial runway for growth with a long-term opportunity to grow to more than 600 restaurants domestically over the next 25 years and are well-positioned for global growth in the future. While we are optimistic about our ability to expand our restaurant base, we will continue evaluating the impact of the COVID-19 pandemic, which may continue to disrupt our business and affect our ability to execute our expansion strategy. For more information, see "Risk Factors—Risks Related to Our Business, Industry and Growth Strategies—Our financial condition and results of operations have been and may continue to be adversely affected by the COVID-19 pandemic or future pandemics or disease outbreaks."



Meara Molitor



PORTILLO'S IS COMING TO MINNESOTA!!!!!! IM ACTUALLY CRYING THIS IS NOT A DRILL MY LIFE IS COMPLETE!!!!!!

Increase Our Same-Restaurant Sales. We aim to continue delivering an outstanding value proposition to our guests and enhance our experience to grow our volumes. We believe the following initiatives will drive same-restaurant sales growth.

- **Deliver a Consistently Outstanding Guest Experience.** In our business, the best way to drive a return visit is to provide our guests a consistently fantastic experience when they visit our restaurants or eat our food. Therefore, our relentless focus on operational excellence enables us to drive significant

throughput in our restaurants, provide a one-of-a-kind experience and a compelling everyday value proposition to our guests and thereby drive increased customer trial and frequency.

- *Purposeful Menu Enhancements.* We are maniacal about quality and crave-ability when it comes to our menu. We are constantly studying ways to further enhance our existing offerings while thoughtfully adding new high-quality items. We are also disciplined in maintaining the number of options on our menu. When a new item earns its way onto our menu, we often replace an existing item to maintain our operational efficiency. We believe this purposeful enhancement drives increased guest frequency and reinforces our everyday value proposition that is key to our success.
- *Increase Brand Awareness Through Non-Traditional and Social Marketing.* Portillo's does not rely on mass media advertising or promotion to drive traffic to our restaurants. We actively engage our fans and guests through a dynamic social media effort that includes email, Twitter, Instagram, TikTok, Facebook, and other platforms. Our social media activity generates significant engagement with our guests and provides our most passionate fans an opportunity to share their enthusiasm with their followers. Portillo's has dedicated Field Marketing Managers for each market that supplement our engaging social media efforts. These managers are involved in local restaurant marketing and assist in the preparation of new openings including coordinating "sneak peek" visits and organizing visits from "The Beef Bus," our food truck, to create excitement and awareness, and donating meals to community members including first responders and coordinating events with local media. After opening, our operations and field marketing teams continue to support brand awareness and drive sales by developing local partnerships with sports teams, such as our vending partnership with the Tampa Bay Lightning and hosting local community events and fundraisers in our restaurants.
- *Enhance Our Off-Premises Guest Experience.* We have always been committed to providing our guests with our delicious food however and whenever they want it. We are currently testing a third drive-thru lane for guests who have digitally pre-paid for their orders to enhance speed of service and further increase our capacity during peak times. We are also developing geo-fencing capabilities to support our curbside pick up operations and provide additional convenience for our guests who place orders through our mobile app and website. Additionally, we will continue to invest in targeted digital advertising to drive demand and direct orders through our app and website to further drive sales across all channels.



Leverage Our Infrastructure to Drive Profitability. Our attractive business model generates strong operating margins and cash flow. We constantly focus on restaurant-level operations while ensuring that we do not sacrifice the quality and experience for which we are known. Our best-in-class AUVs and strong operational focus give us the ability to manage variable costs and leverage our fixed costs. We believe we will continue to grow revenue and system-wide profitability by executing our growth strategy and leveraging the experience of existing Portillo's general managers to lead our new restaurants to drive successful and efficient new openings. Our investments to enhance our multichannel capabilities and drive a frictionless guest order experience are also expected to further leverage our fixed costs. We have made significant investments at the corporate level, which we believe we will leverage in the future, exclusive of the additional costs of operating as a public company.

Our Food

Commitment to Quality. Portillo's food is prepared with fresh, high-quality ingredients, and our commitment to quality is brought to light by every item on the menu. We obsess over each and every ingredient and

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recipe to ensure our food is high quality, consistently prepared and tastes great. We have been perfecting our menu for over 50 years, and we are constantly seeking ways to further enhance the quality and selection of our offerings.

Our Menu. Our menu features unrivaled Chicago style street food and all-American favorites. We are best known for our famous Chicago-style hot dogs, Italian beef sandwiches, chopped salad, cheese fries, homemade chocolate cake, and chocolate cake shake. With something for everyone, our menu variety creates a “veto-proof” proposition and drives a broad set of consumer occasions.

Below is a summary of our highly craveable menu:

Italian Beef



Our famous, homemade, Italian beef is slow-roasted for four hours, thinly sliced, and served on freshly baked Turano French bread. The beef drippings are used to make our flavorful, secretly-spiced gravy, which is typically splashed on the sandwich when served.

Hot dogs



Our smoked, all-beef hot dogs come in a variety of styles. Our signature Chicago-style hot dogs feature mustard, relish, celery salt, freshly chopped onions, sliced red ripe tomatoes, kosher pickle and sport peppers piled onto a perfectly steamed poppy seed bun.

Sausage Sandwiches



Our char-grilled, flavorful Italian pork sausage recipe uses a blend of secret spices made just for Portillo's and can be topped with our homemade, oven-roasted sweet peppers or hot giardiniera peppers. Our menu also features our Maxwell St. Polish sausage featuring a local Chicago recipe created more than 75 years ago.

Burgers



Our 1/3lb juicy beef, char-broiled burgers are flame grilled and sprinkled with a touch of salt to lock in the flavor. The burgers are served on an old-fashioned, cornmeal-dusted bun made just for Portillo's and offered with a wide variety of freshly cut vegetables and toppings.

Sides/Fries



Sides include French Fries, Onion Rings, Chicken Tenders and Chili. Our French Fries are one of our most craveable menu items, featuring perfectly salted crinkle-cut french fries fried in beef tallow with the option to add a smooth cheddar cheese sauce.

Salads

Our salad menu includes a chopped salad (a fan favorite), Caesar salad, Greek Salad with Chicken and the Garden Side Salad which are all made to order for each guest. All salads feature fresh, high quality ingredients and pack a perfect mix of flavor and crunch.



Chicken

Our chicken menu includes a variety of sandwiches (Char Broiled, Breaded, Club and Spicy Chicken) which feature tender, juicy chicken seasoned with a blend of secret spices and our popular chicken tenders. Our new Spicy Chicken sandwich features a spicy giardiniera sauce and a toasted brioche bun.



Desserts/Shakes

Our dessert menu features homemade cakes that are baked with love every morning and generously iced with rich frosting and delicious blended milkshakes, including our 'cake shakes' which feature an entire slice of cake blended into the dessert. Guests can choose from our famous Chocolate Cake, Italian Strawberry Shortcake, Chocolate Eclair Cake and a variety of milkshakes including Chocolate, Vanilla, Strawberry and cake shakes.



Other Sandwiches

We serve a Grilled Portobello Sandwich, featuring grilled, marinated portobello mushroom caps on toasted tomato focaccia, and a Breaded Whitefish Sandwich, featuring a wild caught whitefish filet on a brioche bun.



Barnelli's Pasta

Barnelli's Pasta is offered in 9 locations in Illinois and features traditional family recipes and fresh ingredients combined to create the best home-style Italian cooking. Pastas are served in individual portions and family style. Our pasta offerings are available for catering at all locations.



Ribs

Our ribs, which are available at select locations only, are seasoned in a blend of secret spices, then slow cooked for three hours until they are fork-tender and falling off the bone. We finish them on our chargrill for ten minutes and coat them with our homemade barbeque sauce.



Beverages/Beer

Nearly all of our restaurants offer various draft and bottled beers including imported and domestic favorites along with local rotating selections all poured in ice-cold schooners and wine. We also offer iced tea, fountain and bottled sodas, waters, and milk.



Menu Innovation. Our primary strategy for menu innovation is to drive traffic through truly craveable foods that can be made with a Portillo's spin. New menu items are introduced when we believe they will offer superior guest satisfaction and typically coincide with the removal of an existing menu item to ensure a manageable menu size, so that our team members can maintain the operational efficiency that enables our high volumes and consistently high quality offerings.

Our Sales Channels

Portillo's' restaurants are thoughtfully designed for both their variety of access modes and the overall guest experience.



Drive-Thru. Our restaurants are built with double lane drive-thrus staffed with engaging attendants that ensure a pleasant and efficient experience with average wait times under 8 minutes with all food made to order. Our first drive-thru restaurant was built in 1983 in Downers Grove, Illinois and today all Portillo's locations operate with a drive-thru with nearly all including multiple drive-thru lanes to ensure efficient service even during peak times.



Dine-In. Our restaurant dining rooms are elaborately decorated with timeless, nostalgic designs inspired by the local community. Our dining areas feature a variety of flexible seating arrangements designed to accommodate single diners, couples, families and large groups. Guests dining in our restaurants wait in an ordering line to place their order and walk up to a designated pick up area when their order is called.



Carryout / Curbside. Guests placing a carryout order by phone, online or through our app have the option to walk into the restaurant to pick up their order at our service counter or park in dedicated curbside pick up spots.



Delivery. We have established partnerships with multiple third party delivery providers and have recently added self-delivery capability to fulfill select orders through our team members. We have invested in targeted digital advertising to drive demand and direct orders through our app and website to provide flexibility in fulfillment and maintain margins.

Catering Offerings.



Many of our guests like to celebrate with Portillo's and we offer endlessly customizable catering options to fit any occasion. Our catering offerings include buffet style packages as well as ready to eat favorites like Italian beef, sausages and meatballs, gourmet salads, pastas and whole cakes. We also sell "Take & Make" offerings – a series of catering items and packages designed for convenient, at-home preparation by our guests. For impromptu gatherings we offer "Fast Packs," which are convenient packages of eight of our most popular sandwiches which can be prepared and delivered quickly.

Direct Shipping Offerings.



Our direct shipping offerings include some of Portillo's most popular menu items including Italian beef (8 sandwich or 20 sandwich pack), Chicago-Style Hot Dogs (10 or 50 pack), sausages, chocolate cake and tamales. Detailed preparation instructions are provided for each package, making it easy for customers to enjoy Portillo's in all 50 states.

Our Team Members

Values and Culture. Portillo's team members have turned their obsession into a profession, and we believe they are the single most important factor in our success. People are the heart of Portillo's, and our brand comes to life with the values our diverse and inclusive teams practice every day: "Family," "Greatness," "Energy" and "Fun". Because we hire based on values over skillset, looking for new team members who possess a passion for both our food and our guests, we have cultivated an organization filled with people who are passionate about creating memorable experiences and their engagement drives exceptional productivity.

Community Involvement and Giving Back. We are passionate about serving the communities in which we operate. Our restaurants regularly host fundraisers for local non-profits with a portion of all proceeds going directly to 501(c)(3) charitable organizations. Since the inception of this program in 2017, we have held 7,500 fundraising events and donated \$1.2 million. We also donate meals to local community members including first responders to give back to those who serve us. Our team's philosophy is that we need to work together to make everyone feel at home and step up when someone needs help.

For Valentine's Day 2016, we debuted a heart-shaped version of our homemade chocolate cake. A portion of the sales of this limited time offer went to charity. Since then, we have continued to sell our heart-shaped chocolate cake each Valentine's Day and Mother's Day and donate a portion of the proceeds to charity. To date, we have donated a total of \$190,000 to the American Red Cross and Share Our Strength as a result of these sales. Our restaurants regularly make in-kind donations of Portillo's food, gift cards, and merchandise in order to support silent auctions, raffles, and fundraisers.

Heart of Portillo's Fund. We care deeply about our people and believe that by taking care of our team members, they will in turn take care of our guests. In June 2020 in response to the difficulties faced as a result of the COVID-19 pandemic, we started the "Heart of Portillo's Fund," a 501(c)(3) charitable fund within the Portillo's organization that has raised over \$400,000 from members of the Portillo's family to provide emergency assistance to other team members in need. The fund has awarded more than 45 grants totaling over \$90,000 in relief and has provided support for expenses following illness or injury, the unexpected death of a family member and other financial hardships.



Training and Career Development. Portillo's prioritizes training and development at all levels within the organization to ensure our team members are equipped with the knowledge, skills and tools to succeed. We strive to make Portillo's not only a great place to work but also a great place to have a career. Training for new team members leverages a mixture of digital programs, visual aids and side-by-side training, most of which are offered in both English and Spanish. In addition to learning the day-to-day basics, crew member training involves a focus on Teamwork, Organization, Succeeding in a fast-paced environment, Leadership, Communication and Guest Service. Each restaurant employs a "Training Lead" position that helps ensure these critical concepts are retained and continuously reinforced.

Many of our team members are cross-trained across multiple positions. Cross-training efforts were accelerated during the COVID-19 pandemic to provide more staffing flexibility in restaurants, which led to enhanced productivity. Our cross-trained team members provide additional operating flexibility in our restaurants while driving staffing efficiencies that allow for lower total hours invested over a given shift. The training also provides our employees with additional skills to succeed and advance in our restaurants. Portillo's also offers 10+ week fundamental management training programs, tailored to each management position, which ensures managers learn how to work each position and how to lead those positions effectively. Since each of our restaurants, on average, employs four times as many staff as the average fast casual brand, our managers must be well equipped for a challenging but rewarding job – and our development programs and tools have resulted in some of the lowest management turnover in the industry. More than one third of our general managers make over \$100,000 annually with some at or above \$120,000, including base and bonus. Our average base salary for a general manager is greater than the 95th percentile in the fast casual restaurant segment.

Leadership development is continuous at Portillo's as we strive to create an atmosphere of servant leadership throughout the organization. Through programs like our Career Interest Day, we identify high-potential team members that can eventually become managers then create individualized career development and training plans for each one, providing team members with visibility into their future career path. These management and leadership development programs have allowed us to source two thirds of our restaurant management teams from internal promotions and have cultivated a deep pipeline of in-house talent that we leverage when opening new restaurants. New restaurant managers are identified far in advance of their assigned new restaurant opening so that we can ensure they receive the training necessary to be successful, and our long-term talent planning activities ensure their successors are identified and positioned for success.

Real Estate and Development

Portillo's Restaurant Footprint. Our restaurant footprint consists of 67 Portillo's restaurants across 9 states. We do not own any real estate and lease all of our restaurant locations. When considering new restaurant locations each year as part of our growth strategy, we target AUVs of approximately \$6.4 million in the first year of operation, expect modestly lower sales volumes in the second year with target AUVs of \$5.6 million and expect restaurants to grow in line with our comparable store base thereafter. In the third year of operation, we target AUVs of \$5.8 million with average Restaurant-Level Adjusted EBITDA Margins of approximately 22%, and targeted cash-on-cash returns of approximately 25%, which we calculate by dividing our Restaurant-Level Adjusted EBITDA in the third year of operation by our initial investment costs (net of tenant allowances and excluding pre-opening expenses). We also have three non-traditional locations in operation including a food truck, a ghost kitchen in Chicago (small kitchen with no store-front presence, used to fill online orders), and a concessions partnership with the Tampa Bay Lightning. We have never permanently closed a Portillo's restaurant in our 58-year history. The Company's principal corporate offices are located in Oak Brook, Illinois.

The chart below shows the locations of our restaurants as of June 27, 2021:

<u>State</u>	<u>Total</u>
Arizona	4
California	2
Florida	3
Illinois	44
Indiana	6
Iowa	1
Michigan	1
Minnesota	3
Wisconsin	3
Total	<u>67</u>

Site Selection. Our site selection process is designed to identify optimal locations where we can provide a truly memorable experience for our guests while achieving or exceeding our financial targets. Our Real Estate Committee, consisting of senior Portillo's leadership representing each business function, approves all new sites. The Real Estate Committee meets regularly and utilizes a detailed, data driven approval process to ensure sites meet our rigorous standards and adhere to the Company's long-term goals. Our Vice President of Real Estate actively pursues sites in targeted markets using experienced restaurant real estate brokers across the country in order to leverage external resources in pursuit of a robust pipeline and consistent deal flow.

We target trade areas which meet our demographic criteria and allow the development of free-standing buildings along busy streets near traffic generators such as, strong retail outlets, residential areas, offices, universities, recreational facilities, tourist attractions and hospitals. We also consider multiple other site-specific factors including traffic patterns, parking, accessibility, visibility, area restaurant competition, the potential effect on sales of our nearby restaurants, restaurant size and the suitability of a drive-thru. Our current restaurants average over 8,000 square feet, while our new restaurant prototype ranges from 7,200 – 7,800 square feet. Given our leading volumes and the size of our restaurants, we typically do not compete for real estate with other quick service or fast casual concepts and are often considered a tenant of choice by landlords due to the significant traffic we bring through our locations.

Design. We build our restaurants to be beautiful, inviting and engaging places where people want to come and enjoy a convenient, yet memorable dining experience. We believe this factor further differentiates us from other quick service and fast casual restaurant concepts. Each restaurant is individually designed to complement its surroundings and incorporate local design elements which contribute to our distinctive dining experience. For example, our Springfield, Illinois restaurant incorporates design elements of the iconic Route 66 while our Davenport, Iowa restaurant includes elements evoking the movie *Field of Dreams*. While each restaurant is unique, we strive to create a nostalgic, welcoming atmosphere that is consistent across locations and is critical to the Portillo's brand identity. Our large open kitchens can service multiple sales channels and provide the guests a direct view into the bustling activity adding to the high energy atmosphere of our restaurants. Our restaurants feature double-drive thrus, large dining rooms, a bar area that services alcohol orders, online ordering, carryout, catering and retail sales and ample parking including dedicated spots for curbside pick up by guests or delivery drivers.



Davenport, IA



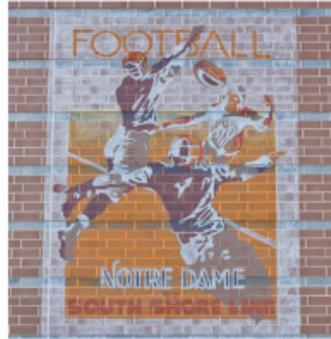
Fort Wayne, IN



Sterling Heights, MI



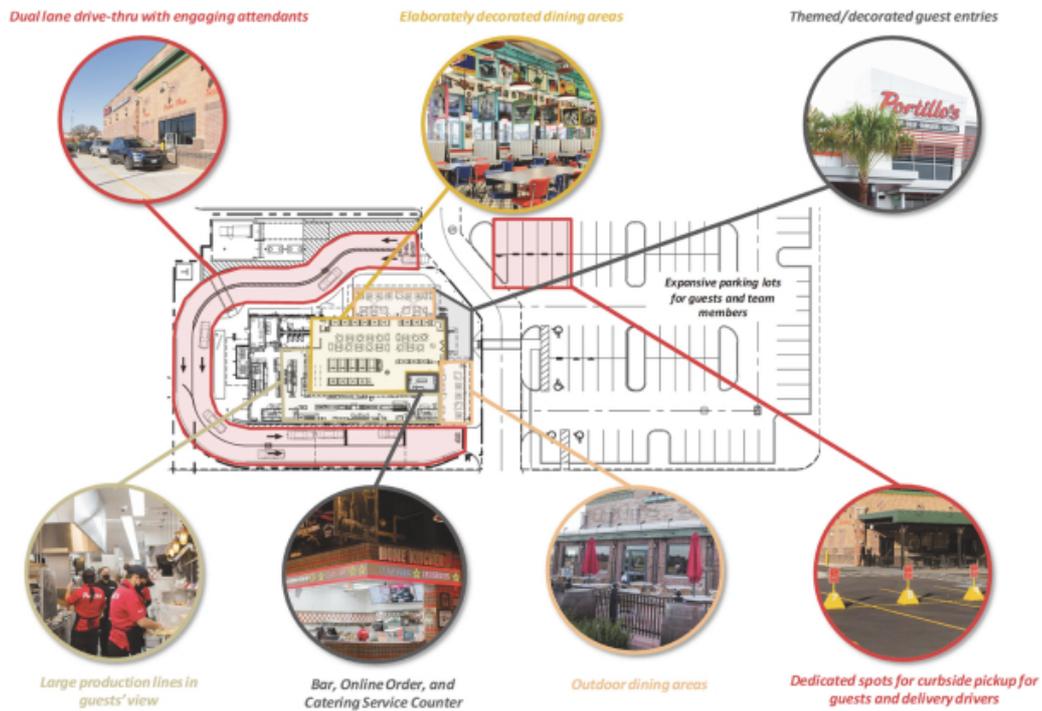
Madison, WI



Mishawaka, IN

Construction. A typical Portillo's takes between 15 and 20 weeks to build. We expect that the initial investment to build a new restaurant will range from \$4.5 to \$5.0 million, excluding pre-opening expenses and net of tenant allowances. Our average near-term build cost of approximately \$4.9 million reflects recent increases in the cost of materials have led to slightly higher build costs, which we believe will be temporary. We use a variety of general contractors on a regional basis and employ a mixed approach of bidding, direct purchasing, and strategic negotiation in order to ensure the best value and highest quality construction. We lease the land where we build our restaurants and often receive landlord development allowance and/or rent credits for leasehold improvements. We continually look to optimize our buildout costs through value engineering efforts in the back-of-house and brokering deals with our landlords to reduce our net capital costs without compromising the guest experience.

Illustrative Layout of a Portillo's Restaurant Site



Supply Chain and Distribution

We are committed to maintaining our high-quality food standards which depends in part on our ability to acquire fresh ingredients and other supplies that meets our demanding specifications from suppliers. We are always looking for the best way to provide this high-quality food at an incredible everyday value. We partner with a variety of companies that are similarly aligned with producing and providing high quality products. We maintain a diversified distribution network to service our restaurants across the country.

We operate two commissaries that we leverage to supply our network of restaurants with several of our most iconic products and ensure product consistency and quality. Our commissaries prepare certain items such as our beef, peppers and gravy for our Italian beef sandwiches. The prepared ingredients are shipped to our restaurants where our team members will finish the preparation in our kitchens to serve our guests the food they love. Our commissaries also fulfill orders for our direct shipping business, which enables us to deliver our delectable food to our fans all over the country.

Our Guests

Our diverse menu offering paired with our inviting, engaging restaurants are suited for any occasion and attract guests of all types—from single workers on a lunch break to family outings to large groups hosting special events such as wedding receptions or reunions. Over the course of our 58 year history, Portillo's has cultivated a diverse and multi-generational base of deeply loyal, obsessed guests that extends nationwide. Our fans frequently reach out via social media to ask us to bring a restaurant to their city. Our direct shipping

business also supports our nationwide guest base with orders coming from all 50 states. Because our fanbase extends far beyond our current markets, Portillo's benefits from significant latent demand when opening in new markets, as evidenced by our massive new restaurant opening events that often include guests waiting in long but fast-moving lines.

Marketing Strategy

Portillo's does not rely on mass media advertising or promotion to drive traffic to our restaurants. We rarely engage in price promotion of our products, instead choosing to offer an everyday value to our guests. Our focus has always been on earned media via public relations and grassroots and local marketing to build a strong relationship with the communities in which we operate. These activities start even before we open a restaurant with dedicated Field Marketing Coordinators arranging "sneak peek" visits for our most loyal fans, organizing visits from our mobile food truck, "The Beef Bus" to create excitement and awareness, donating meals made during training to community members including first responders and coordinating events with local media in advance and up to our large grand opening celebrations. After opening, our operations and field marketing teams continue to support brand awareness and drive sales by developing local partnerships with sports teams, such as our vending partnership with the Tampa Bay Lightning and hosting local community events and fundraisers in our restaurants. For example, we host "Bite of the Brand" dinners designed to bring in new guests who have never tried Portillo's food and offer samples of our most popular items and teach guests about the history of Portillo's. We also host "Catering First Taste" events in which we invite corporate catering buyers to join us for a demonstration and samples of our catering options.

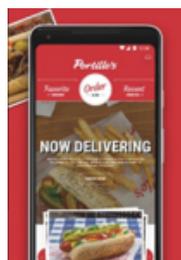
We often use clever ways to announce that we are opening in a new market in order to earn tremendous amounts of free publicity and build an email list of Portillo's fans up to 18 months prior to opening. For example, after the Chicago Blackhawks defeated the Tampa Bay Lightning in the Stanley Cup Finals in 2015, we took out a full-page ad in the Tampa Bay Times newspaper to announce the opening of our first restaurant in Tampa with the headline, "Cheer up, Tampa, there's good news from Chicago today." This announcement received extensive publicity, including from Sports Illustrated, and won the Public Relations Society of America's prestigious Silver Anvil award in 2016. We have replicated this type of announcement in several other cities, garnering massive media attention and building our subscriber list before breaking ground.

We also actively engage our fans and guests through a dynamic social media effort that includes email, Twitter, Instagram, TikTok, Facebook, and other platforms. Our social media activity generates significant engagement with our guests and provides our most passionate fans an opportunity to share their enthusiasm with their followers.

Technology Systems

We have strong partnerships with many best-in-class technology services which help grow our business. We use computerized point-of-sale and back-office systems created by NCR Corporation, which we believe are scalable to support our growth plans. These point-of-sale systems are designed specifically for the restaurant industry and we use many customized features to increase operational efficiencies, internal communication and data analysis. This system provides a touch screen interface, graphical order confirmation display, touch screen kitchen display, and powers the digital menu boards installed in a subset of our restaurants and collects daily transaction data, which we analyze to better understand our guest dining preferences and to ensure we maintain operational efficiency. We use handheld input devices to take orders in our drive-thru, which instantly relay orders to the kitchen, enabling our high volume throughput. We also receive orders through our mobile app and website, which provide guests multiple ways to receive their food, either through pick up inside the restaurant, curbside, drive-thru or delivery.

We have a long-standing relationship with Olo in which they have allowed us to customize their software to support our needs. One such customization allows us to route select delivery orders to our restaurants for processing, which allows us to operate our delivery sales channel more efficiently. We also partner with, and have invested in, Cartwheel, a software service that enables the logistics and fulfillment of our self-delivery program (orders that are delivered by Portillo's team members rather than a third-party service). We additionally have partnerships with multiple leading third-party delivery platforms to drive additional digital sales growth.



The Portillo's mobile app and Portillos.com offer a way for guests to engage with the brand and to conveniently place digital orders for delivery, catering, and shop & ship offerings. Our app and website, combined with our third-party delivery partnerships, resulted in over 20% of our orders being placed digitally during the two quarters ended June 27, 2021. We use a suite of back-office computer systems, including NBO, that enable timely and actionable reporting on sales, costs, recipes, and inventory for both restaurant leadership and management in our Restaurant Support Center.

Our Industry

We believe that our differentiated value proposition combining high-quality, craveable food with speed and multichannel convenience and a high-energy environment broadly appeals to our guests. This proposition enables us to successfully compete with and take share from our competitors across the restaurant industry, particularly the quick service and fast casual restaurant segments. The quick service and fast casual restaurant segments represented \$285 billion in sales in the United States in 2020 per Technomic, which represents a 6.2% decline from 2019 due to the impact of the COVID-19 pandemic, while sales have increased 6.2% since 2016. We believe that our quality, speed, convenience, everyday value and the memorable experience our restaurants provide to our guests allow us to successfully compete in this very large segment of the restaurant industry.

Competition

We compete in the highly competitive and fragmented restaurant industry. We compete primarily with quick service and fast casual concepts, and to a lesser extent, full-service restaurants. The number, size and strength of competitors vary by region. Our competition in these segments includes a variety of small locally owned restaurants, medium-sized regional restaurant concepts, and larger national restaurant concepts that provide some combination of dine-in, carry-out, drive thru and delivery services to their guests. We believe competition with these restaurants is based primarily on food quality, taste, ambiance, convenience, service speed, price, and value.

Intellectual Property

Our intellectual property includes our trademarks and service marks registered with the United States Patent and Trademark Office (including Portillo's® and other names used by our restaurants), the trade dress of our restaurants, our websites and domain names (including our website at portillos.com and other websites and domain names used by our restaurants) and other unregistered intellectual property.

Environmental Matters

We are subject to federal, state and local laws and regulations relating to environmental protection, including regulation of discharges into the air and water, storage and disposal of waste and clean-up of contaminated soil and groundwater. Under various federal, state and local laws, an owner or operator of real estate may be liable for the costs of removal or remediation of hazardous or toxic substances on, in or emanating from such property. Such liability may be imposed without regard to whether the owner or operator knew of, or was responsible for, the presence of such hazardous or toxic substances, and in some cases, we may have obligations imposed by indemnity provisions in our leases.

Regulation and Compliance

We are subject to extensive federal, state and local government regulation, including those relating to, among others, public health and safety, zoning and fire codes. Failure to obtain or retain food or other licenses and registrations or exemptions would adversely affect the operations of restaurants. Although we have not experienced and do not anticipate any significant problems in obtaining required licenses, permits or approvals, any difficulties, delays or failures in obtaining such licenses, permits, registrations, exemptions, or approvals could delay or prevent the opening of, or adversely impact the viability of, a restaurant in a particular area. Additionally, the COVID-19 pandemic has resulted in frequently revised state and local government regulations affecting our business beginning in March 2020, which have significantly impacted our restaurant operations and continue to do so. Such regulations govern, for example, employee leave, opening and closing of restaurants and dining rooms, sanitation practices, guest spacing within dining rooms and other social distancing practices and personal protective equipment.

The development of additional restaurants will be subject to compliance with applicable regulations, including those relating to zoning, land use, water quality and retention, and environment. We believe federal and state environmental regulations have not had a material effect on operations, but more stringent and varied requirements of local government bodies with respect to zoning, land use and environmental factors, among others, could delay construction and increase development costs for new restaurants.

We are also subject to the Fair Labor Standards Act, the Immigration Reform and Control Act of 1986 and various federal and state laws governing such matters as minimum wages, exempt versus non-exempt, overtime, unemployment tax rates, workers' compensation rates, citizenship requirements and other working conditions. As a result of wage pressures, our team members are all paid more than the applicable minimum wage in the area where they work, and increases in federal or state minimum wages or unemployment benefits may result in increases in the wage rates paid. We are also subject to the ADA, which prohibits discrimination on the basis of disability in public accommodations and employment, which may require us to design or modify our restaurants to make reasonable accommodations for disabled persons.

We serve alcoholic beverages at most of our restaurants, and we may introduce alcoholic beverages at additional restaurants in the future.

Alcoholic beverage control regulations require each of our restaurants that will sell alcoholic beverages to apply to a state authority and, in certain locations, county or municipal authorities for a license that must be renewed annually and may be revoked or suspended for cause at any time. Alcoholic beverage control regulations relate to numerous aspects of daily operations of our restaurants, including the minimum age of team members, advertising, trade practices, wholesale purchasing, other relationships with alcoholic beverages manufacturers, wholesalers and distributors, inventory control and handling, storage and dispensing of alcoholic beverages and training of team members. We are also subject in certain states to "dram shop" statutes, which generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. We carry liquor liability coverage as part of our existing comprehensive general liability insurance. We may decide not to obtain liquor licenses in certain jurisdictions due to the high costs associated with obtaining liquor licenses in such jurisdictions.

For a discussion of the various risks we face from regulation and compliance matters, see "Risk Factors."

Legal Proceedings

We are involved in various claims and legal actions that arise in the ordinary course of business. We do not believe that the ultimate resolution of any of these actions, individually or taken in the aggregate, will have a material adverse effect on our financial position, results of operations, liquidity or capital resources. A significant increase in the number of claims or an increase in amounts owing under successful claims could materially adversely affect our business, financial condition, results of operations and cash flows.

MANAGEMENT

Directors and Executive Officers

The following are biographical summaries and a description of the business experience of those individuals who serve as officers and directors of Portillo's OpCo. Upon the consummation of this offering, such individuals will serve in the same capacities at Portillo's Inc. The following also contains biographical summaries and a description of the business experience of those individuals who will serve as directors of Portillo's Inc.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Michael Osanloo	55	President, Chief Executive Officer and Director
Michelle Hook	46	Chief Financial Officer and Treasurer
Susan Shelton	61	General Counsel and Secretary
Jill Waite	43	Chief Human Resources Officer
Sherri Abruscato	66	Chief Development & Supply Chain Officer
Derrick Pratt	53	Chief Operating Officer
Rick Cook	39	Senior Vice President, Technology
Nick Scarpino	39	Senior Vice President, Marketing & Off Premise Dining
Ann Bordelon	54	Director
Noah Glass	40	Director
Gerard J. Hart	63	Director
Richard K. Lubin	75	Director
Joshua A. Lutzker	46	Director
Michael A. Miles, Jr.	59	Director, Chair

Our Executive Officers

Michael Osanloo

Michael Osanloo has served as Chief Executive Officer, President and a member of the Board of Portillo's since August 2018. Prior to joining Portillo's, Mr. Osanloo served as Chief Executive Officer and Director of P.F. Chang's China Bistro Inc. from March 2015 to October 2018. Prior to being named Chief Executive Officer, Mr. Osanloo served as Executive Vice President of Grocery at Kraft Heinz and held senior leadership roles at Caesar's Entertainment. From 1996 to 2005, Mr. Osanloo began his business career at Bain & Company where he spent nine years, the last three as a Partner in the Consumer and Retail practice. Mr. Osanloo holds a Master of Business Administration from the University of Chicago, a Juris Doctorate from the University of Illinois College of Law and a Bachelor of Arts degree in Economics from the University of Michigan.

Mr. Osanloo's experience in senior leadership of other public restaurant companies makes him well qualified to serve as a member of the Board of Portillo's.

Michelle Hook

Michelle Hook has served as Chief Financial Officer and Treasurer of Portillo's since December 2020. Prior to joining Portillo's, Ms. Hook served as Vice President of Finance, Global FP&A and Investor Relations at Domino's Pizza where she oversaw overall finance, global financial planning and analysis and investor relations from June to December 2020. Prior to this position, Ms. Hook held the position of Vice President of Finance, Global Operations at Domino's Pizza beginning in December 2018 and held numerous other positions, including being a member of the initial public offering team at Domino's Pizza since joining in 2003. Prior to joining Domino's Pizza, Ms. Hook worked at Holcim, a global cement manufacturer and as a senior auditor at Arthur Andersen LLP. Ms. Hook received her Masters of Business Administration from the University of Michigan and her Bachelor of Arts degree in accounting from Michigan State University. Ms. Hook is a certified public accountant.

Susan Shelton

Susan Shelton has served as General Counsel since joining Portillo's in January 1998, and has held the position of Corporate Secretary since August 2014. Ms. Shelton oversees legal affairs, including contracts, corporate governance, litigation, licensing and compliance. Prior to joining Portillo's, Ms. Shelton worked at a law firm for ten years where she served as outside counsel to Portillo's. Ms. Shelton holds a Bachelor of Arts degree in Economics from Wheaton College and a Juris Doctorate from the DePaul University College of Law.

Jill Waite

Jill Waite is the Chief Human Resources Officer at Portillo's and has been since she joined in June 2019. Prior to joining Portillo's, Ms. Waite served as Senior Vice President of Human Resources at 24 Hour Fitness from March 2017 to June 2019, and as Director of Talent Management and Development at Sephora, where she oversaw talent growth and management systems implementation for the Americas division from October 2014 to March 2017. Ms. Waite has a Bachelor of Science degree from the University of Florida.

Sherri Abruscato

Sherri Abruscato has served as the Chief Development & Supply Chain Officer of Portillo's since August 2014. Ms. Abruscato is responsible for the oversight of Real Estate & Development and Facilities & Supply Chain, which includes food safety and the management of Portillo's commissaries. Ms. Abruscato joined Portillo's Hot Dogs as a restaurant team member in 1970, then was hired at Portillo's in 1983, where she has held numerous positions related to operation support, negotiating with manufacturers, vendors and suppliers and coordinating new construction projects.

Derrick Pratt

Derrick Pratt has served as the Chief Operating Officer of Portillo's since May 2021. Prior to the position of Chief Operating Officer, Mr. Pratt was Senior Vice President of Restaurants at Portillo's from September 2020 to May 2021. Prior to joining Portillo's, Mr. Pratt worked as Vice President of Operations Services at Starbucks where he oversaw all operational performance and metrics from June to September 2020. From December 2018 to June 2020, Mr. Pratt was Vice President of Operations for the Southeast Market at Starbucks where he oversaw all operational performance and metrics in the southeast market for 800 Starbucks locations and managing \$1.4 billion in annual revenue. Mr. Pratt attended Fort George Meade Military Base and received a Master in Business Administration from Texas Christian University.

Rick Cook

Rick Cook has served as the Senior Vice President of Technology of Portillo's since January 2020. Mr. Cook is responsible for all corporate and restaurant technology and reporting to management. Prior to this position, Mr. Cook worked as Senior Director, Deployment for Coates Group from December 2017 to January 2020. Prior to working at Coates Group, Mr. Cook served as a Director of U.S. Point of Sale Solutions at McDonald's. Mr. Cook has a degree in Systems Engineering from West Point.

Nicholas Scarpino

Nicholas Scarpino has served as the Senior Vice President of Marketing and Off-Premise Dining at Portillo's since September 2019. Prior to this position, Mr. Scarpino held the position of Vice President of Marketing & Public Relations from April 2016 to September 2019 and the position of Director of Marketing from January 2015 to April 2016. Prior to joining Portillo's in 2015, Mr. Scarpino worked in digital advertising at Google. Mr. Scarpino received a Bachelor of Business Administration degree in Marketing from the University of Notre Dame and a Master of Science degree in Integrated Marketing Communications from Northwestern University.

Our Non-Employee Directors

Ann Bordelon

Ann Bordelon has served as a member of the Board of Portillo's since March 2020. Ms. Bordelon is Vice Chancellor for Finance & Administration at the University of Arkansas, a position she took on in 2020. Prior to that, she served as Chief Financial Officer for Mitchell Communications and NOWDiagnostics. Ms. Bordelon also has 13 years of experience in executive finance roles at Walmart, Inc., including as Chief Audit Executive. She began her career at Ernst & Young. She brings financial expertise to the board as well as a strong background in multi-unit operations and management. She also serves on the board of America's Car-Mart, Inc. (NASDAQ: CRMT) where she chairs the compensation committee and is on the audit, compliance and nominating committees. Ms. Bordelon is a certified public accountant. We believe that Ms. Bordelon is well qualified to serve on our Board because of her years of experience in finance and audit leadership at public companies.

Noah Glass

Noah Glass has served as a member of the Board of Portillo's since April 2017. Mr. Glass is the Chief Executive Officer of Olo Inc. (NYSE: OLO), the restaurant technology company he founded in 2005. Olo provides a technology platform giving cloud-based e-commerce functionality to multi location restaurant brands. In addition to his unique vantage point on the restaurant sector, Mr. Glass brings experience building and leading a profitable business through its public offering and a strong understanding of information technology. Mr. Glass is also on the board of Share Our Strength, a non profit focused on ending childhood hunger and a member of the board of trustees of the Culinary Institute of America. We believe that Mr. Glass is well qualified to serve on our Board due to his experience building and leading a public company and his insight into corporate matters.

Gerard J. Hart

Gerard J. Hart has served as a member of the Board of Portillo's since 2016. Mr. Hart is the Chief Executive Officer of Torchy's Tacos, a high-growth, fast casual restaurant chain and has held this position since 2018. Previously, he was Chief Executive Officer of California Pizza Kitchen and Texas Roadhouse. Mr. Hart led the expansion of Texas Roadhouse from 60 to 450 locations. Mr. Hart also serves on the board of Red Robin Gourmet Burgers, Inc. (NASDAQ: RRGB). We believe that Mr. Hart is well qualified to serve on our Board due to his relevant experience in managing high growth restaurant chains.

Richard K. Lubin

Richard K. Lubin has served as a member of the Board of Portillo's since August 2014. Mr. Lubin is a senior advisor at Berkshire Partners LLC which he co-founded in 1986 and was appointed to serve on the Board in connection with the Berkshire Acquisition. We believe that Mr. Lubin is well qualified to serve on our Board due to his decades of experience serving as a director of numerous private and public companies.

Joshua A. Lutzker

Joshua A. Lutzker has served as a member of the Board of Portillo's since August 2014. Mr. Lutzker is a managing director at Berkshire Partners LLC and was appointed to serve on the Board in connection with the Berkshire Acquisition. Mr. Lutzker co-leads the Consumer and Retail practice at Berkshire and has served on the boards of Aritzia, the women's fashion retailer, Mielle Organics, a multicultural beauty brand, National Carwash Solutions and SRS Distribution, a roofing distributor, among others. He also serves on the board of the Boston Symphony Orchestra. We believe that Mr. Lutzker is well qualified to serve on our Board due to the experience he brings building brands and companies in the consumer space.

Michael A. Miles, Jr.

Michael A. Miles, Jr. has served as a member of the Board of Portillo's since August 2014 and is Chairman of the Board. Mr. Miles is the former President of Staples, Inc., a \$25 billion global office supplies retailer and distributor. He also served as Chief Operating Officer of Pizza Hut for YUM Brands. He began his career with Bain & Co. and PepsiCo. He also serves on the board of Western Union (NYSE: WU) where he sits on the governance and ESG committee and chairs the compensation committee. He is an advisory director with Berkshire Partners. We believe that Mr. Miles is well qualified to serve on our Board due to the experience he brings with multi unit operations, development and marketing.

Board of Directors

Our business and affairs are managed under the direction of our Board. Our amended and restated certificate of incorporation will provide that the authorized number of directors may be fixed from time to time by our Board. Contemporaneously with this offering, our Board will be composed of seven directors, to serve until the first annual meeting of our stockholders following the filing of our amended and restated certificate of incorporation, or until their successors are duly elected and qualified. Our directors will be elected annually to serve until the next annual meeting of stockholders, or until their successors are duly elected and qualified.

Director Independence and Controlled Company Exemption

Following the completion of this offering, Berkshire will continue to indirectly beneficially own more than 50% of the voting power of our common stock. As a result, we will be considered a "controlled company" under the Nasdaq listing standards, which means that more than 50% of the power to vote our securities is held by an individual, a group or another company. On this basis, we will be eligible to avail ourselves of the "controlled company" exemption under the corporate governance rules of the Nasdaq and therefore, we are not required to have a majority of "independent directors" on our Board or a compensation committee and a nominating and corporate governance committee composed entirely of independent directors. However, we anticipate that our Board will be composed of a majority of independent directors and that our Compensation Committee and our Nominating and Corporate Governance Committee will be composed entirely of independent directors. The "controlled company" exemption does not modify the independence requirements for the audit committee, and we intend to comply with the requirements of Sarbanes-Oxley and the Nasdaq, which require that our audit committee be composed of at least three members, one of whom will be independent upon the listing of our common stock, a majority of whom will be independent within 90 days of listing and each of whom will be independent within one year of listing. Our Board has affirmatively determined that each of Ms. Bordelon, Mr. Glass, Mr. Hart, Mr. Lubin, Mr. Lutzker and Mr. Miles is an independent director under the applicable rules of the Nasdaq.

If at any time we cease to be a "controlled company" under the rules of the Nasdaq to the extent that we do not already, our Board will take all action necessary to comply with the Nasdaq corporate governance rules, including appointing a majority of independent directors to the Board and establishing certain committees composed entirely of independent directors, subject to a permitted "phase-in" period.

Board Committees

Our Board currently has an Audit Committee and a Compensation Committee and, in connection with the consummation of this offering, the Board will also establish a Nominating and Corporate Governance Committee. Each committee will have a charter that has been approved by our Board and that will be available on our website. Each committee will have the composition and responsibilities described below. Members serve on our Board committees until their resignations or until otherwise determined by our Board.

Audit Committee. The primary purposes of our Audit Committee under the committee's charter will be to assist the Board's oversight of:

- audits of our financial statements;

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- the integrity of our financial statements;
- our process relating to risk management and the conduct and systems of internal control over financial reporting and disclosure controls and procedures;
- the qualifications, engagement, compensation, independence and performance of our independent auditor; and
- the performance of our internal audit function.

Upon the consummation of this offering, our Audit Committee will be composed of Ms. Bordelon, Mr. Glass and Mr. Miles. Ms. Bordelon will serve as chair of the Audit Committee. Ms. Bordelon, Mr. Glass and Mr. Miles each qualify as “audit committee financial experts” as such term has been defined by the SEC in Item 407(d) of Regulation S-K. Our Board has affirmatively determined that Ms. Bordelon and Mr. Glass meet the definition of an “independent director” for the purposes of serving on the Audit Committee under applicable Nasdaq rules and Rule 10A-3 under the Exchange Act. We intend to comply with these independence requirements for all members of the Audit Committee within the time periods specified under such rules. The Audit Committee will be governed by a charter that complies with the rules of Nasdaq.

Compensation Committee. The primary purposes of our Compensation Committee under the committee’s charter will be to assist the Board in overseeing our management compensation policies and practices, including:

- determining and approving the compensation of our executive officers; and
- reviewing and approving incentive compensation and equity compensation policies and programs.

Upon the consummation of this offering, our Compensation Committee will be composed of Mr. Miles, Mr. Lubin, Mr. Hart and Mr. Lutzker. Mr. Miles will serve as chair of the Compensation Committee. The Compensation Committee will be governed by a charter that complies with the rules of the Nasdaq.

Nominating and Corporate Governance Committee. Upon the consummation of this offering, our Board will establish a Nominating and Corporate Governance Committee. The primary purposes of our Nominating and Corporate Governance Committee will be to recommend candidates for appointment to the Board and to review the corporate governance guidelines of the Company, including:

- identifying and screening individuals qualified to serve as directors;
- developing, recommending to the Board and reviewing the Company’s corporate governance guidelines;
- coordinating and overseeing the annual self-evaluation of the Board and its committees; and
- reviewing on a regular basis the overall corporate governance of the Company and recommending improvements to the Board where appropriate.

The Nominating and Corporate Governance Committee will be comprised of Mr. Lutzker and Mr. Miles. Mr. Lutzker will serve as the chair of the Nominating and Corporate Governance Committee. The Nominating and Corporate Governance Committee will be governed by a charter that complies with the rules of the Nasdaq.

Compensation Committee Interlocks and Insider Participation

The members of our Compensation Committee during 2021 were Mr. Hart, Mr. Lubin, Mr. Lutzker, and Mr. Miles. During 2021, none of our executive officers served (i) as a member of the Compensation Committee or board of directors of another entity, one of whose executive officers served on our Compensation Committee, or (ii) as a member of the Compensation Committee of another entity, one of whose executive officers served on our Board.

Indemnification of Directors and Officers

Our amended and restated certificate of incorporation will provide that we will indemnify our executive officers and directors to the fullest extent permitted by the DGCL.

We intend to enter into indemnification agreements with each of our executive officers and directors prior to the completion of this offering. The indemnification agreements will provide the executive officers and directors with contractual rights to indemnification, expense advancement and reimbursement, to the fullest extent permitted under the DGCL, subject to certain exceptions contained in those agreements.

Code of Business Conduct

Prior to the completion of this offering, we will amend our code of business conduct and ethics that applies to all of our employees, officers and directors. A copy of the amended code will be available on our website located at www.portillos.com. Any amendments or waivers from our code for our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions will be disclosed on our Internet website promptly following the date of such amendment or waiver.

Corporate Governance Guidelines

Our Board will adopt corporate governance guidelines that serve as a flexible framework within which our Board and its committees operate. These guidelines will cover a number of areas including the duties and responsibilities of the Board, director independence, Board leadership structure, majority-voting Board resignation policy, executive sessions, Chief Executive Officer evaluations, management development and succession planning, director nomination, qualification and election, director orientation and continuing education, Board agenda, materials, information and presentations, director access to company employees and independent advisers, Board communication with stockholders and others, director compensation and annual Board and committee performance evaluations. A copy of our corporate governance guidelines will be posted on our website.

EXECUTIVE AND DIRECTOR COMPENSATION

The following compensation tables and related disclosure should be read together. This discussion contains forward-looking statements that are based on our current plans and expectations regarding future compensation programs. See “Cautionary Note Regarding Forward-Looking Statements.” Actual compensation programs that we adopt may differ materially from the programs summarized in this discussion.

Overview

The following tables and accompanying narrative disclosure set forth information about the compensation provided to certain of our “named executive officers,” or “NEOs,” namely our principal executive officer during the fiscal year ended December 27, 2020 (“Fiscal 2020”) and our two other most highly compensated executive officers (other than our principal executive officer) who were serving as executive officers at the end of Fiscal 2020. Our NEOs for Fiscal 2020 were:

- Michael Osanloo, our President and Chief Executive Officer;
- Jill Waite, our Chief Human Resource Officer; and
- Sherri Abruscato, our Chief Development and Supply Chain Officer.

Summary Compensation Table

The following table sets forth certain information regarding the total compensation awarded to, earned by or paid to our named executive officers in respect of Fiscal 2020.

Name and Principal Position	Year	Salary (\$)(1)	Bonus (\$)	Stock awards (\$)	Option awards (\$)	Nonequity incentive plan compensation (\$)(2)	Nonqualified deferred compensation earnings (\$)	All other compensation (\$)(3)	Total (\$)
Michael Osanloo, President and Chief Executive Officer	2020	769,038	77,250	—	—	672,075	—	48,431	1,566,794
Jill Waite, Chief Human Resource Officer	2020	365,331	18,315	—	—	159,341	—	40,493	583,480
Sherri Abruscato, Chief Development and Supply Chain Officer	2020	374,265	18,798	—	—	163,538	—	13,108	569,709

- (1) The 2020 base salary amounts represent the amount earned during Fiscal 2020.
(2) Represents performance-based amounts earned in Fiscal 2020 under the 2020 Bonus Program as described below.
(3) Payments to our NEOs included in the “All other compensation” column include the following:

Name	Commuter benefits (\$)	Cell phone stipend (\$)	Health insurance (\$)	Ayco investment (\$)	401(k) match (\$)	Total (\$)
Michael Osanloo	2,644	660	29,627	13,000	2,500	48,431
Jill Waite	5,984	660	20,849	13,000	—	40,493
Sherri Abruscato	—	660	9,948	—	2,500	13,108

Compensation Philosophy

Portillo's provides a total compensation package that is competitive with the larger industry in which we operate and compete for talent, with total compensation that rewards executives for individual performance and company results. In Fiscal 2020, we primarily compensated our NEOs through a combination of base salary and annual cash incentive awards. Generally, we may grant option awards to our executive officers upon hire or promotion. Our NEOs are also entitled to certain other benefits, subject to their enrollment, including a 401(k) plan with matching contributions, deferral of compensation through the Executive Nonqualified Excess Plan as described under "Employee Benefit Plans" below, access to certain investment advice and tax return preparation through Ayco Personal Financial Management as described under "Other Benefits and Perquisites," and medical, dental, vision, life, accidental death and dismemberment, short-term disability and long-term disability insurance.

Cash Compensation

Base Salary

We pay base salaries to provide executives with a secure, fixed base of cash compensation in recognition of individual responsibilities and job performance. Current salaries are based on market conditions and experience of the executive. Annual salary increases are based on personal performance and accomplishments, with discretion for final approval residing with the Compensation Committee.

Future salary levels will be established after a comparative analysis of base salaries for similar positions among the market data set provided by our independent compensation consultant and upon approval from the Compensation Committee. Likewise, annual merit-based salary increases will be determined after a comparative analysis of base salaries for similar positions among the market data set provided by our independent compensation consultant and upon approval from the Compensation Committee.

Nonequity Incentive Plan Pay

In Fiscal 2020, we awarded annual cash incentive opportunities to each of our NEOs under the Executive Discretionary Bonus Plan (the "2020 Bonus Program"), which is a key component of our total rewards philosophy that seeks to pay executives a total compensation package that is competitive with the larger industry in which we operate and compete for talent, with total compensation that rewards executives for individual performance and company results. The 2020 Bonus Program is designed to motivate and drive executives to achieve company results by linking performance-based annual cash incentives, up to a pre-established maximum amount, to the achievement of specified performance targets. We believe that the executive discretionary bonus plan encourages, reinforces and rewards delivery of stockholder value by linking annual cash awards with the achievement of quantifiable performance measures.

For Fiscal 2020, performance under the 2020 Bonus Program, payable in March 2021, was measured based on the Company's growth in Adjusted EBITDA. Mr. Osanloo's performance target payments for Fiscal 2020 were 100% of his base salary. Ms. Waite's performance target payments for Fiscal 2020 were 50% of her base salary. Ms. Abruscato's performance target payments for Fiscal 2020 were 50% of her base salary. Based on growth in Adjusted EBITDA in Fiscal 2020, our Compensation Committee approved an 87% bonus payment, plus an additional 10% discretionary bonus payment in recognition of the performance of the Company throughout the COVID-19 pandemic, with the following payments to our NEOs included in the "Bonus" and "Non-Equity Incentive Plan Compensation."

Equity Compensation

To balance incentives to achieve both short-term and long-term success, upon hire or promotion our executive officers receive unit option grants under the 2014 Plan, but no awards were made in Fiscal 2020. For each executive, the unit option grants were equally divided between (i) options subject to time-based vesting, and (ii) options subject to both time-based and performance based vesting.

The time-based vesting options vest in general, in equal annual installments over a 5-year period and have a ten-year term from the date of the grant. The options subject to both time-based and performance-based vesting have a ten-year term from the date of the grant and vest, in general, in equal annual installments over a 5-year period from the date of grant, subject to acceleration in the event of a sale transaction, and have a performance condition that is satisfied to the extent Berkshire achieves a specified internal rate of return and a minimum multiple of its invested capital. We believe that long-term unit-based compensation, provided in the form of time-based and time and performance-based vesting, provides direct alignment between the interest of our executives and stockholders and helps to ensure long-term retention of key executive talent. No further options will be issued under the 2014 Plan after this offering.

2021 Equity Incentive Plan

In connection with this offering, we intend to adopt a new equity incentive plan, the 2021 Plan. The 2021 Plan provides flexibility to motivate, attract and retain the service providers who are expected to make significant contributions to our success and allow participants to share in such success. The principal features of the 2021 Plan are summarized below.

Purpose

The purpose of the 2021 Plan is to align the interests of eligible participants with our stockholders by providing incentive compensation tied to the Company's performance. The intent of the 2021 Plan is to advance the Company's interests and increase stockholder value by attracting, retaining and motivating key personnel upon whose judgment, initiative and effort the successful conduct of our business is largely dependent.

Awards

The types of awards available under the 2021 Plan include stock options (both incentive and non-qualified), SARs, restricted stock awards, RSUs and stock-based awards. All awards granted to participants under the 2021 Plan will be represented by an award agreement.

Shares Available

Approximately _____ shares of Class A common stock as of the consummation of this offering are available for awards under the 2021 Plan. Within the share reserve, a total of _____ shares of common stock as of the consummation of the initial public offering are available for awards of incentive stock options.

The share reserve will be reduced by one share for each share subject to an award. If any award granted under the 2021 Plan is cancelled, expired, forfeited, or surrendered without consideration or otherwise terminated without delivery of the shares to the participant, then such unissued shares will be returned to the 2021 Plan and be available for future awards under the 2021 Plan.

Shares that are withheld from any award in payment of the exercise, base or purchase price or taxes related to such an award, not issued or delivered as a result of the net settlement of any award, or repurchased by the company on the open market with the proceeds of a stock option will be deemed to have been delivered under the Plan and will not be returned to the 2021 Plan nor be available for future awards under the 2021 Plan. The payment of dividend equivalents in cash in conjunction with any outstanding award shall not count against the share reserve.

Eligibility

Any employee, officer, non-employee director or any natural person who is a consultant or other personal service provider to the Company or any of its subsidiaries or affiliates can participate in the 2021 Plan,

at the Committee's (as defined below) discretion. In its determination of eligible participants, the Committee may consider any and all factors it considers relevant or appropriate, and designation of a participant in any year does not require the Committee to designate that person to receive an award in any other year.

Administration

Pursuant to its terms, the 2021 Plan may be administered by the Compensation Committee of our Board, such other committee of the Board appointed by the Board to administer the 2021 Plan or the Board, as determined by the Board (such administrator of the 2021 Plan, the "Committee"). The Committee has the power and discretion necessary to administer the 2021 Plan, with such powers including, but not limited to, the authority to select persons to participate in the 2021 Plan, determine the form and substance of awards under the 2021 Plan, determine the conditions and restrictions, if any, subject to which such awards will be made, modify the terms of awards, accelerate the vesting of awards, and make determinations regarding a participant's termination of employment or service for purposes of an award. The Committee's determinations, interpretations and actions under the 2021 Plan are binding on the Company, the participants in the 2021 Plan and all other parties. It is anticipated that the 2021 Plan will be administered by our compensation committee, which solely consists of independent directors, as appointed by the Board from time to time. The compensation committee may delegate authority to one or more officers of the Company to grant awards to eligible persons other than members of the Board or who are subject to Rule 16b-3 of the Exchange Act, as permitted under the 2021 Plan and under applicable law.

Award Limit for Non-Employee Directors

No non-employee director may be granted during any calendar year, awards having a fair value that, when added to all other cash compensation received in respect of service as a member of our Board for such calendar year, exceeds \$ _____, provided however such limit shall be \$ _____ during the calendar year in which the registration statement of which this prospectus form a part becomes effective.

Stock Options

A stock option grant entitles a participant to purchase a specified number of shares of our common stock during a specified term (with a maximum term of ten years) at an exercise price that will not be less than the fair market value of a share as of the date of grant (unless otherwise determined by the Committee).

The Committee will determine the requirements for vesting and exercisability of the stock options, which may be based on the continued employment or service of the participant with the Company for a specified time period, upon the attainment of performance goals or both. The stock options may terminate prior to the end of the term or vesting date upon termination of employment or service (or for any other reason), as determined by the Committee. Unless approved by our stockholders, the Committee may not take any action with respect to a stock option that would be treated as a "repricing" under the then applicable rules, regulations or listing requirements of the stock exchange on which shares of common stock are listed, or that would result in the cancellation of "underwater" stock options in exchange for cash or other awards, other than in connection with a change in control.

Stock options granted under the 2021 Plan will be either non-qualified stock options or incentive stock options (with incentive stock options intended to meet the applicable requirements under the Code). Stock options are nontransferable except in limited circumstances.

Stock Appreciation Rights

A SAR granted under the 2021 Plan will give the participant a right to receive, upon exercise or other payment of the SAR, an amount in cash, shares of common stock or a combination of both equal to (i) the excess of (a) the fair market value of a share on the date of exercise less (b) the base price of the SAR that the Committee specified on the date of the grant multiplied by (ii) the number of shares as to which such SAR is

exercised or paid. The base price of a SAR will not be less than the fair market value of a share as of the date of grant. The right of exercise in connection with a SAR may be made by the participant or automatically upon a specified date or event. SARs are nontransferable, except in limited circumstances.

The Committee will determine the requirements for vesting and exercisability of the SARs, which may be based on the continued employment or service of the participant with the Company for a specified time period or upon the attainment of specific performance goals. The SARs may be terminated prior to the end of the term (with a maximum term of ten years) upon termination of employment or service, as determined by the Committee. Unless approved by our stockholders, the Committee may not take any action with respect to a SAR that would be treated as a “repricing” under the then applicable rules, regulations or listing requirements of the stock exchange on which shares of common stock are listed, or that would result in the cancellation of “underwater” SARs in exchange for cash or other awards, other than in connection with a change in control.

Restricted Stock Awards

A restricted stock award is a grant of a specified number of shares of common stock to a participant, which restrictions will lapse upon the terms that the Committee determines at the time of grant. The Committee will determine the requirements for the lapse of the restrictions for the restricted stock awards, which may be based on the continued employment or service of the participant with the Company over a specified time period, upon the attainment of performance goals, or both.

The participant will have the rights of a stockholder with respect to the shares granted under a restricted stock award, including the right to vote the shares and receive all dividends and other distributions with respect thereto, unless the Committee determines otherwise to the extent permitted under applicable law. If a participant has the right to receive dividends paid with respect to a restricted stock award, such dividends shall not be paid to the participant until the underlying award vests. Any shares granted under a restricted stock award are nontransferable, except in limited circumstances.

Restricted Stock Units

An RSU granted under the 2021 Plan will give the participant a right to receive, upon vesting and settlement of the RSUs, one share per vested unit or an amount per vested unit equal to the fair market value of one share as of the date of determination, or a combination thereof, at the discretion of the Committee. The Committee may grant RSUs together with dividend equivalent rights (which will not be paid until the award vests), and the holder of any RSUs will not have any rights as a stockholder, such as dividend or voting rights, until the shares of common stock underlying the RSUs are delivered.

The Committee will determine the requirements for vesting and payment of the RSUs, which may be based on the continued employment or service of the participant with the Company for a specified time period and also upon the attainment of specific performance goals. RSUs will be forfeited if the vesting requirements are not satisfied. RSUs are nontransferable, except in limited circumstances.

Stock-Based Awards

Stock-based awards may be granted to eligible participants under the 2021 Plan and consist of an award of, or an award that is valued by reference to, shares of common stock. A stock-based award may be granted for past employment or service, in lieu of bonus or other cash compensation, as director’s compensation or any other purpose as determined by the Committee, and shall be based upon or calculated by reference to the common stock. The Committee will determine the requirements for the vesting and payment of the stock-based award, with the possibility that awards may be made with no vesting requirements. Upon receipt of the stock-based award that consists of shares of common stock, the participant will not have any rights of a stockholder with respect to the shares of common stock, including the right to vote and receive dividends, until such time as shares of common stock (if any) are issued to the participant.

Plan Amendments or Termination

The Board may amend, modify, suspend or terminate the 2021 Plan; provided that if such amendment, modification, suspension or termination materially and adversely affects any award, the Company must obtain the affected participant's consent, subject to changes that are necessary to comply with applicable laws. Certain amendments or modifications of the 2021 Plan may also be subject to the approval of our stockholders as required by SEC and NASDAQ rules or applicable law.

Termination of Service

Awards under the 2021 Plan may be subject to reduction, cancellation or forfeiture upon termination of service or failure to meet applicable performance conditions or other vesting terms.

Under the 2021 Plan, unless an award agreement provides otherwise, if a participant's employment or service is terminated for cause, or if after termination the Committee determines that the participant engaged in an act that falls within the definition of cause, or if after termination the participant engages in conduct that violates any continuing obligation of the participant with respect to the Company, the Company may cancel, forfeit and/or recoup any or all of that participant's outstanding awards. In addition, if the Committee makes the determination above, the Company may suspend the participant's right to exercise any stock option or SAR, receive any payment or vest in any award pending a determination of whether the act falls within the definition of cause (as defined in the 2021 Plan). If a participant voluntarily terminates employment or service in anticipation of an involuntary termination for cause, that shall be deemed a termination for cause.

Right of Recapture

Awards granted under the 2021 Plan may be subject to recoupment in accordance with Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (regarding recoupment of erroneously awarded compensation). The Company has the right to recoup any gain realized by the participant from the exercise, vesting or payment of any award if, within one year after such exercise, vesting or payment (a) the participant is terminated for cause, (b) if after the participant's termination the Committee determines that the participant engaged in an act that falls within the definition of cause or violated any continuing obligation of the participant with respect to the Company or (c) the Committee determines the participant is subject to recoupment due to a clawback policy.

Change in Control

Under the 2021 Plan, in the event of a change in control of the Company, as defined in the 2021 Plan, all outstanding awards shall either be (a) continued or assumed by the surviving company or its parent or (b) substituted by the surviving company or its parent for awards, with substantially similar terms (with appropriate adjustments to the type of consideration payable upon settlement, including conversion into the right to receive securities, cash or a combination of both, and with performance conditions deemed achieved (i) for any completed performance period, based on actual performance, or (ii) for any partial or future performance period, at the greater of the target level or actual performance, unless otherwise provided in an award agreement).

Only to the extent that outstanding awards are not continued, assumed or substituted upon or following a change in control, the Committee may, but is not obligated to, make adjustments to the terms and conditions of outstanding awards, including without limitation (i) acceleration of exercisability, vesting and/or payment immediately prior to, upon or following such event, (ii) upon written notice, provided that any outstanding stock option and SAR must be exercised during a period of time immediately prior to such event or other period (contingent upon the consummation of such event), and at the end of such period, such stock options and SARs shall terminate to the extent not so exercised, and (iii) cancellation of all or any portion of outstanding awards for fair value (in the form of cash, shares, other property or any combination of such consideration), less any applicable exercise or base price.

Assumption of Awards in Connection with an Acquisition

The Committee may assume or substitute any previously granted awards of an employee, director or consultant of another corporation who becomes eligible by reason of a corporate transaction. The terms of the assumed award may vary from the terms and conditions otherwise required by the 2021 Plan if the Committee deems it necessary. The assumed awards will not reduce the total number of shares available for awards under the 2021 Plan.

Adjustments

In the event of any recapitalization, reclassification, share dividend, extraordinary cash dividend, stock split, reverse stock split, merger, reorganization, consolidation, combination, spin-off or other similar corporate event or transaction affecting the shares of common stock, the Committee will make equitable adjustments to (i) the number and kind of shares or other securities available for awards and covered by outstanding awards, (ii) the exercise, base or purchase price or other value determinations of outstanding awards, and/or (iii) any other terms of an award affected by the corporate event.

Employment Arrangements

The following is a summary of the material terms of the employment arrangements that we have with Mr. Osanloo and Ms. Abruscato. Ms. Waite does not have an employment agreement. The Company generally does not have any other employment agreements or change in control agreements for its executive officers.

Michael Osanloo

The Company entered into an employment agreement with Michael Osanloo (the "Osanloo Employment Agreement") on August 3, 2018, upon his joining the Company. The Osanloo Employment Agreement provides for a 3-year initial term and renews year-to-year thereafter. The Osanloo Employment Agreement further provides for a base salary of \$750,000 as well as annual incentive cash compensation with an annual target equal to 100% of base salary, up to a maximum of 150% (subsequently increased to 200%) of base salary, a signing bonus of \$200,000 which was paid within 30 days of Mr. Osanloo's start date and an award of 15,000,000 options issued under the 2014 Plan, split equally between options that are subject to time-vesting and performance-vesting. Mr. Osanloo was also provided the opportunity to invest up to \$1,500,000 for the purchase of Class A common units of the Company, at the then fair market value. In the event of termination by the Company without cause, by Mr. Osanloo for good reason or upon the Company's non-renewal of the term, Mr. Osanloo is entitled to: (i) base salary continuation for 18 months, (ii) pro-rata annual cash bonus based on actual performance for the year of termination, and (iii) payment of COBRA premiums for a period of 18 months. In the event of termination due to death or disability, Mr. Osanloo or his legal representatives will be entitled to: (i) earned but unpaid annual bonus (if any), and (ii) pro-rata annual cash bonus based on actual performance for the year of termination.

Sherri Abruscato

The Company entered into an employment agreement with Ms. Abruscato (the "Abruscato Employment Agreement") on August 1, 2014, when the original founder of the Company sold to Berkshire Partners. The Abruscato Employment Agreement provides for a 3-year initial term and renews year-to-year thereafter. The Abruscato Employment Agreement further provides for a base salary of \$325,000 as well as annual incentive cash compensation with an annual target equal to 50% of base salary. The Abruscato Employment Agreement further provided that Ms. Abruscato would be eligible to participate in an incentive equity plan, upon adoption of such a plan and approval of the award by the Board. In the event of termination by the Company without cause, by Ms. Abruscato for good reason or upon the Company's non-renewal of the term, Ms. Abruscato is entitled to base salary continuation for 12 months. In the event of termination due to death or disability, Ms. Abruscato or her legal representatives will be entitled to any earned but unpaid annual bonus.

Executive Nonqualified Excess Plan

Portillo’s approved the Executive Nonqualified Excess Plan in February 2016 to provide a means by which certain management employees may elect to defer receipt of current compensation to provide for retirement, and also have access to Ayco Personal Financial Management to provide certain investment advice and services as well as tax return preparation. This plan is an unfunded nonqualified deferred compensation plan, in compliance with Section 409A of the Internal Revenue Code. This plan includes certain Qualifying Distribution Events, including separation from service and change in control provisions, with payment in accordance with the elections made by the participant. A participant is fully vested in the portion of his or her deferred amounts and the income, gains and losses attributable thereto.

In Fiscal 2020, Mr. Osanloo and Ms. Waite took advantage of this perquisite.

Other Benefits and Perquisites

Our NEOs participate in the same 401(k) retirement plan as the rest of our team members.

Our NEOs participate in the same medical benefit plans generally available to our management team members. These benefit plans include health insurance, dental and vision coverage, life insurance and disability coverage. The NEOs receive the same coverage as the rest of our management team members, as well as full coverage of the premium-equivalent. The NEOs also may elect to participate in our medical and dependent care flexible spending plan, on the same terms and conditions as other team members.

We also provide for limited perquisites such as automobiles to the extent that an executive’s job requires the use of a vehicle, and a stipend for cell phone usage. In addition, we make available to our employees, including the NEOs, the ability to dine at our restaurants a limited number of times each year for free or at a discount.

Outstanding Equity Awards at Fiscal Year-End

The following table sets forth certain information with respect to outstanding equity awards held by our named executive officers as of Fiscal 2020.

<u>Name</u>	<u>Option Awards</u>				
	<u>Number of securities underlying unexercised options (#) exercisable</u>	<u>Number of securities underlying unexercised options (#) unexercisable</u>	<u>Equity incentive plan awards: Number of securities underlying unexercised unearned options (#)(1)</u>	<u>Option exercise price (\$)</u>	<u>Option expiration date</u>
Michael Osanloo	3,000,000	4,500,000	7,500,000	\$ 0.69	10/1/2028
Jill Waite	165,000	660,000	825,000	\$ 0.58	8/7/2029
Sherri Abruscato	815,200	—	—	\$ 0.74	12/10/2024
	1,222,800	—	2,038,000	\$ 0.45	12/10/2024

- (1) Represents unvested options outstanding as of Fiscal 2020. For each NEO, the stock options were equally divided into time-based vesting and time and performance-based vesting. The awards vest ratably over the requisite service period, which is generally five years and are generally exercisable within a 10-year period from the date of the grant.

Potential Payments Upon Termination

The employment agreements with Mr. Osanloo and Ms. Abruscato provide for certain potential payments upon termination. A description of these potential payments is included in the summaries of the Osanloo Employment Agreement and the Abruscato Employment Agreement in the Employment Arrangements section above. There are no arrangements pursuant to which payments are triggered upon a change in control.

Director Compensation

Any director who is an employee receives no additional compensation for services as a director or as a member of a committee of our Board. In connection with this offering, we expect that our Compensation Committee and Board will establish a non-employee director compensation program. For Fiscal 2020, our director compensation consisted of cash fees or option awards under the 2014 Plan, depending on each director's individual compensation arrangement(s) as described in the footnotes to the table below. The following table sets forth information concerning the compensation of our non-employee directors for Fiscal 2020. Directors that are employed by Berkshire do not receive compensation from the Company for their service as a director. Compensation information for Mr. Osanloo is included under "Summary Compensation Table" above.

Name	Fees earned or paid in cash (\$)	Option awards \$(1)	All other compensation (\$)	Total (\$)
Michael A. Miles	\$ 250,000	—	—	\$250,000
Ann Bordelon ⁽²⁾	\$ 27,500	\$94,412	—	\$121,912
Noah Glass	\$ 50,000	—	—	\$ 50,000
Gerard J. Hart	\$ 50,000	—	—	\$ 50,000
Joshua A. Lutzker	—	—	—	—
Richard K. Lubin	—	—	—	—
Dolfe Berle ⁽³⁾	\$ 25,000	—	—	\$ 25,000

- (1) Represents aggregate grant-date fair value determined in accordance with the requirements of Financial Accounting Standards Board Accounting Standards Codification Topic 718, "Compensation - Stock Compensation" ("ASC 718"). Each of our directors has the following number of stock options outstanding: Mr. Miles received 4,094,527 Class A unit options at the then market value of \$0.68, with a four-year time only vesting period; and Ms. Bordelon received 441,176 Class A unit options at a grant date fair market value of \$0.59, of which 220,588 vest ratably over a five-year time period and 220,588 vest subject to time and performance conditions under the option award agreement.
- (2) Ms. Bordelon was granted an option award upon her commencement of service as a director of the Company in May 2020. Represents director fees prorated since her start date. Non-sponsor directors each receive a total of 441,176 options equally divided between time-based vesting and time and performance-based vesting.
- (3) Mr. Berle resigned as a director on March 16, 2020. Represents director fees earned through such date.

Directors are also provided an opportunity to invest up to \$500,000 in Class A units at the fair market value in place at time of purchase. Mr. Miles, as Chairman of the Board, receives an annual retainer of \$250,000, payable monthly in arrears, along with reimbursement of reasonable direct out of pocket travel expenses incurred as a result of his service as Chairman. Other independent directors, received an annual \$50,000 retainer, paid pro rata during their first year of service, as well as a stock grant in connection with commencing service as a director, split equally divided into time-based vesting and time and performance-based vesting option awards. The awards vest ratably over the requisite service period, which is generally five years and are generally exercisable within a 10-year period from the date of the grant.

PRINCIPAL STOCKHOLDERS

The following table sets forth information regarding the beneficial ownership of our common stock as of _____, 2021 (i) as adjusted to give effect to the Reorganization Transactions, but prior to this offering, and (ii) as adjusted to give effect to the Reorganization Transactions and this offering by:

- each person or group whom we know to own beneficially more than 5% of our common stock;
- each of the directors and named executive officers individually; and
- all directors and executive officers as a group.

The numbers of shares of common stock beneficially owned, percentages of beneficial ownership and percentages of combined voting power before this offering that are set forth below are based on the number of shares of Class A common stock and Class B common stock to be issued and outstanding prior to this offering after giving effect to the Reorganization Transactions. See “Organizational Structure.” The numbers of shares of common stock beneficially owned, percentages of beneficial ownership and percentages of combined voting power after this offering that are set forth below are based on the number of shares of Class A common stock and Class B common stock to be issued and outstanding immediately after this offering.

In connection with this offering, we will issue to each Continuing Pre-IPO LLC Member one share of Class B common stock for each LLC Unit such Continuing Pre-IPO LLC Member beneficially owns immediately prior to the consummation of this offering. The number of shares of Class A common stock listed in the table below represents the Class A common stock that will be issued in connection with this offering and the shares of Class A common stock that were issued to the Reorganization Parties in connection with the Mergers.

In accordance with the rules of the SEC, beneficial ownership includes voting or investment power with respect to securities and includes the shares issuable pursuant to stock options that are exercisable within 60 days of _____, 2021. The number of shares of Class A common stock outstanding after this offering includes shares of common stock being offered for sale by us in this offering and the shares of Class A common stock that were issued to the Reorganization Parties in connection with the Mergers. Unless otherwise indicated, the address for each listed stockholder is: c/o Portillo’s Inc., 2001 Spring Road, Suite 400, Oak Brook, Illinois 60523. To our knowledge, except as indicated in the footnotes to this table and pursuant to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all shares of common stock.

Name and address of beneficial owner	Class A common stock Beneficially Owned					Class B Common Stock Beneficially Owned						
	Shares of Class A common stock beneficially owned before this offering		Shares of Class A common stock beneficially owned after this offering (assuming no exercise of the option to purchase additional shares)		Percentage of shares	Shares of Class B common stock beneficially owned before this offering		Shares of Class B common stock beneficially owned after this offering (assuming no exercise of the option to purchase additional shares)		Percentage of shares	Percentage of shares	
	Number of shares	Percentage of shares	Number of shares	Number of shares		Number of shares	Percentage of shares	Number of shares	Percentage of shares			
5% stockholders:												
Funds managed by Berkshire(1)												
Named executive officers and directors:												
Michael Osanloo												
Jill Waite												
Sherri Abruscato												
Michael A. Miles, Jr.												
Ann Bordelon												
Noah Glass												
Gerard J. Hart												
Richard K. Lubin(2)												
Joshua A. Lutzker(2)												
All directors and executive officers as a group (9 persons):												

* Less than 1%

(1) Represents (i) _____ shares of Class A common stock owned by Berkshire Fund VIII-A, L.P. (“Berkshire Fund VIII-A”), (ii) _____ shares of Class B common stock owned by Berkshire Fund VIII, L.P. (“Berkshire Fund VIII”), (iii) _____ shares of Class B common stock owned by Berkshire Investors III LLC (“Berkshire Investors III”), and (iv) _____ shares of Class B common stock owned by Berkshire Investors IV LLC (“Berkshire Investors IV” and together with Berkshire Fund VIII-A, Berkshire Fund VIII, Berkshire Investors III, the “Berkshire Entities”). Eighth Berkshire Associates LLC, a Delaware limited liability company (“8BA”), is the general partner of Berkshire Fund VIII-A and Berkshire Fund VIII. The managing members of 8BA are Samantha Adams, Michael C. Ascione, Matthew J. Berner, David C. Bordeau, Kenneth S. Bring, Kevin T. Callaghan, Matthew B. Gooch, Blake L. Gottesman, Christopher J. Hadley, Lawrence S. Hamelsky, Saad Hasan, Sharlyn C. Heslam, Elizabeth L. Hoffman, Matthew A. Janchar, Ross M. Jones, Benjamin D. Levy, Joshua A. Lutzker, Jonathan J. Meyer, Greg Pappas, Marni F. Payne, Anil Seetharam, Raleigh A. Shoemaker, Robert J. Small, Samuel W. Spirn and Edward J. Whelan, Jr. (the “Berkshire Principals”). Mr. Lutzker is a director of the Company. The Berkshire Principals are also the managing members of Berkshire Investors III and Berkshire Investors IV. Berkshire Fund VIII, Berkshire Fund VIII-A, Berkshire Investors III and Berkshire Investors IV often make acquisitions in, and dispose of, securities of an issuer on the same terms and conditions and at the same time. Berkshire Partners LLC, a Massachusetts limited liability company (“Berkshire Partners”), is the investment advisor to Berkshire Fund VIII and Berkshire Fund VIII-A (collectively, the “Funds”). The Berkshire Principals make investment and voting decisions for the Funds by majority vote. Berkshire Partners, the Funds, Berkshire Investors III, Berkshire Investors IV and 8BA may be deemed to constitute a “group” for purposes of Section 13(d) of the Exchange Act, although they do not admit to being part of a group, nor have they agreed to act as part of a group. The address of all the entities and the managing members mentioned above is 200 Clarendon Street, 35th Floor, Boston, Massachusetts 02116-5021.

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- (2) Excludes shares of Class A common stock and Class B common Stock held by the Berkshire Entities, as disclosed in footnote (1) above, in which Mr. Miles, Mr. Lubin and Mr. Lutzker have a pecuniary interest. Mr. Lubin and Mr. Lutzker disclaim beneficial ownership of the shares of Class A common stock and Class B common stock held by the Berkshire Entities except to the extent of their respective pecuniary interests therein.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

We describe below transactions and series of similar transactions, during our last three fiscal years or currently proposed, to which we were a party or will be a party, in which:

- the amounts involved exceeded or will exceed \$120,000; and
- any of our directors, executive officers or beneficial holders of more than 5% of any class of our capital stock had or will have a direct or indirect material interest.

Other than as described below, there have not been, nor are there any currently proposed, transactions or series of similar transactions meeting this criteria to which we have been or will be a party other than compensation arrangements, which are described where required under “Management—Board Structure” and “Executive and Director Compensation.”

Employment Arrangements

We previously issued 1,449,275 LLC units to our Chief Executive Officer and President for a stock subscription receivable of \$1.0 million. As of December 27, 2020 and December 29, 2019, the Company had \$0.5 million and \$0.7 million recorded as subscription receivable, respectively. On August 13, 2021, the remaining stock subscription receivable of \$0.2 million was fully repaid.

The table below sets forth the consideration in LLC Units and Class B common stock to be received by our directors, officers and 5% equity holders in the Reorganization Transactions:

Name	Class B Common Stock and LLC Units to Be Issued in the Reorganization Transactions
	Number
Funds managed by Berkshire	
Michael Osanloo	
Michael A. Miles, Jr.	
Ann Bordelon	
Noah Glass	
Gerard J. Hart	

The consideration set forth above and otherwise to be received in the Reorganization Transactions is subject to adjustment based on the final public offering price of our Class A common stock in this offering.

Amended Portillo’s OpCo Agreement

In connection with the Reorganization Transactions, Portillo’s Inc., Portillo’s OpCo and each of the Continuing Pre-IPO LLC Members will enter into the Amended LLC Agreement. Following the Reorganization Transactions, and in accordance with the terms of the Amended LLC Agreement, we will operate our business through Portillo’s OpCo. Pursuant to the terms of the Amended LLC Agreement, so long as the Continuing Pre-IPO LLC Members continue to own any LLC Units or securities redeemable or exchangeable into shares of our Class A common stock, we will not, without the prior written consent of such holders, engage in any business activity other than the management and ownership of Portillo’s OpCo or own any assets other than securities of Portillo’s OpCo and/or any cash or other property or assets distributed by or otherwise received from Portillo’s OpCo, unless we determine in good faith that such actions or ownership are in the best interest of Portillo’s OpCo.

As the sole managing member of Portillo's OpCo, we will have control over all of the affairs and decision making of Portillo's OpCo. As such, through our officers and directors, we will be responsible for all operational and administrative decisions of Portillo's OpCo and the day-to-day management of Portillo's OpCo's business. We will fund any dividends to our stockholders by causing Portillo's OpCo to make distributions to the holders of LLC Units and us, subject to the limitations imposed by our debt agreements. See "Dividend Policy."

The holders of LLC Units will generally incur U.S. federal, state and local income taxes on their proportionate share of any taxable income of Portillo's OpCo. The Amended LLC Agreement will provide for pro rata cash distributions to the holders of LLC Units for purposes of funding their tax obligations in respect of the taxable income of Portillo's OpCo that is allocated to them. Generally, these tax distributions will be computed based on our estimate of the net taxable income of Portillo's OpCo allocated to the holder of LLC Units that receives the greatest proportionate allocation of income multiplied by an assumed tax rate equal to the highest effective marginal combined U.S. federal, state and local income tax rate prescribed for an individual or corporation residing in New York, New York, whichever is higher. As a result of (i) potential differences in the amount of taxable income allocable to us and the other LLC Unit holders, (ii) the lower tax rate applicable to corporations than individuals and (iii) the use of an assumed tax rate in calculating Portillo's OpCo's distribution obligations, we may receive tax distributions significantly in excess of our tax liabilities and obligations to make payments under the Tax Receivable Agreement.

Except as otherwise determined by us, if at any time we issue a share of our Class A common stock, the net proceeds received by us with respect to such share, if any, shall be concurrently invested in Portillo's OpCo and Portillo's OpCo shall issue to us one LLC Unit, unless such share was issued by us solely to fund the purchase of an LLC Unit from a holder of LLC Units (upon an election by us to exchange such LLC Unit in lieu of redemption following a redemption request by such holder of LLC Units), in which case such net proceeds shall instead be transferred to the selling holder of LLC Units as consideration for such purchase, and Portillo's OpCo will not issue an additional LLC Unit to us. Similarly, except as otherwise determined by us, (i) Portillo's OpCo will not issue any additional LLC Units to us unless we issue or sell an equal number of shares of our Class A common stock and (ii) should Portillo's OpCo issue any additional LLC Units to the Continuing Pre-IPO LLC Members or any other person, we will issue an equal number of shares of our Class B common stock to such Continuing Pre-IPO LLC Members or any other person. Conversely, if at any time any shares of our Class A common stock are redeemed, purchased or otherwise acquired by us, Portillo's OpCo will redeem, purchase or otherwise acquire an equal number of LLC Units held by us, upon the same terms and for the same price per security, as the shares of our Class A common stock are redeemed, purchased or otherwise acquired. In addition, Portillo's OpCo will not effect any subdivision (by any unit split, unit distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse unit split, reclassification, reorganization, recapitalization or otherwise) of the LLC Units unless it is accompanied by a substantively identical subdivision or combination, as applicable, of each class of our common stock, and we will not effect any subdivision or combination of any class of our common stock unless it is accompanied by a substantively identical subdivision or combination, as applicable, of the LLC Units.

Under the Amended LLC Agreement, the holders of LLC Units (other than us) will have the right, from and after the completion of this offering (subject to the terms of the Amended LLC Agreement), to require Portillo's OpCo to redeem all or a portion of their LLC Units for, at our election, newly-issued shares of Class A common stock on a one-for-one basis or a cash payment from the proceeds of a sale of shares of Class A common stock in accordance with the terms of the Amended LLC Agreement. If we decide to make a cash payment, the holder of an LLC Unit has the option to rescind its redemption request within a specified time period. Upon the exercise of the redemption right, the redeeming member will surrender its LLC Units to Portillo's OpCo for cancellation. The Amended LLC Agreement requires that we contribute cash or shares of our Class A common stock to Portillo's OpCo in exchange for an amount of newly-issued LLC Units in Portillo's OpCo equal to the number of LLC Units redeemed from the holders of LLC Units. Portillo's OpCo will then distribute the cash or shares of our Class A common stock to such holder of an LLC Unit to complete the redemption. In the event of a redemption request by a holder of an LLC Unit, we may, at our option, effect a

direct exchange of cash or Class A common stock for LLC Units in lieu of such a redemption. Whether by redemption or exchange, we are obligated to ensure that at all times the number of LLC Units that we own equals the number of shares of Class A common stock issued by us (subject to certain exceptions for treasury shares and shares underlying certain convertible or exchangeable securities). Shares of Class B common stock will be canceled on a one-for-one basis if we, following a redemption request of a holder of an LLC Unit, redeem or exchange LLC Units of such holder of an LLC Unit pursuant to the terms of the Amended LLC Agreement.

The Amended LLC Agreement will provide that, in the event that a tender offer, share exchange offer, issuer bid, take-over bid, recapitalization or similar transaction with respect to our Class A common stock is proposed by us or our stockholders and approved by our Board or is otherwise consented to or approved by our Board, the holders of LLC Units will be permitted to participate in such offer by delivery of a notice of redemption or exchange that is effective immediately prior to the consummation of such offer. In the case of any such offer proposed by us, we are obligated to use our reasonable best efforts to enable and permit the holders of LLC Units to participate in such offer to the same extent or on an economically equivalent basis as the holders of shares of our Class A common stock without discrimination. In addition, we are obligated to use our reasonable best efforts to ensure that the holders of LLC Units may participate in each such offer without being required to redeem or exchange LLC Units.

The Amended LLC Agreement will provide that, except for transfers to us as provided above or to certain permitted transferees, the LLC Units and corresponding shares of Class B common stock may not be sold, transferred or otherwise disposed of.

Subject to certain exceptions, Portillo's OpCo will indemnify all of its members and their officers and other related parties, against all losses or expenses arising from claims or other legal proceedings in which such person (in its capacity as such) may be involved or become subject to in connection with Portillo's OpCo's business or affairs or the Amended LLC Agreement or any related document.

Portillo's OpCo may be dissolved upon (i) the determination by us to dissolve Portillo's OpCo or (ii) any other event which would cause the dissolution of Portillo's OpCo under the Delaware Limited Liability Company Act, unless Portillo's OpCo is continued in accordance with the Delaware Limited Liability Company Act. Upon dissolution, Portillo's OpCo will be liquidated and the proceeds from any liquidation will be applied and distributed in the following manner: (a) first, to creditors (including creditors who are members or affiliates of members) in satisfaction of all of Portillo's OpCo's liabilities (whether by payment or by making reasonable provision for payment of such liabilities, including the setting up of any reasonably necessary reserves) and (b) second, to the members in proportion to their vested LLC Units.

Tax Receivable Agreement

As described under "Organizational Structure," we will acquire certain favorable tax attributes from the Blocker Companies in the Mergers and a share of the existing tax basis of the assets of Portillo's OpCo in this offering. In addition, future redemptions or exchanges by Continuing Pre-IPO LLC Members of LLC Units for shares of our Class A common stock or cash are expected to result in favorable tax attributes for us. These tax attributes would not be available to us in the absence of those transactions and are expected to reduce the amount of tax that we would otherwise be required to pay in the future.

Upon the completion of this offering, we will be a party to a Tax Receivable Agreement with the TRA Parties. Under the Tax Receivable Agreement, we generally will be required to pay to the TRA Parties, in the aggregate, 85% of the amount of cash savings, if any, in U.S. federal, state and local income tax that we actually realize, or in certain circumstances are deemed to realize, as a result of (i) our allocable share of tax basis, including any applicable tax basis adjustments, acquired in this offering, (ii) certain favorable tax attributes we will acquire from the Blocker Companies in the Mergers (including net operating losses and the Blocker Companies' allocable share of existing tax basis), (iii) increases in our allocable share of existing tax basis and

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tax basis adjustments resulting from future redemptions or exchanges of LLC Units by Continuing Pre-IPO LLC Members for cash or Class A common stock and (iv) certain payments made under the Tax Receivable Agreement. Portillo's OpCo intends to have in effect an election under Section 754 of the Internal Revenue Code of 1986, as amended, effective for each taxable year in which a redemption or exchange (including deemed exchange) of LLC Units for Class A common stock or cash occurs. The payment obligations under the Tax Receivable Agreement are our obligations and not the obligations of Portillo's OpCo. Payments under the Tax Receivable Agreement are not conditioned on our existing owners' continued ownership of us after this offering.

We expect that the payments we will be required to make under the Tax Receivable Agreement will be substantial. Assuming no material changes in relevant tax law and that we earn sufficient taxable income to realize all tax benefits that are subject to the Tax Receivable Agreement, we expect future payments under the Tax Receivable Agreement relating to the purchase by us of LLC Units in connection with this offering, and the Mergers to be approximately \$ (or approximately \$ if the underwriters exercise their option to purchase additional shares, the proceeds of which will be used by Portillo's Inc. to acquire additional LLC Units from Portillo's OpCo) and, based on certain assumptions, to range over the next 15 years from approximately \$ to \$ per year (or range from approximately \$ to \$ per year if the underwriters exercise their option to purchase additional shares) and decline thereafter. These estimates are based on an initial public offering price of \$ per share of Class A common stock, which is the midpoint of the estimated public offering price range set forth on the cover page of this prospectus. Future payments in respect of subsequent redemptions or exchanges would be in addition to these amounts and are expected to be substantial. The foregoing numbers are merely estimates—the actual payments could differ materially. It is possible that future transactions or events could increase or decrease the actual tax benefits realized and the corresponding Tax Receivable Agreement payments. There may be a material negative effect on our liquidity if, as a result of timing discrepancies or otherwise, the payments under the Tax Receivable Agreement exceed the actual benefits we realize in respect of the tax benefits that are subject to the Tax Receivable Agreement and/or distributions to us by Portillo's OpCo are not sufficient to permit us to make payments under the Tax Receivable Agreement after we have paid taxes.

The actual tax attributes, as well as any amounts paid to the TRA Parties under the Tax Receivable Agreement, will vary depending on a number of factors, including:

- *the timing of redemptions or exchanges*—for instance, the increase in any tax deductions will vary depending on the fair market value, which may fluctuate over time, of the depreciable or amortizable assets of Portillo's OpCo at the time of each redemption or exchange. In addition, the increase in Portillo's Inc.'s allocable share of existing tax basis acquired upon the future exchange of LLC Units for shares of Class A common stock will vary depending on the amount of remaining existing tax basis at the time of such redemption or exchange;
- *the price of shares of our Class A common stock at the time of the redemption or exchange*—the increase in any tax deductions, as well as the tax basis increase in other assets, of Portillo's OpCo, is directly proportional to the price of shares of our Class A common stock at the time of the redemption or exchange;
- *the extent to which such redemptions or exchanges are taxable*—if an exchange is not taxable for any reason, increased tax deductions as a result of the Section 754 election mentioned above will not be available to generate payments under the Tax Receivable Agreement;
- *the amount of Blocker tax attributes*—the amount of applicable tax attributes of the Blocker Companies at the time of the Mergers will impact the amount and timing of payments under the Tax Receivable Agreement;

- *changes in tax rates*—payments under the Tax Receivable Agreement will be calculated using the actual U.S. federal income tax rate in effect for the applicable period and an assumed, weighted-average state and local income tax rate based on apportionment factors for the applicable period, so changes in tax rates will impact the magnitude of cash tax benefits covered by the Tax Receivable Agreement and the amount of payments under the Tax Receivable Agreement; and
- *the amount and timing of our income*—Portillo's Inc. is obligated to pay 85% of the cash tax benefits under the Tax Receivable Agreement as and when realized. If Portillo's Inc. does not have taxable income, Portillo's Inc. is not required (absent certain changes of control or other circumstances requiring an early termination payment) to make payments under the Tax Receivable Agreement for a taxable year in which it does not have taxable income because no cash tax benefits will have been realized. However, any tax attributes that do not result in realized benefits in a given tax year will likely generate tax attributes that may be utilized to generate benefits in previous or future tax years. The utilization of such tax attributes will result in cash tax benefits that will result in payments under the Tax Receivable Agreement.

In addition, the depreciation and amortization periods that apply to the increases in tax basis, the timing and amount of any earlier payments that we may have made under the Tax Receivable Agreement and the portion of our payments under such Tax Receivable Agreement that constitute imputed interest or give rise to depreciable or amortizable tax basis are also relevant factors.

Decisions made by the Pre-IPO LLC Members in the course of running our business may influence the timing and amount of payments that are received by an exchanging or selling existing owner under the Tax Receivable Agreement. For example, the earlier disposition of assets following an exchange or acquisition transaction may accelerate payments under the Tax Receivable Agreement and increase the present value of such payments, and the disposition of assets before an exchange or acquisition transaction will increase an existing owner's tax liability without giving rise to any rights of an existing owner to receive payments under the Tax Receivable Agreement.

Payments under the Tax Receivable Agreement will be based on the tax reporting positions we determine, and the IRS or another taxing authority may challenge all or a part of the existing tax basis, deductions, tax basis increases, net operating losses or other tax attributes subject to the Tax Receivable Agreement, and a court could sustain such challenge. Payments we will be required to make under the Tax Receivable Agreement generally will not be reduced as a result of any taxes imposed on us, Portillo's OpCo or any direct or indirect subsidiary thereof that are attributable to a tax period (or portion thereof) ending on or before the Mergers or the date of the completion of this offering. Further, the TRA Parties will not reimburse us for any payments previously made if such tax attributes are subsequently disallowed, except that any excess payments made to a TRA Party will be netted against future payments otherwise to be made to such TRA Party under the Tax Receivable Agreement, if any, after our determination of such excess. In addition, the actual state or local tax savings we may realize may be different than the amount of such tax savings we are deemed to realize under the Tax Receivable Agreement, which will be based on an assumed combined state and local tax rate applied to our reduction in taxable income as determined for U.S. federal income tax purposes as a result of the tax attributes subject to the Tax Receivable Agreement. In both such circumstances, we could make payments to the TRA Parties that are greater than our actual cash tax savings and we may not be able to recoup those payments, which could negatively impact our liquidity. The Tax Receivable Agreement provides that (1) in the event that we breach any of our material obligations under the Tax Receivable Agreement, (2) upon certain changes of control or (3) if, at any time, we elect an early termination of the Tax Receivable Agreement, our obligations under the Tax Receivable Agreement (with respect to all LLC Units, whether or not LLC Units have been exchanged or acquired before or after such transaction) would accelerate and become payable in a lump sum amount equal to the present value of the anticipated future cash tax benefits calculated based on certain assumptions, including that we would have sufficient taxable income to fully utilize the deductions arising from the tax deductions, tax basis and other tax attributes subject to the Tax Receivable Agreement. The change of control provisions in the Tax Receivable Agreement may result in situations where the TRA Parties have

interests that differ from or are in addition to those of our other stockholders. The present value of such anticipated future cash tax benefits are discounted at a rate equal to . Assuming that the market value of a share of Class A common stock were to be equal to an initial public offering price of \$ per share of Class A common stock (the midpoint of the price range set forth on the cover of this prospectus) and a discount rate of , we estimate that the aggregate amount of these termination payments would be approximately \$ if Portillo's Inc. were to exercise its early termination right immediately following this offering.

Finally, because we are a holding company with no operations of our own, our ability to make payments under the Tax Receivable Agreement depends on the ability of Portillo's OpCo to make distributions to us. To the extent that we are unable to make payments under the Tax Receivable Agreement for any reason, such payments will be deferred and will accrue interest until paid. Nonpayment for a specified period, however, may constitute a breach of a material obligation under the Tax Receivable Agreement and therefore accelerate payments due under the Tax Receivable Agreement (unless, generally, such nonpayment is due to a lack of sufficient funds), which could negatively impact our results of operations and could also affect our liquidity in periods in which such payments are made.

Registration Rights Agreement

Prior to the consummation of this offering, we intend to enter into a registration rights agreement with certain of the Pre-IPO LLC Members.

Receivables

As of December 27, 2020 and December 29, 2019, the related parties' receivables consisted of a receivable balance due from C&O, which Portillo's OpCo has a 50% interest in, of \$0.2 million and \$0.4 million, respectively, which is included in accounts receivable in the consolidated balance sheets.

Olo

Noah Glass, a member of our Board, is the founder and CEO of Mobo Systems, Inc. (also known as "Olo"), a platform Portillo's OpCo uses in connection with its mobile ordering application and delivery. Portillo's OpCo incurred \$1.2 million in net Olo-related costs for the year ended December 27, 2020. Of these expenses, \$0.7 million were included in cost of goods sold, excluding depreciation and amortization and \$0.5 million were included in operating expenses in the consolidated statements of operations. Portillo's OpCo incurred \$1.0 million in net Olo-related costs for the year ended December 29, 2019. Of these expenses, \$0.7 million were included in cost of goods sold, excluding depreciation and amortization and \$0.3 million were included in operating expenses in the consolidated statements of operations. As of December 27, 2020 and December 29, 2019, \$0.2 million and \$0.3 million respectively were payable to Olo and were included in accounts payable in the consolidated balance sheets.

Consulting Agreement

Portillo's OpCo leases 21 real properties from Richard Portillo through his ownership of Richport Property, LLC, pursuant to a sale-leaseback transaction completed in late 2014. Mr. Portillo was the former President, CEO and owner of Portillo's OpCo, as comprised at the date of the Berkshire Acquisition. Portillo's OpCo made \$7.1 million in rental payments related to the aforementioned 21 locations, during each of the years ended December 27, 2020 and December 29, 2019, respectively. Mr. Portillo served as a consultant under an agreement with Portillo's Holdings, LLC (the "Consulting Agreement"). On August 1, 2019, the Consulting Agreement was extended through July 2021. Under the terms of the Consulting Agreement, \$2.0 million was paid annually for various consulting services, which was included in general and administrative expenses in the consolidated statements of operations. The Consulting Agreement terminated on July 31, 2021 and has not been renewed.

Related Party Transactions Policies and Procedures

In connection with this offering, we will adopt a written Related Person Transaction Policy (the “Policy”), which will set forth our policy with respect to the review, approval, ratification and disclosure of all related person transactions by our Audit Committee. In accordance with the Policy, our Audit Committee will have overall responsibility for implementation of and compliance with the Policy.

For purposes of the Policy, a “related person transaction” is a transaction, arrangement or relationship (or any series of similar transactions, arrangements or relationships) in which we were, are or will be a participant and the amount involved exceeded, exceeds or will exceed \$120,000 and in which any related person (as defined in the Policy) had, has or will have a direct or indirect material interest. A “related person transaction” does not include any employment relationship or transaction involving an executive officer and any related compensation resulting solely from that employment relationship that has been reviewed and approved by our Board or our Compensation Committee, as applicable. A “related person” includes (i) our directors, director nominees or executive officers, (ii) any 5% beneficial owner of our voting securities, or (iii) any immediate family member of the foregoing.

The Policy will require that notice of a proposed related person transaction be provided to our General Counsel prior to entry into such transaction. If our General Counsel determines that such transaction is a related person transaction, the proposed transaction will be submitted to our Audit Committee for consideration at its next meeting. Under the Policy, our Audit Committee may approve only those related person transactions that are in, or are not inconsistent with, our best interests. In reviewing and approving any related party transaction, the Audit Committee is tasked to consider all of the relevant facts and circumstances, and consideration of various factors enumerated in the Policy.

The Policy will also provide that the Audit Committee review certain previously approved or ratified related person transactions that are ongoing to determine whether the related person transaction remains in our best interests and the best interests of our stockholders. Additionally, we will make periodic inquiries of directors and executive officers with respect to any potential related person transaction of which they may be a party or of which they may be aware.

DESCRIPTION OF MATERIAL INDEBTEDNESS

Credit Facilities

First Lien Credit Facilities

On August 1, 2014, Portillo's Holdings, LLC, a Delaware limited liability company (the "Borrower"), entered into a first lien credit agreement (the "First Lien Credit Agreement"), among the Borrower, PHD Intermediate LLC, a Delaware limited liability company ("Holdings"), UBS AG, Stamford Branch, as administrative agent and collateral agent (the "First Lien Administrative Agent"), and the lenders from time to time party thereto, pursuant to which the lenders party thereto agreed to provide secured credit facilities, consisting of (i) an initial term loan facility in an original principal amount equal to \$335.0 million (the "Initial First Lien Term B Loans") and (ii) a revolving credit facility in an original principal amount equal to \$30.0 million, including a letter of credit sub-facility with a \$7.5 million sublimit (the "Revolving Facility" and the loans thereunder, the "Revolving Loans"). On October 25, 2016, the Borrower entered into a first amendment to the First Lien Credit Agreement (the "First Amendment to First Lien Credit Agreement"), pursuant to which the lenders party thereto agreed to add additional term loans in a principal amount equal to \$71.0 million (the "First Lien Term B-2 Loans"). On May 18, 2018, the Borrower entered into a second amendment to the First Lien Credit Agreement pursuant to which the maturity date of the revolving loan commitments was extended. On December 6, 2019, the Borrower entered into a third amendment to the First Lien Credit Agreement (the "Third Amendment to First Lien Credit Agreement"), pursuant to which (i) the lenders party thereto agreed to increase the aggregate commitments with respect to the Revolving Facility to \$50.0 million and (ii) the Initial First Lien Term B Loans and the First Lien Term B-2 Loans were either repaid or converted into a single tranche of term loans (the "First Lien Term B-3 Loans," and together with the Revolving Facility, the "First Lien Credit Facilities").

Second Lien Credit Facility

On August 1, 2014, the Borrower entered into a second lien credit agreement (the "Second Lien Credit Agreement" and together with the First Lien Credit Agreement, the "Credit Agreements"), among the Borrower, Holdings, UBS AG, Stamford Branch, as administrative agent and collateral agent (the "Second Lien Administrative Agent" and together with the First Lien Administrative Agent, the "Administrative Agent"), and the lenders from time to time party thereto, pursuant to which the lenders party thereto agreed to provide a secured credit facility, consisting of an initial term loan facility (the related term loans, the "Initial Second Lien Term B Loans") in an original principal amount equal to \$80.0 million. On October 25, 2016, the Borrower entered into a first amendment to the Second Lien Credit Agreement (the "First Amendment to Second Lien Credit Agreement"), pursuant to which the lenders party thereto agreed to lend additional term loans in a principal amount equal to \$25.0 million (the "Second Lien Term B-2 Loans"). On December 6, 2019, the Borrower entered into a second amendment to the Second Lien Credit Agreement (the "Second Amendment to Second Lien Credit Agreement"), pursuant to which the Initial Second Lien Term B Loans and the Second Lien Term B-2 Loans were either repaid or converted into a single tranche of term loans and the lenders agreed to provide additional term loans (the "Second Lien Term B-3 Loans," the loans collectively, the "Second Lien Credit Facility" and together with the First Lien Credit Facilities, the "Credit Facilities").

Interest Rate and Fees

Borrowings under the Credit Facilities bear interest, at the Borrower's option, at a rate per annum equal to either (a)(i) an adjusted London interbank offered rate (the "Eurocurrency Rate"); provided that in no event will the Eurocurrency Rate, (A) in the case of the First Lien Credit Facilities, be less than 1.00% and (B) in the case of the Second Lien Credit Facility, be less than 1.25% plus (ii) the applicable Eurocurrency Rate spread or (b)(i) the base rate ("Base Rate") plus (ii) the applicable Base Rate spread. Base Rate is a floating rate per annum equal to the highest of (i) the federal funds effective rate plus 0.50%, (ii) to rate of interest in effect for such day as the Administrative Agent's "prime rate," and (iii) the Eurocurrency Rate for a 1-month interest period on such

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day plus 1.00%; provided that in no event will the Base Rate (i) in the case of the First Lien Credit Facilities, be less than 2.00% and (ii) in the case of the Second Lien Credit Facility, be less than 2.25%.

First Lien Credit Facilities

With respect to the First Lien Term B-3 Loans, the applicable spread for (i) any loans using the Eurocurrency Rate is 5.50% and (ii) any loans using the Base Rate is 4.50%.

The applicable Eurocurrency Rate spread and Base Rate spread for Revolving Loans and letters of credit and the commitment fee for the amount of unused commitments under the Revolving Facility will be calculated based upon the first lien net leverage ratio of the Borrower and its restricted subsidiaries on a consolidated basis, as set forth below.

<u>Pricing Level</u>	<u>Consolidated First Lien Net Leverage Ratio</u>	<u>Eurocurrency Rate spread Revolving Loans and Letters of Credit</u>	<u>Base Rate spread Revolving Loans</u>	<u>Commitment Fee Rate</u>
1	>4.25:1.00	3.75%	2.75%	0.500%
2	£4.25:1.00 and >3.75:1.00	3.50%	2.50%	0.375%
3	£3.75:1.00	3.25%	2.25%	0.250%

The following fees are required to be paid under the First Lien Credit Facilities:

- a participation fee to each revolving lender payable quarterly in arrears at a rate equal to the applicable Eurocurrency Rate for Revolving Loans multiplied by the daily face amount of such revolving lender's letter of credit exposure;
- a customary fronting fee to each issuing bank payable quarterly in arrears on the daily face amount of such issuing bank's letter of credit exposure and such issuing bank's standard fees with respect to the issuance, amendment, renewal or extension of letters of credit or processing of drawings thereunder; and
- an annual administrative agency fee payable to the First Lien Administrative Agent.

Second Lien Credit Facility

The applicable spread for the Second Lien Term B-3 Loans using (i) the Eurocurrency Rate is 9.50% and (ii) the Base Rate is 8.50%. An annual administrative agency fee payable to the Second Lien Administrative Agent is required to be paid under the Second Lien Credit Facility.

Voluntary Prepayments

First Lien Credit Facilities

Subject to certain notice requirements, the Borrower may voluntarily prepay outstanding loans under the First Lien Credit Agreement in whole or in part without premium or penalty other than customary "breakage" costs with respect to Eurocurrency Rate loans.

Second Lien Credit Facility

Subject to certain notice requirements, the Borrower may voluntarily prepay outstanding loans under the Second Lien Credit Agreement in whole or in part (i) if prepayment is made prior to December 6, 2021, in an

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amount equal to 102% of the aggregate principal amount of the Second Lien Term B-3 Loans prepaid, (iii) if the prepayment is made prior to December 6, 2022, in an amount equal to 101% of the aggregate principal amount of Second Lien Term B-3 Loans prepaid and (ii) thereafter without premium or penalty, in either case, subject to customary “breakage” costs with respect to Eurocurrency Rate loans.

Amortization; Mandatory Prepayments; Final Maturity

First Lien Credit Facilities

The First Lien Term B-3 Loans amortize at an annual rate equal to 1.00% per annum, payable in equal quarterly installments of 0.25% of the original principal amount of the First Lien Term B-3 Loans. The Revolving Loans do not require amortization payments.

In addition, the First Lien Credit Agreement requires mandatory prepayments of the loans thereunder with:

- 50% of excess cash flow for each fiscal year, minus, at the Borrower’s option, the amount of any voluntary prepayment of loans under the First Lien Credit Facilities (in the case of any voluntary prepayment of Revolving Loans, to the extent accompanied by a permanent reduction of the related commitment), subject to other exceptions and subject to stepdowns to (i) 25% if the secured net leverage ratio is less than or equal to 5.50:00 and greater than 5.00:1.00 and (ii) 0% if the secured net leverage ratio is less than or equal to 5.00:1.00;
- 100% of the net cash proceeds of certain asset sales and/or insurance/condemnation events; and
- 100% of the net cash proceeds of any issuance or incurrence of debt that is not permitted by the First Lien Credit Agreement.

The maturity dates of the First Lien Term B-3 Loans and the Revolving Loans is September 6, 2024 and June 6, 2024, respectively.

Second Lien Credit Facility

The Second Lien Term B-3 Loans do not require amortization payments.

In addition, the Second Lien Credit Agreement requires mandatory prepayments of the loans thereunder in a manner consistent with the First Lien Credit Agreement, except no prepayment is required prior to the termination of the First Lien Credit Facilities.

The maturity date of the Second Lien Term B-3 Loans is December 6, 2024.

Guarantors

The obligations of the Borrower under the Credit Agreements are guaranteed by Holdings and each wholly-owned domestic subsidiary of the Borrower, subject to certain exceptions. Certain future-formed or acquired wholly owned domestic subsidiaries of the Borrower (subject to certain exceptions) will also be required to guarantee the obligations under each Credit Agreement.

Security

The obligations of the Borrower under the Credit Agreements are secured by (i) in the case of the First Lien Credit Agreement, first-priority security interests in substantially all of the assets of the Borrower and the guarantors and (ii) in the case of the Second Lien Credit Agreement, second-priority security interests in substantially all of the assets of the Borrower and the guarantors, in each case, subject to permitted liens and other exceptions.

Certain Covenants; Representations and Warranties

The Credit Agreements contain customary affirmative covenants (including reporting obligations) and negative covenants and require the Borrower to make customary representations and warranties. The negative covenants, among other things and subject to certain exceptions, limit the ability of the Borrower and certain of its subsidiaries to:

- incur or guarantee additional indebtedness;
- create liens;
- pay dividends or make other distributions in respect of equity;
- make payments in respect of subordinated debt;
- enter into burdensome agreements with negative pledge clauses or restrictions on subsidiary distributions;
- make investments, including acquisitions, loans, and advances;
- consolidate, merge, liquidate, or dissolve;
- sell, transfer, or otherwise dispose of assets;
- engage in transactions with affiliates;
- materially alter the business conducted by the Borrower and certain of its subsidiaries;
- change the fiscal year of the Borrower; and
- amend or otherwise change the terms of the documentation governing certain restricted debt.

Financial Covenant

The Revolving Facility includes a springing financial covenant that will be tested only if the revolving credit exposure exceeds 35% of the aggregate amount of revolving credit commitments as of the last day of any fiscal quarter (which calculation will exclude letter of credit obligations that have been cash collateralized or backstopped in full and obligations with respect to other letters of credit in an aggregate amount not to exceed \$5.0 million). If such condition is met, the financial covenant requires the Borrower to maintain a ratio of consolidated first lien net debt to consolidated EBITDA (with certain adjustments) no greater than 6.50 to 1.00 on the last day of each of its four most recent fiscal quarters.

The First Lien Term B-3 Loans and the Second Lien Credit Facility do not include a financial covenant.

Events of Default

The Credit Agreements contain customary events of default, subject in certain circumstances to specified grace periods, thresholds and exceptions, including, among others, payment defaults, cross-defaults to certain material indebtedness, covenant defaults, material inaccuracy of representations and warranties, bankruptcy events, material judgments, material defects with respect to guarantees and collateral and change of control. If an event of default occurs, the lenders will be entitled to take various actions, including acceleration of the loans and termination of the commitments under the Credit Agreements, foreclosure on collateral and all other remedial actions available to a secured creditor. Bankruptcy events and the failure to pay certain amounts owing under the Credit Agreements may result in an increased interest rate equal to 2.00% per annum plus the applicable interest rate for such outstanding loans.

DESCRIPTION OF CAPITAL STOCK

In connection with this offering, we will amend and restate our certificate of incorporation and our bylaws. The following is a description of the material terms of, and is qualified in its entirety by, our certificate of incorporation and bylaws, each of which will be in effect upon the consummation of this offering, the forms of which are filed as exhibits to the registration statement of which this prospectus forms a part. Under “Description of Capital Stock,” “we,” “us,” “our” and “our company” refer to Portillo’s Inc.

General

Upon the consummation of this offering, our authorized capital stock will consist of _____ shares of Class A common stock, par value \$0.01 per share, _____ shares of Class B common stock, par value \$0.01, and _____ shares of preferred stock, par value \$ _____ per share. Unless our Board determines otherwise, we will issue all shares of our capital stock in uncertificated form.

Common stock

Class A Common Stock

Holders of shares of our Class A common stock are entitled to one vote for each share held of record on all matters on which stockholders are entitled to vote generally, including the election or removal of directors. The holders of our Class A common stock do not have cumulative voting rights in the election of directors.

Holders of shares of our Class A common stock are entitled to receive dividends when and if declared by our Board out of funds legally available therefor, subject to any statutory or contractual restrictions on the payment of dividends and to any restrictions on the payment of dividends imposed by the terms of any outstanding preferred stock.

Upon our liquidation, dissolution or winding up and after payment in full of all amounts required to be paid to creditors and to the holders of preferred stock having liquidation preferences, if any, the holders of shares of our Class A common stock will be entitled to receive pro rata our remaining assets available for distribution.

All shares of our Class A common stock that will be outstanding at the time of the completion of the offering will be fully paid and non-assessable. The Class A common stock will not be subject to further calls or assessments by us. The rights, powers and privileges of our Class A common stock will be subject to those of the holders of any shares of our preferred stock or any other series or class of stock we may authorize and issue in the future.

Class B Common Stock

Each share of Class B common stock will entitle its holder to one vote per share on all matters submitted to a vote of our stockholders. If at any time the ratio at which LLC Units are redeemable or exchangeable for shares of our Class A common stock changes from one-for-one as described under “Certain Relationships and Related Party Transactions—Amended Portillo’s OpCo Agreement,” the number of votes to which Class B common stockholders are entitled will be adjusted accordingly. The holders of our Class B common stock do not have cumulative voting rights in the election of directors.

Except for transfers to us pursuant to the Amended LLC Agreement or to certain permitted transferees, the LLC Units and corresponding shares of Class B common stock may not be sold, transferred or otherwise disposed of. Holders of shares of our Class B common stock will vote together with holders of our Class A common stock as a single class on all matters on which stockholders are entitled to vote, except as otherwise required by law.

The Class B common stock is not entitled to economic interests in Portillo's Inc. Holders of our Class B common stock do not have any right to receive dividends or to receive a distribution upon a liquidation or winding up of Portillo's Inc. However, if Portillo's OpCo makes distributions to Portillo's Inc., the other holders of LLC Units, including the Continuing Pre-IPO LLC Members, will be entitled to receive distributions pro rata in accordance with the percentages of their respective LLC Units. The Class B common stock will not be subject to further calls or assessment by us.

Preferred Stock

No shares of preferred stock will be issued or outstanding immediately after the offering contemplated by this prospectus. Our amended and restated certificate of incorporation will authorize our Board to establish one or more series of preferred stock (including convertible preferred stock). Unless required by law or any stock exchange, the authorized shares of preferred stock will be available for issuance without further action by holders of our common stock. Our Board will be able to determine, with respect to any series of preferred stock, the powers (including voting powers), preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, including, without limitation:

- the designation of the series;
- the number of shares of the series, which our Board may, except where otherwise provided in the preferred stock designation, increase (but not above the total number of authorized share of the class) or decrease (but not below the number of shares then outstanding);
- whether dividends, if any, will be cumulative or non-cumulative and the dividend rate of the series;
- the dates at which dividends, if any, will be payable;
- the redemption rights and price or prices, if any, for shares of the series;
- the terms and amounts of any sinking fund provided for the purchase or redemption of shares of the series;
- the amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of our company;
- whether the shares of the series will be convertible into shares of any other class or series, or any other security, of our company or any other entity, and, if so, the specification of the other class or series or other security, the conversion price or prices or rate or rates, any rate adjustments, the date or dates as of which the shares will be convertible and all other terms and conditions upon which the conversion may be made;
- restrictions on the issuance of shares of the same series or of any other class or series; and
- the voting rights, if any, of the holders of the series.

We could issue a series of preferred stock that could, depending on the terms of the series, impede or discourage an acquisition attempt or other transaction that some, or a majority, of the holders of our common stock might believe to be in their best interests or in which the holders of our common stock might receive a premium over the market price of the shares of common stock. Additionally, the issuance of preferred stock may adversely affect the holders of our common stock by restricting dividends on the common stock, diluting the voting power of the common stock or subordinating the liquidation rights of the common stock. As a result of these or other factors, the issuance of preferred stock could have an adverse impact on the market price of our common stock.

Authorized but Unissued Capital Stock

Delaware law does not require stockholder approval for any issuance of authorized shares. However, the listing requirements of the Nasdaq, which would apply so long as the shares of Class A common stock

remains listed on the Nasdaq, require stockholder approval of certain issuances equal to or exceeding 20% of the then outstanding voting power or the then outstanding number of shares of Class A common stock (we believe the position of the Nasdaq is that the calculation in this latter case treats as outstanding shares of Class A common stock issuable upon redemption or exchange of outstanding LLC Units not held by Portillo's Inc.). These additional shares of Class A common stock may be used for a variety of corporate purposes, including future public offerings, to raise additional capital or to facilitate acquisitions.

One of the effects of the existence of unissued and unreserved common stock or preferred stock may be to enable our Board to issue shares to persons friendly to current management, which issuance could render more difficult or discourage an attempt to obtain control of our company by means of a merger, tender offer, proxy contest or otherwise, and thereby protect the continuity of our management and possibly deprive the stockholders of opportunities to sell their shares at prices higher than prevailing market prices.

Dividends

The DGCL permits a corporation to declare and pay dividends out of "surplus" or, if there is no "surplus," out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. "Surplus" is defined as the excess of the net assets of the corporation over the amount determined to be the capital of the corporation by its board of directors. The capital of the corporation is typically calculated to be (and cannot be less than) the aggregate par value of all issued shares of capital stock. Net assets equal the fair value of the total assets minus total liabilities. The DGCL also provides that dividends may not be paid out of net profits if, after the payment of the dividend, remaining capital would be less than the capital represented by the outstanding stock of all classes having a preference upon the distribution of assets. Declaration and payment of any dividend will be subject to the discretion of our Board. See also "Dividend Policy."

Stockholder Meetings

Our amended and restated certificate of incorporation and our amended and restated bylaws will provide that annual stockholder meetings will be held at a date, time and place, if any, as exclusively selected by our Board. Our amended and restated certificate of incorporation will provide that, subject to any special rights of the holders as required by law, special meetings of the stockholders can only be called by the chairman of the Board, the chief executive officer of the Company. Stockholders are not permitted to call a special meeting or to require the Board to call a special meeting. To the extent permitted under applicable law, we may conduct meetings by remote communications, including by webcast.

Transferability, Redemption and Exchange

Under the Amended LLC Agreement, the holders of LLC Units will have the right, from and after the completion of this offering (subject to the terms of the Amended LLC Agreement), to require Portillo's OpCo to redeem all or a portion of their LLC Units for, at our election, newly issued shares of Class A common stock on a one-for-one basis or a cash payment from the proceeds of a sale of shares of Class A common stock in accordance with the terms of the Amended LLC Agreement. Additionally, in the event of a redemption request by a holder of LLC Units, we may, at our election, effect a direct exchange of cash or Class A common stock for LLC Units in lieu of such a redemption. Shares of Class B common stock will be canceled on a one-for-one basis if we, following a redemption request of a holder of LLC Units, redeem or exchange LLC Units of such holder of LLC Units pursuant to the terms of the Amended LLC Agreement. See "Certain Relationships and Related Party Transactions—Amended Portillo's OpCo Agreement."

Except for transfers to us pursuant to the Amended LLC Agreement or to certain permitted transferees, the LLC Units and corresponding shares of Class B common stock may not be sold, transferred or otherwise disposed of.

Other Provisions

Neither the Class A common stock nor the Class B common stock has any preemptive or other subscription rights.

There will be no redemption, conversion or sinking fund provisions applicable to the Class A common stock or Class B common stock.

At such time when no LLC Units remain redeemable or exchangeable for shares of our Class A common stock, our Class B common stock will be canceled.

Anti-takeover Provisions

Our amended and restated certificate of incorporation and amended and restated bylaws will contain provisions that delay, defer or discourage transactions involving an actual or potential change in control of us or change in our management. We expect that these provisions, which are summarized below, will discourage coercive takeover practices or inadequate takeover bids. These provisions will be designed to encourage persons seeking to acquire control of us to first negotiate with our Board, which we believe may result in an improvement of the terms of any such acquisition in favor of our stockholders. However, they will also give our Board the power to discourage transactions that some stockholders may favor, including transactions in which stockholders might otherwise receive a premium for their shares or transactions that our stockholders might otherwise deem to be in their best interests. Accordingly, these provisions could adversely affect the price of our common stock.

Special Meetings of Stockholders

Our amended and restated bylaws will provide that special meetings of the stockholders may be called only upon the request of a majority of our Board, our Chair or upon the request of the Chief Executive Officer. Our amended and restated bylaws will prohibit the conduct of any business at a special meeting other than as specified in the notice for such meeting. These provisions may have the effect of deferring, delaying or discouraging hostile takeovers or changes in control or management of our company.

Advance Notice of Nominations and Other Business

Our amended and restated bylaws will establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of our Board or a committee of our Board. In order for any matter to be “properly brought” before a meeting, a stockholder will have to comply with the advance notice requirements of directors, which may be filled only by a vote of a majority of directors then in office, even though less than a quorum, and not by the stockholders. Our amended and restated bylaws will allow the presiding officer at a meeting of the stockholders to adopt rules and regulations for the conduct of meetings, which may have the effect of precluding the conduct of certain business at a meeting if the rules and regulations are not followed. These provisions may also defer, delay or discourage a potential acquiror from conducting a solicitation of proxies to elect the acquiror’s own slate of directors or otherwise attempting to obtain control of our company.

Board of Directors and Related Provisions

Our amended and restated certificate of incorporation will provide that our Board will be elected annually by plurality vote to serve until the next annual meeting of stockholders or until their successors are duly elected and qualified.

The number of directors constituting our Board is determined from time to time by our Board. Our amended and restated certificate of incorporation will also provide that, subject to any rights of any preferred

stock then outstanding, any director may be removed from office at any time with or without cause and only by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote for the election of directors, considered for this purpose as one class. In addition, our amended and restated certificate of incorporation will provide that any vacancy on the Board, including a vacancy that results from an increase in the number of directors, may be filled only by a majority of the directors then in office or by an affirmative vote of the sole remaining director. This provision, in conjunction with the provisions of our amended and restated certificate of incorporation authorizing our Board to fill vacancies on the Board, will prevent stockholders from filling the resulting vacancies with their own nominees.

No Stockholder Action by Written Consent

Our amended and restated certificate of incorporation will provide that after the time that our Sponsor and its affiliates collectively own less than 50% of our then outstanding common stock, subject to the rights of any holders of preferred stock to act by written consent instead of a meeting, stockholder action may be taken only at an annual meeting or special meeting of stockholders and may not be taken by written consent instead of a meeting. Failure to satisfy any of the requirements for a stockholder meeting could delay, prevent or invalidate stockholder action.

Section 203 of the DGCL

Our amended and restated certificate of incorporation will provide that the provisions of Section 203 of the DGCL, which relate to business combinations with interested stockholders, do not apply to us. Section 203 of the DGCL prohibits a publicly held Delaware corporation from engaging in a business combination transaction with an interested stockholder (a stockholder who owns more than 15% of our common stock) for a period of three years after the interested stockholder became such unless the transaction fits within an applicable exemption, such as Board approval of the business combination or the transaction that resulted in such stockholder becoming an interested stockholder. These provisions will apply even if the business combination could be considered beneficial by some stockholders. Our amended and restated certificate of incorporation will contain provisions that have the same effect as Section 203 of the DGCL, but such provisions will not apply to our Sponsor and its affiliates. Although we have elected to opt out of the statute's provisions, we could elect to be subject to Section 203 in the future.

Amendment to Bylaws and Certificate of Incorporation

Any amendment to our amended and restated certificate of incorporation must first be approved by a majority of our Board and if required by law, thereafter be approved by a majority of the outstanding shares entitled to vote on the amendment. Our amended and restated bylaws may be amended by (i) the affirmative vote of a majority of the directors then in office, subject to any limitations set forth in the bylaws, without further stockholder action or (ii) the affirmative vote of at least a majority of the outstanding shares entitled to vote on the amendment, without further action by our Board.

Exclusive Forum

Our amended and restated certificate of incorporation will provide that, unless we consent in writing to an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery lacks jurisdiction, a state court located within the State of Delaware or the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for any (i) derivative action or proceeding brought on our behalf, (ii) action asserting a claim of breach of a fiduciary duty or other wrongdoing by any current or former director, officer, employee, agent or stockholder to us or our stockholders, (iii) action asserting a claim arising pursuant to any provision of the DGCL, our amended and restated certificate of incorporation, or our amended and restated bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, or (iv) action asserting a claim governed by the internal affairs doctrine of the law of the State of Delaware.

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Our amended and restated certificate of incorporation will also provide that the foregoing exclusive forum provision does not apply to actions brought to enforce any liability or duty created by the Securities Act or Exchange Act, or any other claim or cause of action for which the federal courts have exclusive jurisdiction.

Additionally, because the Securities Act provides for concurrent federal and state jurisdiction, our amended and restated certificate of incorporation will also provide that, unless we consent in writing to an alternative forum, the federal district courts of the United States shall be the sole and exclusive forum for the resolution of any action asserting a claim arising under the Securities Act, or the rules and regulations promulgated thereunder. Pursuant to the Exchange Act, claims arising there under must be brought in federal district courts of the United States.

To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in any shares of our capital stock shall be deemed to have notice of and consented to the forum provision in our amended and restated certificate of incorporation. In any case, stockholders will not be deemed to have waived our compliance with the federal securities laws and the rules and regulations thereunder. The enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that a court could find these types of provisions to be inapplicable or unenforceable. Our amended and restated certificate of incorporation will also provide that any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of and consented to this choice of forum provision. These exclusive forum provisions may have the effect of discouraging lawsuits against our directors and officers.

Corporate Opportunities

Our amended and restated certificate of incorporation will provide that neither our Sponsor nor a director affiliated with a Sponsors will have any obligation to offer us an opportunity to participate in business opportunities presented to such Sponsor even if the opportunity is one that we might reasonably have pursued (and therefore may be free to compete with us in the same business or similar businesses), and that, to the extent permitted by law, no Sponsor will be liable to us or our stockholders for breach of any duty by reason of any such activities.

Listing

We will apply to have our Class A common stock approved for listing on the Nasdaq under the symbol "PTLO."

Transfer Agent and Registrar

The transfer agent and registrar for the Class A common stock is .

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our Class A common stock. We cannot make any prediction as to the effect, if any, that sales of Class A common stock or the availability of Class A common stock for future sales will have on the market price of our Class A common stock. The market price of our Class A common stock could decline because of the sale of a large number of shares of our Class A common stock or the perception that such sales could occur in the future. These factors could also make it more difficult to raise funds through future offerings of Class A common stock. See “Risk Factors—Risks Related to Our Class A common stock and This Offering—Future offerings of debt or equity securities by us may have a material adverse effect on the market price of our Class A common stock.”

Sale of Restricted Shares

Upon the consummation of this offering, we will have _____ shares of Class A common stock (or _____ shares if the underwriters exercise their option to purchase additional shares of Class A common stock in full) outstanding. Of these shares, the _____ shares sold in this offering (or _____ shares if the underwriters exercise their option to purchase additional shares of Class A common stock in full) will be freely tradable, without further restriction or registration under the Securities Act, except any shares held by our “affiliates,” as that term is defined in Rule 144 under the Securities Act, or any shares purchased in our directed share program which are subject to the lock-up agreements described in “Underwriting.” In the absence of registration under the Securities Act, shares held by affiliates may only be sold in compliance with the limitations of Rule 144 described below or another exemption from the registration requirements of the Securities Act. As defined in Rule 144, an affiliate of an issuer is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the issuer. Upon the completion of this offering, approximately _____ of our outstanding shares of Class A common stock will be deemed “restricted securities,” as that term is defined under Rule 144, and would also be subject to the “lock-up” period noted below.

In addition, upon the consummation of the offering, the Continuing Pre-IPO LLC Members will own all of the _____ shares of our Class B common stock. The Continuing Pre-IPO LLC Members, from time to time following the offering may require Portillo’s OpCo to redeem or exchange all or a portion of their LLC Units for newly-issued shares of Class A common stock on a one-for-one basis. Shares of our Class B common stock will be canceled on a one-for-one basis if we, following a redemption request of a Continuing Pre-IPO LLC Member, redeem or exchange LLC Units of such Continuing Pre-IPO LLC Member pursuant to the terms of the Amended LLC Agreement. Shares of our Class A common stock issuable to the Continuing Pre-IPO LLC Members upon a redemption or exchange of LLC Units would be considered “restricted securities,” as that term is defined under Rule 144 and would also be subject to the “lock-up” period noted below.

Restricted securities may be sold in the public market only if they qualify for an exemption from registration under Rule 144 under the Securities Act, which is summarized below, or any other applicable exemption under the Securities Act, or pursuant to a registration statement that is effective under the Securities Act. Immediately following the consummation of this offering, the holders of approximately _____ shares of our Class A common stock (on an assumed as-exchanged basis) will be entitled to dispose of their shares following the expiration of an initial 180-day underwriter “lock-up” period pursuant to the holding period, volume and other restrictions of Rule 144. _____ are entitled to waive these lock-up provisions at their discretion prior to the expiration dates of such lock-up agreements.

Lock-up Arrangements and Registration Rights

In connection with this offering, we, each of our directors, executive officers and certain other stockholders, will enter into lock-up agreements that restrict the sale of our securities for up to _____ days after the date of this prospectus, subject to certain exceptions or an extension in certain circumstances.

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In addition, we intend to enter into a registration rights agreement pursuant to which, following the expiration of the lock-up period, certain stockholders will have the right, subject to certain conditions, to require us to register the sale of their shares of our common stock under federal securities laws. See “Certain Relationships and Related Party Transactions — Registration Rights Agreement.” If these stockholders exercise this right, our other existing stockholders may require us to register their registrable securities.

Following the lock-up periods described above, all of the shares of our common stock that are restricted securities or are held by our affiliates as of the date of this prospectus will be eligible for sale in the public market in compliance with Rule 144 under the Securities Act.

Lock-up Agreements

Our executive officers, directors and certain of our stockholders have agreed that, for a period of _____ days from the date of this prospectus, they will not, without the prior written consent of _____, dispose of or hedge any shares of our common stock or any securities convertible into or exchangeable for our common stock (including LLC Units) subject to certain exceptions (including dispositions in connection with the Reorganization Transactions).

Immediately following the consummation of this offering, stockholders subject to lock-up agreements will hold _____ shares of our Class A common stock (assuming the Continuing Pre-IPO LLC Members redeem or exchange all their Class B common stock and LLC Units for shares of our Class A common stock), representing approximately _____ % of our then-outstanding shares of Class A common stock (or approximately _____ % of our then-outstanding shares of Class A common stock if the underwriters exercise their option to purchase additional shares of Class A common stock in full and giving effect to the use of the net proceeds therefrom).

We have agreed, subject to certain exceptions, not to issue, sell or otherwise dispose of any shares of our Class A common stock or any securities convertible into or exchangeable for our Class A common stock (including LLC Units) during the 180-day period following the date of this prospectus.

Rule 144

The shares of our Class A common stock sold in this offering will generally be freely transferable without restriction or further registration under the Securities Act, except that any shares of our Class A common stock held by an “affiliate” of ours may not be resold publicly except in compliance with the registration requirements of the Securities Act or under an exemption under Rule 144 or otherwise. Rule 144 permits our Class A common stock that has been acquired by a person who is an affiliate of ours, or has been an affiliate of ours within the past three months, to be sold into the market in an amount that does not exceed, during any three-month period, the greater of:

- one percent of the total number of shares of our Class A common stock outstanding; or
- the average weekly reported trading volume of our Class A common stock for the four calendar weeks prior to the sale.

Such sales are also subject to specific manner of sale provisions, a six-month holding period requirement, notice requirements and the availability of current public information about us.

Approximately _____ shares of our Class A common stock that are not subject to lock-up arrangements described above will be eligible for sale under Rule 144 immediately upon the closing.

Rule 144 also provides that a person who is not deemed to have been an affiliate of ours at any time during the three months preceding a sale, and who has for at least two quarters beneficially owned shares of our

Class A common stock that are restricted securities, will be entitled to freely sell such shares of our Class A common stock subject only to the availability of current public information regarding us. A person who is not deemed to have been an affiliate of ours at any time during the three months preceding a sale, and who has beneficially owned for at least one year shares of our Class A common stock that are restricted securities, will be entitled to freely sell such shares of our Class A common stock under Rule 144 without regard to the current public information requirements of Rule 144.

Rule 701

Rule 701 generally allows a stockholder who purchased shares of our capital stock pursuant to a written compensatory plan or contract and who is not deemed to have been an affiliate of our company during the immediately preceding 90 days to sell these shares in reliance upon Rule 144, but without being required to comply with the public information, holding period, volume limitation or notice provisions of Rule 144. Rule 701 also permits affiliates of our company to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. All holders of Rule 701 shares, however, are required to wait until 90 days after the date of this prospectus before selling those shares pursuant to Rule 701.

Stock Issued Under Employee Plans

We intend to file a registration statement on Form S-8 under the Securities Act to register stock issuable pursuant to awards granted under our 2021 Plan. This registration statement on Form S-8 is expected to be filed following the effective date of the registration statement of which this prospectus is a part and will be effective upon filing. Accordingly, shares of Class A common stock registered under such registration statement will be available for sale in the open market following the effective date, unless such shares are subject to vesting restrictions with us, Rule 144 restrictions applicable to our affiliates or the lock-up restrictions described above.

Additional Registration Statements

We intend to file a registration statement on Form S-8 under the Securities Act to register _____ shares of our Class A common stock to be issued or reserved for issuance under our equity incentive plans. Such registration statement is expected to be filed soon after the date of this prospectus and will automatically become effective upon filing with the SEC. Accordingly, shares registered under such registration statement will be available for sale in the open market, unless such shares are subject to vesting restrictions with us or the lock-up restrictions described above.

MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS

The following is a summary of certain material U.S. federal income tax consequences of the purchase, ownership and disposition of shares of our Class A common stock as of the date hereof. Except where noted, this summary deals only with Class A common stock that is held as a capital asset by a non-U.S. holder (as defined below).

A “non-U.S. holder” means a beneficial owner of shares of our Class A common stock (other than an entity treated as a partnership for U.S. federal income tax purposes) that is not, for U.S. federal income tax purposes, any of the following:

- an individual citizen or resident of the United States;
- a corporation (or any other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust if it (1) is subject to the primary supervision of a court within the United States and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

This summary is based upon provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and regulations, rulings and judicial decisions as of the date hereof. Those authorities may be changed, perhaps retroactively, so as to result in U.S. federal income tax consequences different from those summarized below. This summary does not address all aspects of U.S. federal income taxes and does not deal with other U.S. federal taxes or with foreign, state, local or other tax considerations that may be relevant to non-U.S. holders in light of their particular circumstances. In addition, it does not represent a detailed description of the U.S. federal income tax consequences applicable to you if you are subject to special treatment under the U.S. federal income tax laws (including if you are a U.S. expatriate, foreign pension fund, “controlled foreign corporation,” “passive foreign investment company” or a partnership or other pass-through entity for U.S. federal income tax purposes). We cannot assure you that a change in law will not alter significantly the tax considerations that we describe in this summary.

If a partnership (or other entity treated as a partnership for U.S. federal income tax purposes) holds shares of our Class A common stock, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. If you are a partner of a partnership holding our Class A common stock, you should consult your tax advisors.

If you are considering the purchase of our Class A common stock, you should consult your own tax advisors concerning the particular U.S. federal income tax consequences to you of the purchase, ownership and disposition of our Class A common stock, as well as the consequences to you arising under other U.S. federal tax laws and the laws of any other taxing jurisdiction.

Dividends

In the event that we make a distribution of cash or other property (other than certain pro rata distributions of our Class A common stock) in respect of shares of our Class A common stock, the distribution generally will be treated as a dividend for U.S. federal income tax purposes to the extent it is paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Any portion of a distribution that exceeds our current and accumulated earnings and profits generally will be treated first as a tax-free return of capital, causing a reduction in the adjusted tax basis of a non-U.S. holder’s Class A common stock, and to the extent the amount of the distribution exceeds a non-U.S. holder’s adjusted tax basis in shares of

our Class A common stock, the excess will be treated as gain from the disposition of shares of our Class A common stock (the tax treatment of which is discussed below under “—Gain on Disposition of Class A Common Stock”). Dividends paid to a non-U.S. holder generally will be subject to withholding of U.S. federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty, subject to the discussion of FATCA below under “—Additional Withholding Requirements.” However, dividends that are effectively connected with the conduct of a trade or business by the non-U.S. holder within the United States (and, if required by an applicable income tax treaty, are attributable to a U.S. permanent establishment) are not subject to the withholding tax, provided certain certification and disclosure requirements are satisfied. Instead, such dividends are subject to U.S. federal income tax on a net income basis in the same manner as if the non-U.S. holder were a U.S. person as defined under the Code. Any such effectively connected dividends received by a foreign corporation may be subject to an additional “branch profits tax” at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

A non-U.S. holder who wishes to claim the benefit of an applicable treaty rate and avoid backup withholding, as discussed below, for dividends will be required (a) to provide the applicable withholding agent with a properly executed IRS Form W-8BEN or Form W-8BEN-E (or other applicable form) certifying under penalty of perjury that such holder is not a U.S. person as defined under the Code and is eligible for treaty benefits or (b) if our Class A common stock is held through certain foreign intermediaries, to satisfy the relevant certification requirements of applicable U.S. Treasury regulations. Special certification and other requirements apply to certain non-U.S. holders that are pass-through entities rather than corporations or individuals.

A non-U.S. holder eligible for a reduced rate of U.S. federal withholding tax pursuant to an income tax treaty may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS.

Gain on Disposition of Class A Common Stock

Subject to the discussion of backup withholding below, any gain realized by a non-U.S. holder on the sale or other disposition of our Class A common stock generally will not be subject to U.S. federal income tax unless:

- the gain is effectively connected with a trade or business of the non-U.S. holder in the United States (and, if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment of the non-U.S. holder);
- the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of that disposition, and certain other conditions are met; or
- we are or have been a “U.S. real property holding corporation” for U.S. federal income tax purposes and certain other conditions are met.

A non-U.S. holder described in the first bullet point immediately above will be subject to tax on the gain derived from the sale or other disposition in the same manner as if the non-U.S. holder were a U.S. person as defined under the Code. In addition, if any non-U.S. holder described in the first bullet point immediately above is a foreign corporation, the gain realized by such non-U.S. holder may be subject to an additional “branch profits tax” at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. An individual non-U.S. holder described in the second bullet point immediately above will be subject to a 30% (or such lower rate as may be specified by an applicable income tax treaty) tax on the gain derived from the sale or other disposition, which gain may be offset by U.S. source capital losses even though the individual is not considered a resident of the United States, provided the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses.

Generally, a corporation is a “U.S. real property holding corporation” if the fair market value of its U.S. real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real

property interests and its other assets used or held for use in a trade or business (all as determined for U.S. federal income tax purposes). We believe we are not and do not anticipate becoming a “U.S. real property holding corporation” for U.S. federal income tax purposes.

Information Reporting and Backup Withholding

Distributions paid to a non-U.S. holder and the amount of any tax withheld with respect to such distributions generally will be reported to the IRS. Copies of the information returns reporting such distributions and any withholding may also be made available to the tax authorities in the country in which the non-U.S. holder resides under the provisions of an applicable income tax treaty.

A non-U.S. holder will not be subject to backup withholding on dividends received if such holder certifies under penalty of perjury that it is a non-U.S. holder (and the payor does not have actual knowledge or reason to know that such holder is a U.S. person as defined under the Code), or such holder otherwise establishes an exemption.

Information reporting and, depending on the circumstances, backup withholding will apply to the proceeds of a sale or other disposition of our Class A common stock made within the United States or conducted through certain U.S.-related financial intermediaries, unless the beneficial owner certifies under penalty of perjury that it is a non-U.S. holder (and the payor does not have actual knowledge or reason to know that the beneficial owner is a U.S. person as defined under the Code), or such owner otherwise establishes an exemption.

Backup withholding is not an additional tax and any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a non-U.S. holder’s U.S. federal income tax liability provided the required information is timely furnished to the IRS.

Additional Withholding Requirements

Under Sections 1471 through 1474 of the Code (such Sections commonly referred to as FATCA), a 30% U.S. federal withholding tax may apply to any dividends paid on our Class A common stock to (i) a “foreign financial institution” (as specifically defined in the Code) which does not provide sufficient documentation, typically on IRS Form W-8BEN-E, evidencing either (x) an exemption from FATCA or (y) its compliance (or deemed compliance) with FATCA (which may alternatively be in the form of compliance with an intergovernmental agreement with the United States) in a manner which avoids withholding, or (ii) a “non-financial foreign entity” (as specifically defined in the Code) which does not provide sufficient documentation, typically on IRS Form W-8BEN-E, evidencing either (x) an exemption from FATCA or (y) adequate information regarding certain substantial U.S. beneficial owners of such entity (if any). Under proposed U.S. Treasury regulations promulgated by the Treasury Department on December 13, 2018, which state that taxpayers may rely on the proposed Treasury regulations until final Treasury regulations are issued, this withholding tax will not apply to the gross proceeds from the sale or disposition of our Class A common stock. An intergovernmental agreement between the United States and an applicable foreign country may modify these requirements. If a dividend payment is both subject to withholding under FATCA and subject to the withholding tax discussed above under “—Dividends,” the withholding under FATCA may be credited against, and therefore reduce, such other withholding tax. You should consult your own tax advisors regarding these requirements and whether they may be relevant to your ownership and disposition of our Class A common stock.

UNDERWRITING

Subject to the terms and conditions set forth in the underwriting agreement, dated _____, 2021, among us and Jefferies LLC, Morgan Stanley & Co. LLC, BofA Securities, Inc. and Piper Sandler & Co. as the representatives of the underwriters named below and the joint book-running managers of this offering, we have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us, the respective number of shares of common stock shown opposite its name below:

<u>Underwriter</u>	<u>Number of Shares</u>
Jefferies LLC	
Morgan Stanley & Co. LLC	
BofA Securities, Inc.	
Piper Sandler & Co.	
Robert W. Baird & Co. Incorporated	
UBS Securities LLC	
William Blair & Company, L.L.C.	
Guggenheim Securities, LLC	
Stifel, Nicolaus & Company, Incorporated	
Loop Capital Markets LLC	
Samuel A. Ramirez & Company, Inc.	
Total	

The underwriting agreement provides that the obligations of the several underwriters are subject to certain conditions precedent such as the receipt by the underwriters of officers' certificates and legal opinions and approval of certain legal matters by their counsel. The underwriting agreement provides that the underwriters will purchase all of the shares of common stock if any of them are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the underwriting agreement may be terminated. We have agreed to indemnify the underwriters and certain of their controlling persons against certain liabilities, including liabilities under the Securities Act, and to contribute to payments that the underwriters may be required to make in respect of those liabilities.

The underwriters have advised us that, following the completion of this offering, they currently intend to make a market in the common stock as permitted by applicable laws and regulations. However, the underwriters are not obligated to do so, and the underwriters may discontinue any market-making activities at any time without notice in their sole discretion. Accordingly, no assurance can be given as to the liquidity of the trading market for the common stock, that you will be able to sell any of the common stock held by you at a particular time or that the prices that you receive when you sell will be favorable.

The underwriters are offering the shares of common stock subject to their acceptance of the shares of common stock from us and subject to prior sale. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

Commission and Expenses

The underwriters have advised us that they propose to offer the shares of common stock to the public at the initial public offering price set forth on the cover page of this prospectus and to certain dealers, which may include the underwriters, at that price less a concession not in excess of \$ _____ per share of common stock. The underwriters may allow, and certain dealers may reallow, a discount from the concession not in excess of \$ _____ per share of common stock to certain brokers and dealers. After the offering, the initial public offering price, concession and reallowance to dealers may be reduced by the representatives. No such reduction will change the amount of proceeds to be received by us as set forth on the cover page of this prospectus.

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The following table shows the public offering price, the underwriting discounts and commissions that we are to pay the underwriters and the proceeds, before expenses, to us in connection with this. Such amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase additional shares.

	Per Share		Total	
	Without Option to Purchase Additional Shares	With Option to Purchase Additional Shares	Without Option to Purchase Additional Shares	With Option to Purchase Additional Shares
Public offering price	\$	\$	\$	\$
Underwriting discounts and commissions paid by us	\$	\$	\$	\$
Proceeds to us, before expenses	\$	\$	\$	\$

We estimate expenses payable by us in connection with this offering, other than the underwriting discounts and commissions referred to above, will be approximately \$.

Determination of Offering Price

Prior to this offering, there has not been a public market for our common stock. Consequently, the initial public offering price for our common stock will be determined by negotiations between us and the representatives. Among the factors to be considered in these negotiations will be prevailing market conditions, our financial information, market valuations of other companies that we and the underwriters believe to be comparable to us, estimates of our business potential, the present state of our development and other factors deemed relevant.

We offer no assurances that the initial public offering price will correspond to the price at which the common stock will trade in the public market subsequent to the offering or that an active trading market for the common stock will develop and continue after the offering.

Listing

We intend to apply to have our common stock approved for listing on Nasdaq under the trading symbol "PTLO".

Stamp Taxes

If you purchase shares of common stock offered in this prospectus, you may be required to pay stamp taxes and other charges under the laws and practices of the country of purchase, in addition to the offering price listed on the cover page of this prospectus.

Option to Purchase Additional Shares

We have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase, from time to time, in whole or in part, up to an aggregate of _____ shares from us at the public offering price set forth on the cover page of this prospectus, less underwriting discounts and commissions. If the underwriters exercise this option, each underwriter will be obligated, subject to specified conditions, to purchase a number of additional shares proportionate to that underwriter's initial purchase commitment as indicated in the table above.

No Sales of Similar Securities

We, our officers, directors and holders of all or substantially all our outstanding capital stock and other securities have agreed, subject to specified exceptions, not to directly or indirectly:

- sell, offer, contract or grant any option to sell (including any short sale), pledge, transfer, establish an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Exchange Act, or

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- otherwise dispose of any shares of common stock, options or warrants to acquire shares of common stock, or securities exchangeable or exercisable for or convertible into shares of common stock currently or hereafter owned either of record or beneficially, or
- publicly announce an intention to do any of the foregoing for a period of _____ days after the date of this prospectus without the prior written consent of _____.

This restriction terminates after the close of trading of the common stock on and including the _____ day after the date of this prospectus.

_____ may, in their sole discretion and at any time or from time to time before the termination of the _____ day period release all or any portion of the securities subject to lock-up agreements. There are no existing agreements between the underwriters and any of our shareholders who will execute a lock-up agreement, providing consent to the sale of shares prior to the expiration of the lock-up period.

Stabilization

The underwriters have advised us that, pursuant to Regulation M under the Exchange Act, certain persons participating in the offering may engage in short sale transactions, stabilizing transactions, syndicate covering transactions or the imposition of penalty bids in connection with this offering. These activities may have the effect of stabilizing or maintaining the market price of the common stock at a level above that which might otherwise prevail in the open market. Establishing short sales positions may involve either “covered” short sales or “naked” short sales.

“Covered” short sales are sales made in an amount not greater than the underwriters’ option to purchase additional shares of our common stock in this offering. The underwriters may close out any covered short position by either exercising their option to purchase additional shares of our common stock or purchasing shares of our common stock in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the option to purchase additional shares.

“Naked” short sales are sales in excess of the option to purchase additional shares of our common stock. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the shares of our common stock in the open market after pricing that could adversely affect investors who purchase in this offering.

A stabilizing bid is a bid for the purchase of shares of common stock on behalf of the underwriters for the purpose of fixing or maintaining the price of the common stock. A syndicate covering transaction is the bid for or the purchase of shares of common stock on behalf of the underwriters to reduce a short position incurred by the underwriters in connection with the offering. Similar to other purchase transactions, the underwriter’s purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. A penalty bid is an arrangement permitting the underwriters to reclaim the selling concession otherwise accruing to a syndicate member in connection with the offering if the common stock originally sold by such syndicate member are purchased in a syndicate covering transaction and therefore have not been effectively placed by such syndicate member.

Neither we, nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. The underwriters are not obligated to engage in these activities and, if commenced, any of the activities may be discontinued at any time.

Electronic Distribution

A prospectus in electronic format may be made available by e-mail or through online services maintained by one or more of the underwriters or their affiliates. In those cases, prospective investors may view offering terms online and may be allowed to place orders online. The underwriters may agree with us to allocate a specific number of shares of common stock for sale to online brokerage account holders. Any such allocation for online distributions will be made by the underwriters on the same basis as other allocations. Other than the prospectus in electronic format, the information on the underwriters' web sites and any information contained in any other web site maintained by any of the underwriters is not part of this prospectus, has not been approved and/or endorsed by us or the underwriters and should not be relied upon by investors.

Other Activities and Relationships

The underwriters and certain of their affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. The underwriter and certain of its affiliates have, from time to time, performed, and may in the future perform, various commercial and investment banking and financial advisory services for us and our affiliates, for which they received or will receive customary fees and expenses.

In the ordinary course of their various business activities, the underwriters and certain of their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers, and such investment and securities activities may involve securities and/or instruments issued by us and our affiliates. If the underwriters or their respective affiliates have a lending relationship with us, they routinely hedge their credit exposure to us consistent with their customary risk management policies. The underwriters and their respective affiliates may hedge such exposure by entering into transactions which consist of either the purchase of credit default swaps or the creation of short positions in our securities or the securities of our affiliates, including potentially the common stock offered hereby. Any such short positions could adversely affect future trading prices of the common stock offered hereby. The underwriters and certain of their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments. In addition, certain of the underwriters and/or their affiliates are lenders under our Revolving Facility.

Selling Restrictions

Canada

Resale Restrictions

The distribution of the shares in Canada is being made only in the provinces of Ontario, Quebec, Alberta, British Columbia, Manitoba, New Brunswick and Nova Scotia on a private placement basis exempt from the requirement that we prepare and file a prospectus with the securities regulatory authorities in each province where trades of these shares are made. Any resale of the shares in Canada must be made under applicable securities laws which may vary depending on the relevant jurisdiction, and which may require resales to be made under available statutory exemptions or under a discretionary exemption granted by the applicable Canadian securities regulatory authority. Purchasers are advised to seek legal advice prior to any resale of the shares.

Representations of Canadian Purchasers

By purchasing shares in Canada and accepting delivery of a purchase confirmation, a purchaser is representing to us and the dealer from whom the purchase confirmation is received that:

- (a) the purchaser is entitled under applicable provincial securities laws to purchase the shares without the benefit of a prospectus qualified under those securities laws as it is an "accredited investor" as

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- defined under National Instrument 45-106 – *Prospectus Exemptions* or Section 73.3(1) of the *Securities Act* (Ontario), as applicable,
- (b) the purchaser is a “permitted client” as defined in National Instrument 31-103—*Registration Requirements, Exemptions and Ongoing Registrant Obligations*,
 - (c) where required by law, the purchaser is purchasing as principal and not as agent, and
 - (d) the purchaser has reviewed the text above under Resale Restrictions.

Conflicts of Interest

Canadian purchasers are hereby notified that certain of the underwriters are relying on the exemption set out in section 3A.3 or 3A.4, if applicable, of National Instrument 33-105 – *Underwriting Conflicts* from having to provide certain conflict of interest disclosure in this document.

Statutory Rights of Action

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if the prospectus (including any amendment thereto) such as this document contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser’s province or territory. The purchaser of these shares in Canada should refer to any applicable provisions of the securities legislation of the purchaser’s province or territory for particulars of these rights or consult with a legal advisor.

Enforcement of Legal Rights

All of our directors and officers as well as the experts named herein may be located outside of Canada and, as a result, it may not be possible for Canadian purchasers to effect service of process within Canada upon us or those persons. All or a substantial portion of our assets and the assets of those persons may be located outside of Canada and, as a result, it may not be possible to satisfy a judgment against us or those persons in Canada or to enforce a judgment obtained in Canadian courts against us or those persons outside of Canada.

Taxation and Eligibility for Investment

Canadian purchasers of shares should consult their own legal and tax advisors with respect to the tax consequences of an investment in the share in their particular circumstances and about the eligibility of the shares for investment by the purchaser under relevant Canadian legislation.

Australia

This prospectus is not a disclosure document for the purposes of Australia’s Corporations Act 2001 (Cth) of Australia, or Corporations Act, has not been lodged with the Australian Securities & Investments Commission and is only directed to the categories of exempt persons set out below. Accordingly, if you receive this prospectus in Australia:

You confirm and warrant that you are either:

- (a) a “sophisticated investor” under section 708(8)(a) or (b) of the Corporations Act;
- (b) a “sophisticated investor” under section 708(8)(c) or (d) of the Corporations Act and that you have provided an accountant’s certificate to the Company which complies with the requirements of section 708(8)(c)(i) or (ii) of the Corporations Act and related regulations before the offer has been made;

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- (c) a person associated with the Company under Section 708(12) of the Corporations Act; or
- (d) a “professional investor” within the meaning of section 708(11)(a) or (b) of the Corporations Act.

To the extent that you are unable to confirm or warrant that you are an exempt sophisticated investor, associated person or professional investor under the Corporations Act any offer made to you under this prospectus is void and incapable of acceptance.

You warrant and agree that you will not offer any of the shares issued to you pursuant to this prospectus for resale in Australia within 12 months of those shares being issued unless any such resale offer is exempt from the requirement to issue a disclosure document under section 708 of the Corporations Act.

European Economic Area

In relation to each Member State of the European Economic Area (each, a “Relevant State”), no shares have been offered or will be offered pursuant to the offering to the public in that Relevant State prior to the publication of a prospectus in relation to the shares which have been approved by the competent authority in that Relevant State or, where appropriate, approved in another Relevant State and notified to the competent authority in that Relevant State, all in accordance with the Prospectus Regulation, except that the shares may be offered to the public in that Relevant State at any time:

- (a) to any legal entity which is a “qualified investor” as defined under Article 2 of the Prospectus Regulation;
- (b) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the Prospectus Regulation), subject to obtaining the prior consent of representatives for any such offer; or
- (c) in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of the shares shall require us or any of the representatives to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation.

For the purposes of this provision, the expression “offer to the public” in relation to the shares in any Relevant State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, and the expression “Prospectus Regulation” means Regulation (EU) 2017/1129.

Hong Kong

No shares have been offered or sold, and no shares may be offered or sold, in Hong Kong, by means of any document, other than to persons whose ordinary business is to buy or sell shares or debentures, whether as principal or agent; or to “professional investors” as defined in the Securities and Futures Ordinance (Cap. 571) of Hong Kong (“SFO”) and any rules made under that Ordinance; or in other circumstances which do not result in the document being a “prospectus” as defined in the Companies Ordinance (Cap. 32) of Hong Kong (“CO”) or which do not constitute an offer or invitation to the public for the purpose of the CO or the SFO. No document, invitation or advertisement relating to the shares has been issued or may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted under the securities laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” as defined in the SFO and any rules made under that Ordinance.

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This prospectus has not been registered with the Registrar of Companies in Hong Kong. Accordingly, this prospectus may not be issued, circulated or distributed in Hong Kong, and the shares may not be offered for subscription to members of the public in Hong Kong. Each person acquiring the shares will be required, and is deemed by the acquisition of the shares, to confirm that he is aware of the restriction on offers of the shares described in this prospectus and the relevant offering documents and that he is not acquiring, and has not been offered any shares in circumstances that contravene any such restrictions.

Israel

This document does not constitute a prospectus under the Israeli Securities Law, 5728-1968, or the Securities Law, and has not been filed with or approved by the Israel Securities Authority. In Israel, this prospectus is being distributed only to, and is directed only at, and any offer of the shares is directed only at, (i) a limited number of persons in accordance with the Israeli Securities Law and (ii) investors listed in the first addendum, or the Addendum, to the Israeli Securities Law, consisting primarily of joint investment in trust funds, provident funds, insurance companies, banks, portfolio managers, investment advisors, members of the Tel Aviv Stock Exchange, underwriters, venture capital funds, entities with equity in excess of NIS 50 million and “qualified individuals,” each as defined in the Addendum (as it may be amended from time to time), collectively referred to as qualified investors (in each case, purchasing for their own account or, where permitted under the Addendum, for the accounts of their clients who are investors listed in the Addendum). Qualified investors are required to submit written confirmation that they fall within the scope of the Addendum, are aware of the meaning of same and agree to it.

Japan

The offering has not been and will not be registered under the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948 of Japan, as amended), or FIEL, and the underwriters will not offer or sell any shares, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the FIEL and any other applicable laws, regulations and ministerial guidelines of Japan.

Singapore

This prospectus has not been and will not be lodged or registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the “SFA”), (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275, of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

- (a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or
- (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor, securities (as defined in

Section 239(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the shares pursuant to an offer made under Section 275 of the SFA except:

- i. to an institutional investor or to a relevant person defined in Section 275(2) of the SFA, or to any person arising from an offer referred to in Section 275(1A) or Section 276(4)(i)(B) of the SFA;
- ii. where no consideration is or will be given for the transfer;
- iii. where the transfer is by operation of law;
- iv. as specified in Section 276(7) of the SFA; or
- v. as specified in Regulation 32 of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 of Singapore.

Switzerland

The shares may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange ("SIX") or on any other stock exchange or regulated trading facility in Switzerland. This prospectus has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this prospectus nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this prospectus nor any other offering or marketing material relating to the offering, the Company or the shares have been or will be filed with or approved by any Swiss regulatory authority. In particular, this prospectus will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority FINMA, and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes ("CISA"). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

United Kingdom

No shares have been offered or will be offered pursuant to the offering to the public in the United Kingdom prior to the publication of a prospectus in relation to the shares which has been approved by the Financial Conduct Authority, except that the shares may be offered to the public in the United Kingdom at any time:

- (a) to any legal entity which is a qualified investor as defined under Article 2 of the UK Prospectus Regulation;
- (b) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the UK Prospectus Regulation), subject to obtaining the prior consent of the representatives for any such offer; or
- (c) in any other circumstances falling within Section 86 of the FSMA,

provided that no such offer of the shares shall require the Company or any Manager to publish a prospectus pursuant to Section 85 of the FSMA or supplement a prospectus pursuant to Article 23 of the UK Prospectus Regulation. For the purposes of this provision, the expression an "offer to the public" in relation to the shares in the United Kingdom means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares and the expression "UK Prospectus Regulation" means Regulation (EU) 2017/1129 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018.

LEGAL MATTERS

Weil, Gotshal & Manges LLP, New York, New York, has passed upon the validity of the Class A common stock offered hereby on behalf of us. Certain legal matters will be passed upon on behalf of the underwriters by Latham & Watkins LLP.

EXPERTS

The financial statement of Portillo's Inc. as of June 27, 2021, included in this prospectus, has been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein. Such financial statement is included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

The financial statements of PHD Group Holdings LLC as of December 27, 2020 and December 29, 2019 and for each of the two years in the period ended December 27, 2020, included in this prospectus, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein. Such financial statements are included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of our Class A common stock offered by this prospectus. For purposes of this section, the term registration statement means the original registration statement and any and all amendments including the schedules and exhibits to the original registration statement or any amendment. This prospectus, filed as part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules thereto as permitted by the rules and regulations of the SEC. For further information about us and our Class A common stock, you should refer to the registration statement, including the exhibits. This prospectus summarizes provisions that we consider material of certain contracts and other documents to which we refer you. Because the summaries may not contain all of the information that you may find important, you should review the full text of those documents.

This registration statement, including its exhibits and schedules, will be filed with the SEC. The SEC maintains a website at <http://www.sec.gov> from which interested persons can electronically access the registration statement, including the exhibits and schedules to the registration statement. We intend to furnish our stockholders with annual reports containing financial statements audited by our independent auditors.

We have not authorized anyone to give you any information or to make any representations about us or the transactions we discuss in this prospectus other than those contained in this prospectus. If you are given any information or representations about these matters that is not discussed in this prospectus, you must not rely on that information. This prospectus is not an offer to sell or a solicitation of an offer to buy securities anywhere or to anyone where or to whom we are not permitted to offer or sell securities under applicable law.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Management of PHD Group Holdings LLC

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of PHD Group Holdings LLC and subsidiaries (the “Company”) as of December 27, 2020 and December 29, 2019, the related consolidated statements of operations, changes in redeemable preferred units and common equity, and cash flows, for each of the years then ended, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 27, 2020 and December 29, 2019, and the results of its operations and its cash flows for each of the two years in the period ended December 27, 2020, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Deloitte & Touche LLP

Chicago, IL

July 16, 2021 (August 27, 2021 as to the effects of the restatement discussed in Note 2)

We have served as the Company’s auditor since 2014.

PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
AS OF DECEMBER 27, 2020 AND DECEMBER 29, 2019
(In thousands, except common unit and per common unit data)

	<u>December 27, 2020</u>	<u>December 29, 2019</u>
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 41,211	\$ 22,424
Restricted cash	221	205
Accounts receivable	5,204	3,664
Inventory	5,075	3,895
Other current assets	2,915	2,499
Total current assets	<u>54,626</u>	<u>32,687</u>
Property and equipment, net	<u>174,769</u>	<u>165,102</u>
OTHER ASSETS:		
Goodwill	394,298	394,298
Intangible assets-net of accumulated amortization	266,180	274,948
Equity method investment	16,015	15,862
Other assets	4,334	3,743
Total other assets	<u>680,827</u>	<u>688,851</u>
TOTAL ASSETS	<u>\$ 910,222</u>	<u>\$ 886,640</u>
LIABILITIES, REDEEMABLE PREFERRED UNITS AND COMMON EQUITY		
CURRENT LIABILITIES:		
Accounts payable	\$ 21,427	\$ 15,881
Short-term debt	—	15,000
Current portion of long-term debt	3,324	3,324
Current deferred revenue	6,774	5,985
Accrued expenses	34,827	29,745
Total current liabilities	<u>66,352</u>	<u>69,935</u>
LONG-TERM LIABILITIES:		
Long-term debt, net of current portion	466,380	465,841
Deferred rent	26,694	19,755
Other long-term liabilities	9,516	3,328
Total long-term liabilities	<u>502,590</u>	<u>488,924</u>
Total liabilities	<u>568,942</u>	<u>558,859</u>
COMMITMENTS AND CONTINGENCIES (NOTE 13)		
REDEEMABLE PREFERRED UNITS	<u>200,571</u>	<u>180,047</u>
COMMON EQUITY:		
Common units—378,659,104 units authorized, 378,659,104 and 378,609,104 units issued and outstanding as of December 27, 2020 and December 29, 2019, respectively	—	—
Stock subscription receivable	(499)	(749)
Additional paid-in-capital	141,208	148,483
Retained earnings	—	—
Total common equity	<u>140,709</u>	<u>147,734</u>
TOTAL LIABILITIES, REDEEMABLE PREFERRED UNITS AND COMMON EQUITY	<u>\$ 910,222</u>	<u>\$ 886,640</u>

See accompanying notes to consolidated financial statements.

PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
FOR THE YEARS ENDED DECEMBER 27, 2020 AND DECEMBER 29, 2019
(In thousands)

	Year Ended	
	<u>December 27, 2020</u>	<u>December 29, 2019</u>
REVENUES	\$ 455,471	\$ 479,417
COST AND EXPENSES:		
Restaurant operating expenses:		
Cost of goods sold, excluding depreciation and amortization	142,446	149,063
Labor	115,991	134,206
Occupancy	24,920	24,538
Other operating expenses	<u>50,169</u>	<u>54,540</u>
Total restaurant operating expenses	333,526	362,347
General and administrative expenses	39,854	43,118
Pre-opening expenses	2,209	2,834
Depreciation and amortization	24,584	24,364
Net income attributable to equity method investment	(459)	(766)
Other income, net	<u>(1,537)</u>	<u>(1,402)</u>
OPERATING INCOME	57,294	48,922
Interest expense	<u>45,031</u>	<u>43,367</u>
NET INCOME	12,263	5,555
Less: Redeemable preferred units accretion	<u>(20,524)</u>	<u>(18,424)</u>
NET INCOME (LOSS) ATTRIBUTABLE TO COMMON UNIT HOLDERS	<u>\$ (8,261)</u>	<u>\$ (12,869)</u>
Earnings/(loss) per common unit:		
Basic	<u>\$ (0.02)</u>	<u>\$ (0.03)</u>
Diluted	<u>\$ (0.02)</u>	<u>\$ (0.03)</u>
Weighted-average common units outstanding:		
Basic	<u>378,633,829</u>	<u>378,535,959</u>
Diluted	<u>378,633,829</u>	<u>378,535,959</u>

See accompanying notes to consolidated financial statements.

PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CHANGES IN REDEEMABLE PREFERRED UNITS AND COMMON EQUITY
FOR THE YEARS ENDED DECEMBER 27, 2020 AND DECEMBER 29, 2019
(In thousands, except unit data)

	Preferred Units		Common Units					Total Common Equity
	Units	Amounts	Units	Amounts	Stock Subscription Receivable	Additional Paid-In Capital	Retained Earnings	
Balance, as of December 31, 2018	100,000	\$ 161,623	378,436,690	\$ —	\$ (1,000)	\$ 159,762	\$ —	\$ 158,762
Net income	—	—	—	—	—	—	5,555	5,555
Cumulative effect of accounting changes	—	—	—	—	—	—	204	204
Unit-based compensation	—	—	—	—	—	1,286	—	1,286
Issuance of common units	—	—	172,414	—	—	100	—	100
Repayment of subscription receivable	—	—	—	—	251	—	—	251
Redeemable preferred units accretion	—	18,424	—	—	—	(12,665)	(5,759)	(18,424)
Balance, as of December 29, 2019	100,000	180,047	378,609,104	—	(749)	148,483	—	147,734
Net income	—	—	—	—	—	—	12,263	12,263
Unit-based compensation	—	—	—	—	—	960	—	960
Issuance of common units	—	—	50,000	—	—	26	—	26
Repayment of subscription receivable	—	—	—	—	250	—	—	250
Redeemable preferred units accretion	—	20,524	—	—	—	(8,261)	(12,263)	(20,524)
Balance, as of December 27, 2020	100,000	\$ 200,571	378,659,104	\$ —	\$ (499)	\$ 141,208	\$ —	\$ 140,709

See accompanying notes to consolidated financial statements.

PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED DECEMBER 27, 2020 AND DECEMBER 29, 2019
(In thousands)

	Year Ended	
	December 27, 2020	December 29, 2019
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	\$ 12,263	\$ 5,555
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	24,584	24,364
Amortization of debt issuance costs and discount	3,863	2,830
Loss on sales of assets	98	271
Unit-based compensation	960	1,286
Deferred rent and tenant allowance	3,888	3,159
Amortization of deferred lease incentives	(330)	(251)
Gift card breakage	(700)	(774)
Changes in operating assets and liabilities:		
Accounts receivables	(753)	33
Receivables from related parties	280	414
Inventory	(1,180)	(141)
Other current assets	(416)	1,804
Accounts payable	1,354	(1,785)
Accrued expenses and other liabilities	6,573	7,206
Deferred lease incentives	2,314	400
Other assets and liabilities	5,473	(1,046)
Net cash provided by operating activities	<u>58,271</u>	<u>43,325</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment	(21,452)	(22,045)
Proceeds from the sale of property and equipment	32	33
Net cash used in investing activities	<u>(21,420)</u>	<u>(22,012)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
(Repayments) borrowings of short-term debt	(15,000)	9,000
Proceeds from Paycheck Protection Program loan	10,000	—
Proceeds from long-term debt	—	464,110
Payment of long-term debt	(13,324)	(471,842)
Proceeds from issuance of common units	26	100
Repayment of stock subscription receivable	250	251
Payment of deferred financing costs	—	(13,340)
Net cash used in financing activities	<u>(18,048)</u>	<u>(11,721)</u>
NET INCREASE IN CASH AND CASH EQUIVALENTS AND RESTRICTED CASH	18,803	9,592
CASH AND CASH EQUIVALENTS AND RESTRICTED CASH:		
Beginning of the year	22,629	13,037
End of the year	<u>\$ 41,432</u>	<u>\$ 22,629</u>
SUPPLEMENTAL CASH FLOW INFORMATION		
Interest Paid	34,294	36,506
NON-CASH INVESTING AND FINANCING ACTIVITIES:		
Accrued capital expenditures	5,008	1,058
Proceeds from the sale of property and equipment	61	51
Redeemable preferred units accretion	(20,524)	(18,424)

See accompanying notes to consolidated financial statements.

**PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
FOR THE YEARS ENDED DECEMBER 27, 2020 AND DECEMBER 29, 2019**

NOTE 1. DESCRIPTION OF BUSINESS

PHD Group Holdings LLC (the “Company”) owns 100% of Portillo’s Holdings, LLC. Portillo’s Holdings, LLC, through its wholly owned subsidiary, Portillo’s Hot Dogs, LLC, operates fast-casual restaurants in Illinois, Indiana, California, Arizona, Florida, Wisconsin, Minnesota and Iowa, along with two food production commissaries in Illinois. As of December 27, 2020 and December 29, 2019, the Company had 63 and 61 restaurants in operation, respectively. The Company also had 4 non-traditional locations in operation as of December 27, 2020 and December 29, 2019, respectively. These non-traditional locations include a food truck, ghost kitchen (small kitchen with no store-front presence, used to fill online orders), and concessions. PHD Card Services LLC, a wholly owned subsidiary of Portillo’s Hot Dogs, LLC, manages gift cards and was organized in the State of Florida as a separate legal entity. Portillo’s Hot Dogs, LLC additionally has a 50% interest in a single restaurant in Chicago, IL, that is referred to in Note 6. There were no restaurant closings during any period presented in the financial statements. The Company’s principal corporate offices are located in Oak Brook, IL.

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation - The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”). The consolidated financial statements as of December 27, 2020 and December 29, 2019 include the accounts of the Company and its subsidiary. All intercompany balances and transactions have been eliminated in consolidation.

The Company does not have any components of other comprehensive income (loss) recorded within its consolidated financial statements, and therefore, does not separately present a statement of comprehensive income (loss).

Fiscal Year - In fiscal year 2019, the Company changed from a calendar year ending on December 31 to a 52-53 week fiscal year ending on the Sunday prior to December 31, effective beginning with the first quarter of 2019. In a 52-week fiscal year, each quarterly period is comprised of 13 weeks. The additional week in a 53-week fiscal year is added to the fourth quarter. Fiscal years 2020 and 2019 were 52-week fiscal years.

Segment Reporting - The Company owns and operates fast-casual restaurants in the United States, along with two food production commissaries in Illinois. The Company’s chief operating decision maker (the “CODM”) is its Chief Executive Officer. As the CODM reviews financial performance and allocates resources at a consolidated level on a recurring basis, the Company has one operating segment and one reportable segment.

Use of Estimates - The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions, primarily related to the reported amounts and related disclosures of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents and Restricted Cash - Cash includes amounts that are either held in the Company’s bank accounts or represent deposits in transit. Amounts receivable from credit card processors are considered cash equivalents because they are both short in term and highly liquid in nature and are typically converted to cash within three business days of the sales transactions.

Restricted cash includes amounts that are held in the Company’s bank accounts subject to minimum balance requirements for medical claim disbursements and escrow requirements related to certain new restaurant construction projects.

**PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
FOR THE YEARS ENDED DECEMBER 27, 2020 AND DECEMBER 29, 2019**

Accounts Receivable - Accounts receivable consist primarily of vendor rebates, tenant improvement receivables, and delivery receivables as well as receivables from related parties (see Note 12). The Company evaluates the collectability of its accounts receivable based on a variety of factors, including historical experience, current economic conditions and other factors. Based on these factors, no allowance for uncollectible accounts was recorded at December 27, 2020 or December 29, 2019.

Inventory - Inventory, which consists mainly of food products, is valued at the lower of cost or net realizable value, with cost determined on the first-in, first-out (FIFO) method. The Company had a \$0.06 million and no allowance for excess and obsolete inventories as of December 27, 2020 and December 29, 2019, respectively. The estimate was based on the value of slow-moving catering trays and the likelihood that the overstocked volume will be sold prior to expiration date. No other adjustment is deemed necessary to reduce inventory to lower of cost or net realizable value due to the rapid turnover and high utilization of inventory.

Certain of the Company's inventories are held at its distributors on a short-term consignment basis. Inventories subject to these consignment arrangements are recorded on the Company's consolidated balance sheet and totaled \$0.2 million and \$0.3 million as of December 27, 2020 and December 29, 2019, respectively.

Long-Lived Assets - The Company's long-lived assets include property and equipment and definite-lived intangible assets. Depreciation and amortization are computed using the straight-line method. Except for leasehold improvements, depreciation is computed over the estimated useful life of each asset (generally ranging from three to ten years). Leasehold improvements are amortized over the shorter of the estimated lives of the asset or the lease term.

The Company reviews its long-lived assets, including property and equipment and definite-lived intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset or asset group might not be recoverable. Recoverability is measured by a comparison of the carrying amount to future undiscounted cash flows that are expected to be generated by the asset or asset group. If the carrying amount exceeds its estimated future cash flows, an impairment charge is recognized in the amount by which the carrying value exceeds the estimated fair value. Restaurant-level assets are grouped by restaurant for the purpose of the impairment assessment because a restaurant represents the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. No impairment charge was recorded for any period presented.

Goodwill and Indefinite-Lived Intangible Assets - Goodwill and indefinite-lived intangible assets are assessed for impairment annually or more frequently if events and circumstances indicate that it is more likely than not that the fair value of a reporting unit or an intangible asset is less than its carrying value. The Company has one reporting unit which is evaluated for impairment annually. Fair value of the reporting unit is estimated using the income approach and the market approach. Under the income approach, fair value is based on the present value of estimated future cash flows. The market approach is based upon both the price-earnings multiples of comparable public companies, as well as transactional data from similar companies that were recently sold. If the fair value of the reporting unit is less than its carrying value, an impairment loss is recorded for the difference between the fair value of the reporting unit and the carrying value of the reporting unit.

The Company's indefinite-lived intangible assets consist of trade names and trade marks (collectively "trade names"). The Company estimates the fair value of its trade names using a relief-from-royalty income approach. If the fair value of the trade name is less than its carrying value, an impairment loss is recorded for the difference between the estimated fair value and carrying value of the intangible assets.

PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
FOR THE YEARS ENDED DECEMBER 27, 2020 AND DECEMBER 29, 2019

Leases - The Company leases retail restaurants, commissaries, and office space under operating leases. Some lease agreements contain tenant improvement allowances, rent escalation clauses and/or contingent rent provisions. For purposes of recognizing incentives and minimum rental expenses on a straight-line basis over the terms of the leases, the Company uses the date it takes possession of the leased space for construction purposes as the beginning of the term. For leases with renewal periods at the Company's option, the Company determines the expected lease period based on whether the renewal of any option is reasonably assured at the inception of the lease. In addition to rental expense, certain leases require the Company to pay a portion of real estate taxes, utilities, building operating expenses, insurance, common area maintenance charges, and other charges.

For rent escalations, and rent holidays, the Company records a deferred rent liability and amortizes the deferred rent over the terms of the leases as reductions to occupancy expense.

Leasehold improvements financed by the landlord through lease incentive allowances are recorded as deferred lease incentives. The Company classifies lease incentive allowances as deferred rent on the consolidated balance sheets and amortizes the lease incentives on a straight-line basis over the defined lease term as a reduction of occupancy expense.

In April 2020, the Financial Accounting Standards Board ("FASB") issued guidance related to rent concessions resulting from the COVID-19 pandemic. This guidance allows entities an election to account for eligible concessions, regardless of their form, either by (1) applying the modification framework for these concessions in accordance with FASB Accounting Standards Codification ("ASC") Topic 840, *Leases* or (2) accounting for the concessions as if they were made under the enforceable rights included in the original agreement. The election applies to any lessor-provided lease concession related to the impact of the COVID-19 pandemic, provided the concession does not result in a substantial increase in the rights of the lessor or in the obligations of the lessee. During the year ended December 27, 2020, the Company received non-substantial concessions from certain landlords in the form of rent deferrals and abatements. The Company has elected to account for these rent concessions as if they were made under the enforceable rights included in the original agreements. The recognition of rent concessions resulting from the COVID-19 pandemic did not have a material impact on the Company's consolidated financial statements as of December 27, 2020.

Revenue Recognition - The Company adopted FASB ASC Topic 606, *Revenue from Contracts with Customers*, as of January 1, 2019 using the modified retrospective method applied to contracts that were not completed as of the date of adoption. Refer to Note 3 for additional information.

Fair Value of Financial Instruments - The Company discloses and recognizes the fair value of its assets and liabilities using a hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in an orderly transaction between market participants at the measurement date. The guidance establishes three levels of the fair value hierarchy as follows:

Level 1—Inputs are unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date;

Level 2—Inputs are observable, unadjusted quoted prices in active markets for similar assets or liabilities, unadjusted quoted prices for identical or similar assets or liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the related assets or liabilities; and

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Level 3—Unobservable inputs that are significant to the measurement of the fair value of the assets or liabilities that are supported by little or no market data

Investments designated for the deferred compensation plan consist of mutual funds which are valued based on quoted market prices. Investments purchased and held principally for the purpose of selling them in the near term are classified as trading securities. Trading securities are reported at fair value with unrealized gains and losses included in earnings. The investments are being held to satisfy the obligations for the deferred compensation plan.

Pre-Opening Expenses - Pre-opening expenses consist primarily of occupancy expenses, which represent rent expense recognized during the period between the date of possession of the restaurant facility and the restaurant opening date, wages, travel for the opening team, food, beverage and the initial stocking of operating supplies. These are expensed as incurred prior to the restaurant opening for business.

Income and Other Taxes - The Company is a limited liability corporation and taxed as a partnership under the appropriate provisions of the Internal Revenue Code. Therefore, federal and state income taxes on the net earnings will be payable by the unit-holders and no provisions are made for federal and state income taxes in the accompanying consolidated financial statements.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was signed into law. It intended to provide economic relief to those impacted by the COVID-19 pandemic. The CARES Act also allowed eligible employers to defer the remittance of certain FICA taxes otherwise payable during calendar year 2020 and remit half of such deferred amounts on or before December 31, 2021 and half on or before December 31, 2022. The Company deferred approximately \$5.4 million of FICA tax remittances under this provision as of December 27, 2020, which is included in other long-term liabilities in the consolidated balance sheets.

The CARES Act provides refundable employee retention credits, which can be used to offset payroll tax liabilities. For the year ended December 27, 2020, the Company recorded a benefit of \$0.3 million, which is included in other income in the consolidated statement of operations.

Commitments - The majority of the food products the Company purchases are subject to changes in price primarily due to the effect of supply and demand of the commodities, in particular, proteins, dairy, produce, and grains. Overall pricing agreements are established in an effort to maintain a more consistent food cost without creating long-term purchase commitments.

Advertising and Marketing Expenses—The costs of producing advertising are expensed the first-time advertising takes place, while the costs of communicating advertising are expensed as services are received. Advertising and marketing expenses totaled \$2.6 million and \$4.5 million for the years ended December 27, 2020 and December 29, 2019, respectively. Advertising and marketing expenses included in other operating expenses in the consolidated statements of operations is primarily related to sponsorships, in-store merchandising, and charitable giving; those included in general and administrative expenses in the consolidated statements of operations primarily consist of branding initiatives.

Employee Benefits - The Company sponsors a 401(k) plan for all employees that are eligible based upon age and length of service. The expenses incurred for Company matching contributions to the plan were approximately \$0.36 million and \$0.44 million for the years ended December 27, 2020 and December 29, 2019, respectively.

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The Company offers a non-qualified deferred compensation plan to certain officers and other members of management. Under the plan, eligible employees may defer up to 80% of their annual salary and annual bonus. The Company has elected to fund its deferred compensation obligations through a rabbi trust. The rabbi trust is subject to creditor claims in the event of insolvency, but such assets are not available for general corporate purposes. Assets held in the rabbi trust are invested in mutual funds, as selected by the participants, which are designated as trading securities and carried at fair value. The fair value measurement of these trading securities is considered Level 1 of the fair value hierarchy as they are measured using quoted market prices. As of December 27, 2020 and December 29, 2019, the fair value of the mutual fund investments and deferred compensation obligations were as follows:

	December 27, 2020			December 29, 2020		
	Level 1	Level 2	Level 3	Level 1	Level 2	Level 3
Assets - Investments designated for deferred compensation plan						
Cash/money accounts	\$ 481	\$ —	\$ —	\$ 111	\$ —	\$ —
Mutual Funds	3,643	—	—	3,433	—	—
Total assets	<u>\$4,124</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$3,544</u>	<u>\$ —</u>	<u>\$ —</u>

The mutual fund investments and deferred compensation obligations are included in other assets, accrued expenses and other long-term liabilities in the consolidated balance sheets. Changes in the fair value of securities held in the rabbi trust are recognized as trading gains and losses and included in other income in the consolidated statements of operations and offsetting increases or decreases in the deferred compensation obligation are recorded in other long-term liabilities in the consolidated balance sheets. For the year ended December 27, 2020, the trading gains and compensation expense were each \$0.4 million. For the year ended December 29, 2019, trading gains and compensation expense were each \$0.5 million.

Earnings (Loss) Per Unit - Basic earnings (loss) per unit is calculated by dividing the net income (loss) attributable to common unitholders by the weighted-average number of common units outstanding.

Diluted earnings (loss) per unit attributable to common unitholders adjusts the basic earnings (loss) per unit attributable to common unitholders and the weighted-average number of units of common units outstanding for the potential dilutive impact of common units, using the treasury-stock method. Diluted earnings (loss) per unit considers the impact of potentially dilutive securities except in periods in which there is a loss because the inclusion of the potential common units would have an anti-dilutive effect.

Immaterial Correction of an Error in Prior Periods

The Company has revised its previously presented consolidated financial statements as of and for the periods ended December 27, 2020 and December 29, 2019 to properly reflect that the increases in the carrying amount of Redeemable Preferred Units shall be charged against retained earnings, or in the absence of retained earnings, by charges against additional paid-in capital. For the years ended December 27, 2020 and December 29, 2019, \$12.3 and \$5.8 million were reclassified from additional paid-in-capital to retained earnings, respectively. Additionally, \$50.3 million was reclassified from the December 31, 2018 beginning balance of additional paid-in-capital to retained earnings. The effect of the errors did not impact Total Assets, Total Liabilities, Total Common Equity, the Consolidated Statement of Operations or the Consolidated Statements of Cashflows. In accordance with FASB ASC 250 Accounting Changes and Error Corrections, the Company evaluated the error from quantitative and qualitative perspectives and concluded it was immaterial to the Company's consolidated financial statements.

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Recently Issued Accounting Standards -

In February 2016, the FASB issued Accounting Standards Update (“ASU”) No. 2016-02, *Leases (Topic 842)* (“ASC 842”). The pronouncement requires lessees to recognize a liability for lease obligations, which represents the discounted obligation to make future minimum lease payments, and a corresponding right-of-use asset on the balance sheet. The guidance requires disclosure of key information about leasing arrangements that is intended to give financial statement users the ability to assess the amount, timing, and potential uncertainty of cash flows related to leases. The update is effective for fiscal years beginning after December 15, 2021, with early adoption permitted. The Company is in the process of implementing ASC 842 and expects this guidance to materially impact the Company’s consolidated financial statements by significantly increasing assets and liabilities on the consolidated balance sheet in order to record the right of use assets and related lease liabilities. However, the Company does not expect this guidance to have a significant impact to its consolidated statements of operations or consolidated statements of cash flows.

In August 2018, the FASB issued ASU No. 2018-15, *Intangibles-Goodwill and Other-Internal-Use Software (Subtopic 350-40): Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*, which clarifies the accounting for implementation costs in cloud computing arrangements that is a service contract. The update is effective for fiscal years beginning after December 15, 2020, with early adoption permitted. The Company adopted this standard effective December 28, 2020. Subsequent to the adoption of ASU 2018-15, the Company will capitalize such costs within other current assets or other assets on its consolidated balance sheets. We will begin amortizing the implementation costs once the system is ready for its intended use, on a straight-line basis, over the term of the related service agreements, including all reasonably certain renewals. The amortization expense related to cloud computing arrangements that are service contracts will be recorded within general and administrative expenses or other operating expenses on the Company’s consolidated statements of operations. The Company does not expect the adoption of ASU 2018-15 to result in a material change to its consolidated financial statements.

The Company reviewed all other recently issued accounting pronouncements and concluded that they were either not applicable or not expected to have a significant impact to the consolidated financial statements.

Recently Adopted Accounting Standards -

In May 2014, the FASB issued ASU No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*, as amended by multiple standards updates. The update was issued to clarify the principles for recognizing revenue and to develop a common revenue standard and disclosure requirements for U.S. Generally Accepted Accounting Principles and International Financial Reporting Standards (“IFRS”). The FASB approved a one-year deferral of the effective date of ASU 2014-09, such that it became effective for the annual period beginning after December 15, 2018. The Company adopted the standard effective January 1, 2019 and applied the amendments using the modified retrospective method applied to contracts that were not completed as of the date of adoption. The adoption did not have a material impact on restaurant sales but did impact gift card breakage. The Company sells gift cards to customers, records the sale as a contract liability and recognizes the associated revenue as the gift card is redeemed. A portion of these gift cards are not redeemed by the customer, which is recognized by the Company as revenue in proportion to the pattern of rights exercised by the customer. The expected breakage amount recognized was determined based on a portfolio assessment of historical data on gift card redemption patterns. Upon adoption of this standard, the Company’s retained earnings increased by approximately \$0.2 million. Refer to Note 3 for additional information.

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NOTE 3. REVENUE RECOGNITION

Revenues from retail restaurants are presented net of discounts and recognized when food and beverage products are sold to the end customer. Sales taxes collected from customers are excluded from revenues and the obligation is included in accrued liabilities until the taxes are remitted to the appropriate taxing authorities.

The Company offers delivery services to its customers. Delivery services are fulfilled by the Company and third-party service providers. In some cases, the Company makes delivery sales through Portillos.com or the Portillo's App ("Dispatch Sales"). In other cases, the Company makes delivery sales through a non-Company owned channel, such as the delivery partner's website or app ("Marketplace Sales"). With respect to Dispatch Sales, delivery may be performed by the Company or through a third-party service provider. The Company generally recognizes revenue, including delivery fees, when the performance obligation is complete and the food is transferred to the customer. For these sales, the Company receives payment directly from the customer at the time of sale. With respect to Marketplace Sales, the Company generally recognizes revenue, excluding delivery fees collected by the delivery partner, when the performance obligation is complete, and control of the food is transferred to the delivery partner. The Company receives payment subsequent to the transfer of food. The payment terms with respect to Marketplace Sales are short-term in nature.

The Company sells gift cards which do not have expiration dates. The Company records the sale of the gift card as a contract liability and recognizes revenue from gift cards when: (i) the gift card is redeemed by the customer; or (ii) in the event a gift card is not expected to be redeemed, in proportion to the pattern of rights exercised by the customer (gift card breakage). The Company has determined that 11% of gift card sales will not be redeemed and will be retained by us based on a portfolio assessment of historical data on gift card redemption patterns. Gift card breakage is recorded within revenues in the consolidated statements of operations. The Company recognized gift card breakage of \$0.7 million and \$0.8 million for the years ended December 27, 2020 and December 29, 2019, respectively.

The Company's only revenue related to performance obligations not yet satisfied is revenue from gift cards sold but not yet redeemed. The gift card liability included in current deferred revenue on the consolidated balance sheets is as follows (in thousands):

	<u>December 27, 2020</u>	<u>December 29, 2019</u>
Gift card liability	\$ 6,216	\$ 5,861

Revenue recognized in the consolidated statements of operations for the redemption of gift cards that were included in their respective liability balances at the beginning of the year is as follows (in thousands):

	<u>December 27, 2020</u>	<u>December 29, 2019</u>
	<u>Year Ended</u>	
Revenue recognized from gift card liability balance at the beginning of the year	\$ 3,197	\$ 7,111

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NOTE 4. PROPERTY & EQUIPMENT, NET

Property and equipment, net consisted of the following:

<i>(In thousands)</i>	December 27, 2020	December 29, 2019
Land improvements	\$ 15,039	\$ 14,549
Furniture, fixtures, and equipment	105,059	100,046
Leasehold improvements	115,695	105,468
Transportation equipment	2,285	2,261
Construction-in-progress	10,711	1,405
	<u>248,789</u>	<u>223,729</u>
Less accumulated depreciation	<u>(74,020)</u>	<u>(58,627)</u>
	<u>\$ 174,769</u>	<u>\$ 165,102</u>

Depreciation expense was \$15.8 million and \$15.6 million for the years ended December 27, 2020 and December 29, 2019, respectively.

NOTE 5. GOODWILL & INTANGIBLE ASSETS

During the fourth quarter of 2020 and 2019, the Company performed an annual impairment test over the goodwill and indefinite-lived trade names of the Company. The Company has one reporting unit for goodwill which is evaluated for impairment annually. The Company used the income approach and market approach to test goodwill, and the relief-from-royalty method form of the income approach to test the trade names. Under the income approach, fair value is based on the present value of estimated future cash flows. The market approach utilized both the price-earnings multiples of comparable public companies, as well as transactional data from similar companies that were recently sold. Adjustments are then made for any dissimilarities, to appropriately compare and correlate the market transactions used in this method. In estimating the fair value of the Company under the market approach, the most significant assumptions include the selection of the guideline public companies used in the analysis and the selection of EBITDA multiples. The most significant assumptions utilized in the fair value estimate of the income approach include projected annual revenue, earnings before interest, taxes, depreciation and amortization ("EBITDA"), capital expenditures and the discount rate. Growth assumptions were primarily based on a combination of historical performance, expected comparable store sales growth, the number of new restaurant additions, and performance of new restaurants.

For indefinite-lived intangibles, the relief-from-royalty method estimates the fair value of an intangible asset based on what a third party would pay for the right to use that asset. The most significant assumptions utilized in the relief-from-royalty method are projected revenues and the royalty rate. No impairment charges were recognized for goodwill or indefinite-lived intangible assets for the years ended December 27, 2020 and December 29, 2019.

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Intangibles, net consisted of the following:

<i>(In thousands)</i>	As of December 27, 2020		
	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Amount</u>
Indefinite-lived intangible assets:			
Trade names	\$ 223,925	\$ —	\$ 223,925
Intangibles subject to amortization:			
Recipes	56,117	(18,538)	37,579
Covenants not-to-compete	40,799	(37,515)	3,284
Favorable rental contracts	2,991	(1,599)	1,392
	<u>\$ 323,832</u>	<u>\$ (57,652)</u>	<u>\$ 266,180</u>

<i>(In thousands)</i>	As of December 29, 2019		
	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Amount</u>
Indefinite-lived intangible assets:			
Trade names	\$ 223,925	\$ —	\$ 223,925
Intangibles subject to amortization:			
Recipes	56,117	(15,650)	40,467
Covenants not-to-compete	40,799	(31,884)	8,915
Favorable rental contracts	2,991	(1,350)	1,641
	<u>\$ 323,832</u>	<u>\$ (48,884)</u>	<u>\$ 274,948</u>

Amortization expense was \$8.8 million for each of the years ended December 27, 2020 and December 29, 2019, respectively.

The estimated aggregate amortization expense for the intangibles over the succeeding five years and thereafter are \$6.4 million, \$3.1 million, \$3.1 million, \$3.1 million, \$3.0 million, and \$23.6 million, respectively.

NOTE 6. EQUITY METHOD INVESTMENT

The Company has a 50% interest in C&O Chicago, L.L.C. (“C&O”). The Company accounts for the investment and financial results in the consolidated financial statements under the equity method of accounting as the Company has significant influence but does not have control. The investment is adjusted to reflect the Company’s share of C&O’s earnings and losses to date and any distributions received.

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A summary of financial information for C&O is as follows:

<i>(In thousands)</i>	<u>December 27, 2020</u>	<u>December 29, 2019</u>
Assets:		
Current assets	\$ 1,349	\$ 1,197
Property, plant, and equipment, net of accumulated depreciation— \$5,838 and \$5,719 in 2020 and 2019, respectively	837	939
Total assets	<u>2,186</u>	<u>2,136</u>
Liabilities:		
Current liabilities	681	1,117
Non-current liabilities:		
Deferred rent	1,193	1,176
Total liabilities	<u>1,874</u>	<u>2,293</u>
Members' equity (deficit)	\$ 312	\$ (157)
Total liabilities and members' equity (deficit)	<u>2,186</u>	<u>2,136</u>
Results from operations:		
Sales	\$ 10,885	\$ 16,143
Net income	918	1,533

NOTE 7. ACCRUED EXPENSES

Accrued expenses consisted of the following:

<i>(In thousands)</i>	<u>December 27, 2020</u>	<u>December 29, 2019</u>
Salaries, wages, and other compensation	\$ 15,243	\$ 16,486
Interest	9,377	2,713
Rent and real estate taxes	4,807	4,434
Insurance	2,837	2,886
Sales tax	1,609	2,266
Other accrued expenses	954	960
	<u>\$ 34,827</u>	<u>\$ 29,745</u>

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NOTE 8. DEBT

Debt consisted of the following:

<i>(In thousands)</i>	<u>December 27, 2020</u>	<u>December 29, 2019</u>
First Lien Term B-3 Loans	\$ 329,076	\$ 332,400
Revolving Loans	—	15,000
Second Lien Term B-3 Loans	155,000	155,000
Unamortized discount and debt issuance costs	<u>(14,372)</u>	<u>(18,235)</u>
Total debt, net	469,704	484,165
Less: current portion	<u>(3,324)</u>	<u>(18,324)</u>
Long-term debt, net	<u>\$ 466,380</u>	<u>\$ 465,841</u>

First Lien Credit Agreement – PHD Intermediate LLC (“Holdings”), Portillo’s Holdings LLC (the “Borrower”) and certain of its subsidiaries entered into the First Lien Credit Agreement (“First Lien Credit Agreement”), dated as of August 1, 2014 and as amended October 25, 2016, May 18, 2018 and December 6, 2019, with UBS AG, Stamford Branch, as the administrative agent and collateral agent, and other lenders from time to time party thereto (the “First Lien Lenders”). The First Lien Lenders extended credit in the form of (i) first lien initial term loans in an initial aggregate principal amount of \$335.0 million and (ii) a revolving credit facility in an original principal amount equal to \$30.0 million, including a letter of credit sub-facility with a \$7.5 million sublimit (the “Revolving Facility” and the loans thereunder, the “Revolving Loans”).

On December 6, 2019, the Borrower entered a third amendment to the First Lien Credit Agreement (the “Third Amendment to First Lien Credit Agreement”) whereby the aggregate principal amount of the term loans as of the effective date of the Third Amendment to First Lien Credit Agreement was \$332.4 million (the “First Lien Term B-3 Loans”), and the Revolving Facility was increased by \$50 million. The maturity date with respect to the First Lien Term B-3 Loans was extended to September 6, 2024 and the maturity date with respect to the Revolving Loans was extended to June 6, 2024.

In connection with Third Amendment to First Lien Credit Agreement, the interest rates spread for the First Lien Term B-3 Loans increased by 100 basis points to 5.50% for the adjusted London interbank offered rate (“Eurocurrency Rate”) loans. As of December 27, 2020, the interest rate on the First Lien Term B-3 Loans was 6.50%. For the years ended December 27, 2020 and December 29, 2019, the effective interest rate on the First Lien Term B-3 Loans was 7.38% and 7.90%, respectively. Beginning with December 31, 2019, the Borrower is required to pay on the last business day of each calendar quarter, March 31, June 30, September 30, and December 31, an aggregate principal amount of \$0.8 million.

As of December 27, 2020 and December 29, 2019, the Borrower had \$0.0 million and \$15.0 million borrowings of Revolving Loans outstanding, respectively. As of December 27, 2020 and December 29, 2019, the interest rate on the Revolving Loans was 3.25% and 3.50%, respectively, subject to change based on a consolidated first lien net leverage ratio as defined in the First Lien Credit Agreement. As of December 27, 2020 and December 29, 2019, the commitment fee rate, pursuant to the First Lien Credit Agreement, was 0.250% and 0.375%,

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respectively. Also pursuant to the First Lien Credit Agreement, as of December 27, 2020 and December 29, 2019, letter of credit fronting fees were 0.125%. Commitment fees and letter of credit fronting fees are recorded as interest expense in the consolidated statements of operations.

The Borrower had \$5.8 million of letters of credit issued against the Revolving Facility as of both December 27, 2020 and December 29, 2019, respectively. As of December 27, 2020, the Borrower had \$44.2 million of availability under the Revolving Facility.

Second Lien Credit Agreement – Holdings, the Borrower and certain of its subsidiaries entered into the Second Lien Credit Agreement (the “Second Lien Credit Agreement”) dated as of August 1, 2014 and as amended on October 25, 2016 and December 6, 2019 with UBS AG, Stamford Branch, as administrative agent and collateral agent, and other lenders from time to time party thereto (the “Second Lien Lenders”). The Second Lien Lenders extended credit in the form of initial second lien term loans in an initial aggregate principal amount of \$80.0 million.

On December 6, 2019, the Borrower entered into a second amendment to the Second Lien Credit Agreement (the “Second Amendment to Second Lien Credit Agreement”) whereby the aggregate principal amount of the term loans as of the effective date of the Second Amendment to the Second Lien Credit Agreement was \$155.0 million (the “Second Lien Term B-3 Loans”). The maturity date of the Second Lien Term B-3 Loans was extended to December 6, 2024 (the “Second Lien Maturity Date”). In addition to the increased principal amount, the interest rates spread for the Second Lien Term B-3 Loans increased by 150 basis points to 9.50% for Eurocurrency Rate loans. The Borrower has elected to determine interest on the Second Lien Term B-3 Loans at the Eurocurrency Rate, plus 9.50%. As of December 27, 2020, the interest rate on the Second Lien Term B-3 Loans was 10.75%. For the years ended December 27, 2020 and December 29, 2019, the effective interest rate on the Second Lien Term B-3 Loans was 11.83% and 12.06%, respectively. No principal payments are required. The aggregate principal is due on the Second Lien Maturity Date.

As of December 27, 2020 and December 29, 2019, the fair value of debt approximates the carrying value as it is variable rate debt. The fair value measurement of this debt is considered Level 2 of the fair value hierarchy as inputs to interest are observable, unadjusted quoted prices in active markets for similar assets or liabilities.

Discount and Debt Issuance Costs - In connection with entering into the Third Amendment to First Lien Credit Agreement and the Second Amendment to Second Lien Credit Agreement, in each case, dated as of December 6, 2019, the Borrower paid debt issuance costs of \$14.5 million, of which \$13.3 million were capitalized and are being amortized over the term of the related debt agreements, and \$1.2 million were expensed as incurred.

Borrowings under the First Lien Credit Agreement and Second Lien Credit Agreement are guaranteed by Holdings, the Borrower and certain of the Borrower’s subsidiaries, and Holdings, the Borrower and certain of the Borrower’s subsidiaries have pledged substantially all tangible and intangible assets as collateral, subject to certain exclusions and exceptions.

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Maturities of long-term debt - Principal payments on long-term debt (excluding the Revolving Facility) outstanding at December 27, 2020 for each of the next five fiscal years are as follows (in thousands):

2021	\$ 3,324
2022	3,324
2023	4,155
2024	473,273
2025	—
	<u>\$ 484,076</u>

The Borrower amortized \$2.2 million and \$2.6 million of deferred financing costs, respectively, during the years ended December 27, 2020 and December 29, 2019, which is included in interest expense in the consolidated statements of operations. In addition, the Borrower also amortized \$1.6 million and \$0.3 million in original issue discount related to the long-term debt, which is included in interest expense in the consolidated statements of operations in the years ended December 27, 2020 and December 29, 2019, respectively.

Total interest costs incurred were \$45.0 million and \$43.4 million for the years ended December 27, 2020 and December 29, 2019, respectively. No interest amounts were capitalized into property and equipment during the years ended December 27, 2020 and December 29, 2019.

The Borrower is subject to certain financial and reporting covenants pursuant to the terms of the First Lien Credit Agreement and Second Lien Credit Agreement. These covenants are customary for these types of debt agreements.

NOTE 9. REDEEMABLE PREFERRED UNITS

Pursuant to a unit purchase agreement, dated August 1, 2014, between the Company and Broad Street Principal Investments (the “Preferred Investor”), the Company issued 100,000 preferred units (the “Preferred Units”) on the Closing Date in exchange for a capital contribution of \$97.7 million, net of discounts and fees as agreed between the parties. The Preferred Units have all the rights, privileges, and obligations as provided for in the Amended and Restated Limited Liability Company Agreement of the Company (the “LLC Agreement”), which include redemption rights and the amounts payable upon liquidation, but exclude dividend and conversion rights.

Preferred Yield - Pursuant to the LLC Agreement, each Preferred Unit accrues on a daily basis the following applicable preferred rate, subject to certain triggering events as defined in the LLC Agreement that would result in an additional 2% to the prevailing rate below:

- 11% per year until the eighth anniversary of the Closing Date
- 12% per year from the eighth to the tenth anniversary of the Closing Date
- 13% per year thereafter

The preferred rate accrues daily and compounds semiannually on June 30 and December 31 of each year on the sum of the preferred unreturned capital contributions and the unpaid Preferred Yield outstanding that has compounded for all prior periods.

Call Rights - The Company can, on or after the first anniversary of the Closing Date (the “First Call Date”), choose to redeem the Preferred Units in whole or in part, by giving proper written notice as required in the LLC

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Agreement. The redemption price is a premium percentage applied to the sum of the unreturned capital contributions for the Preferred Units and the unpaid Preferred Yield (together, the “Preferred Liquidation Amount”). As of December 27, 2020, the percentage of Preferred Liquidation Amount is 101%.

Put Rights - The Preferred Units holder can also require the Company to redeem the Preferred Units, in whole or in part, by delivering proper written notice (i) immediately prior to or simultaneously with a sale of the Company or (ii) at any time from and after the twelfth anniversary of the Closing Date. The redemption price is specified in the LLC Agreement.

As of December 27, 2020 and December 29, 2019, the Company had recorded \$200.6 million and \$180.0 million, respectively, as Redeemable Preferred Units. These transactions were recorded in accordance with FASB ASC 480 *Distinguishing Between Liabilities and Equity*. As a result of the probability of the redemption by holder feature, the Preferred Units are classified outside of permanent equity within the consolidated balance sheets.

NOTE 10. COMMON UNITS AND UNIT-BASED COMPENSATION

Common Units

As of December 27, 2020 and December 29, 2019, the Company had 378,659,104 and 378,609,104 Class A Common Units outstanding. The increase of 50,000 Class A Common Units was primarily attributable to the issuance of common units to a team member during the fiscal year ended December 27, 2020. The Company has 52,343,609 options authorized to purchase Class A Common Units as designated by the Company’s 2014 Equity Incentive Plan, as amended.

Equity Incentive Plan

The Company has granted common unit options under its 2014 Equity Incentive Plan, as amended, (the “2014 Plan”). The 2014 Plan permits the granting of awards to employees, officers, directors and consultants of the Company and affiliates in the form of options, unit appreciation rights, Restricted Class A Units, unrestricted Class A Units, Performance Awards and awards convertible into or otherwise based on Class A Units. The 2014 Plan gives broad powers to the Company’s board of managers to administer and interpret the 2014 Plan, including the authority to select the individuals to be granted awards and rights to prescribe the particular form and conditions of each award to be granted.

As of December 27, 2020, the Company had 126,000 options available to be issued.

Under the 2014 Plan, the number of common units and exercise price of each option are determined by the board of managers (the “Board”), or a committee designated by the Board. The awards granted are generally exercisable within a 10-year period from the date of grant. As of December 27, 2020, the Company has issued options with time vesting, and other options with time and performance vesting. The Company’s performance condition restricts certain option holders’ ability to exercise vested options until a liquidity event and payback criteria to the Buyer are both met. Because these events, conditions or criteria are not considered probable, no compensation expense related to these unit options was recognized. For unit options granted without performance conditions, the Company records compensation expense on a graded-vesting basis over the vesting period based on the grant-date fair value of the option, determined using the Black-Scholes option pricing valuation model. Options issued and outstanding expire on various dates through the year 2030. The exercise price on all options outstanding as of December 27, 2020, range from \$0.44 to \$0.74, and the options vest over a range of immediately to five-year periods.

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Activity under the 2014 Plan for the year ended December 27, 2020, is as follows:

	Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Term (Years)
Outstanding-December 29, 2019	50,835	\$ 0.58	6.8
Granted	2,075	\$ 0.59	9.5
Exercised	(50)	\$ 0.81	—
Cancelled	(742)	\$ 0.73	—
Outstanding-December 27, 2020	<u>52,118</u>	\$ 0.61	5.9
Vested-December 27, 2020	<u>19,973</u>	\$ 0.60	5.2
Vested and expected to vest-December 27, 2020	<u>27,428</u>	\$ 0.62	5.9

Unit Options Valuation - The Company estimates the fair value of unit options without performance conditions on the date of grant using the Black-Scholes option-pricing model. The Black-Scholes option-pricing model requires estimates of highly subjective assumptions, which greatly affect the fair value of each unit option. The weighted average assumptions used to estimate the fair value of unit options granted during the years ended December 27, 2020 and December 29, 2019 were as follows:

	2020	2019
Fair value of common units	\$0.46	\$0.46
Risk-free interest rate	0.49%	1.86%
Expected life (years)	6.5	6.5
Expected dividend yield	—	—
Volatility	54.3%	43.8%

Since the Company is not publicly traded, the expected volatility is based on the historical volatility of similar companies whose stock or option prices are publicly available, after considering the industry, stage of life cycle, size, market capitalization, and financial leverage of the other companies. The risk-free interest rate assumption is based on U.S. Treasury interest rates in effect at the time of grant appropriate for the expected term of the unit options granted. As permitted under authoritative guidance, due to the limited amount of option exercises, the Company used the simplified method to compute the expected term for options granted. The Company uses an expected dividend yield of zero in the Black-Scholes option valuation model as there is no anticipation of paying cash dividends in the foreseeable future. The weighted average grant date fair value was \$0.22 and \$0.18 for options granted during the years ended December 27, 2020 and December 29, 2019, respectively.

The fair value of the Company's common units was estimated using a two-step process. First, the Company's enterprise value was established using generally accepted valuation methodologies, including discounted cash flow analysis, comparable public company analysis, and comparable acquisition analysis. Second, the enterprise value was allocated among the securities that comprise the capital structure of the Company using the option-pricing method ("OPM"). The OPM treats all levels of the capital structure as call options on the enterprise's value, with exercise price based on the "breakpoints" between each of the different claims on the securities. The inputs necessary for the OPM include the current equity value (the enterprise value as previously calculated), breakpoints (the various characteristics for each class of equity, including liquidation preferences and priority distributions, in accordance with the Company's certificate of incorporation, as amended and restated), term, risk

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free rate, and volatility. The applied term of 2.5 years and 3.5 years for the 2020 and 2019 valuations, respectively, represents management's then current estimate of time to an exit event. The applied risk-free rate of 0.2% and 1.6% for the 2020 and 2019 valuations, respectively, is based upon the US treasury yield constant maturity rate corresponding to the time to an exit event as of the date of the valuation. The applied volatility of 64% and 39% for the 2020 and 2019 valuations, respectively, is based on the volatility of a sample of publicly traded companies operating in the Company's comparable industries.

Unit-Based Compensation Expense - In accordance with FASB ASC Topic 718, *Compensation-Stock Compensation*, unit-based compensation is measured at the grant date, based on the calculated fair value of the award, and is recognized as an expense over the requisite service period (generally the vesting period of the grant). The Company recognized \$1.0 million and \$1.3 million of unit-based compensation expense for the years ended December 27, 2020 and December 29, 2019, respectively, with a corresponding increase to additional paid-in-capital. Unit-based compensation expense is calculated based on awards ultimately expected to vest and is reduced for estimated forfeitures. Forfeitures are revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates and an adjustment to unit-based compensation expense will be recognized at that time.

The former Senior VP of Operations resigned effective September 11, 2019. In accordance with the Separation Agreement and Release, certain modifications were made to his unit options awarded in 2014. The primary modification was to extend the permitted time for which the options could be exercised subsequent to termination, from 90 days to December 10, 2024, which is the tenth anniversary of the original awards. The Company recorded a \$0.2 million charge to unit-based compensation expense during the year ended December 29, 2019, to reflect the incremental value related to the modifications described herein.

The former Chief Financial Officer resigned effective November 20, 2020. In accordance with the Separation Agreement and Release, certain modifications were made to his unit options awarded in 2015. The primary modification was to extend the permitted time for which the options could be exercised subsequent to termination, from 90 days to May 11, 2025, which is the tenth anniversary of the original awards. The Company recorded a \$0.3 million charge to unit-based compensation expense during the year ended December 27, 2020, to reflect the incremental value related to the modifications described herein.

As of December 27, 2020, the unrecognized unit-based compensation expense was \$6.2 million, of which \$0.8 million will be recognized through fiscal year 2025, and \$5.4 million related to performance options will be recognized if and when certain performance criteria are met. The Company records unit-based compensation expense within general and administrative expenses in the consolidated statements of operations as related awards have been granted to a limited number of management employees.

NOTE 11. OPERATING LEASES

The Company leases retail restaurants, commissaries, and office space under various long-term operating lease agreements. The leases for the Company's restaurant locations generally have an initial term of 20 years and typically provide for renewal options in five-year increments, as well as rent escalations. These leases expire or become subject to renewal clauses at various dates from 2022 to 2068. Some of the leases provide for base rent, plus additional rent based on gross sales, as defined in each lease agreement. The Company is also generally obligated to pay certain real estate taxes, utilities, building operating expenses, insurance and various other expenses associated with the properties.

The Company does not own the real properties of any of its restaurant or commissary locations.

PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
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A summary of rent expense under operating lease agreements is as follows:

<i>(In thousands)</i>	Year Ended	
	December 27, 2020	December 29, 2019
Minimum rentals	\$ 19,787	\$ 19,311
Contingent rentals	486	615
Total rental expense	\$ 20,273	\$ 19,926

A schedule by year of future minimum rental payments required under operating leases, excluding contingent rent, that have initial or remaining noncancelable lease terms in excess of one year, as of December 27, 2020, is as follows *(in thousands)*:

	Years Ending	Minimum Amount
2021		\$ 19,155
2022		19,793
2023		19,799
2024		20,141
2025		20,064
Thereafter		489,856
Total minimum payments required		\$ 588,808

NOTE 12. RELATED PARTY TRANSACTIONS

As of December 27, 2020 and December 29, 2019, the related parties' receivables consisted of a receivable balance due from C&O of \$0.2 million and \$0.4 million, respectively, which is included in accounts receivable in the consolidated balance sheets.

The Company previously issued 1,449,275 common units to the CEO and President for a unit subscription receivable of \$1.0 million. As of December 27, 2020 and December 29, 2019, the Company had \$0.5 million and \$0.7 million recorded as subscription receivable, respectively.

Also, a member of the Company's Board of Managers is the founder and CEO of Mobo Systems, Inc. (also known as "Olo"), a platform the Company uses in connection with its mobile ordering application and delivery. The Company incurred \$1.2 million in net Olo-related expenses for the year ended December 27, 2020. Of these expenses, \$0.7 million were included in cost of goods sold and \$0.5 million were included in operating expenses in the consolidated statements of operations. The Company incurred \$1.0 million in net Olo-related expenses for the year ended December 29, 2019. Of these expenses, \$0.7 million were included in cost of goods sold and \$0.3 million were included in operating expenses in the consolidated statements of operations. As of December 27, 2020 and December 29, 2019, \$0.2 million and \$0.3 million was payable to Olo and was included in accounts payable in the consolidated balance sheets.

Additionally, the Company leases 21 real properties from Richard Portillo through his ownership of Richport Property, LLC, pursuant to a sale-leaseback transaction completed in late 2014. Mr. Portillo was the former President, CEO, and Owner of the Company, as comprised at the date of the 2014 purchase. The Company made \$7.1 million in rental payments related to the aforementioned 21 locations, during each of the years ended December 27, 2020 and December 29, 2019. Mr. Portillo currently serves as a consultant under an agreement

PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
FOR THE YEARS ENDED DECEMBER 27, 2020 AND DECEMBER 29, 2019

with Portillo's Holdings, LLC (the "Consulting Agreement"). On August 1, 2020, the Consulting Agreement was extended through July 2021. Under the terms of the Consulting Agreement, \$2.0 million is paid annually for various consulting services, which is included in general and administrative expenses in the consolidated statements of operations.

NOTE 13. CONTINGENCIES

The Company is party to legal proceedings and potential claims arising in the normal conduct of business, including claims related to employment matters, contractual disputes, customer injuries, and property damage. Although the ultimate outcome of these claims and lawsuits cannot be predicted with certainty, management believes that the resulting liability, if any, will not have a material effect on the Company's consolidated financial statements.

The Company is subject to unclaimed property laws by states in the ordinary course of business. These laws generally require entities to report and remit abandoned and unclaimed property to the state which includes unclaimed wages, gift card funds, vendor payments, and customer refunds. Failure to timely report and remit the property can result in assessments that could include interest and penalties, in addition to the payment of the escheat liability. The Company routinely remits payments to states in compliance with applicable unclaimed property laws. As of each of December 27, 2020 and December 29, 2019, the Company has recorded a \$0.9 million loss contingency related to the probable loss that may arise from an obligation to report and deliver unclaimed gift card funds, which is included in accrued expenses in the consolidated balance sheets.

NOTE 14. EARNINGS (LOSS) PER UNIT

Basic earnings (loss) per unit is computed by dividing net income (loss) available to common unitholders by the weighted-average number of common units outstanding during the year.

Net income (loss) applicable to common unitholders is calculated after deducting any redeemable preferred unit accretion.

Diluted earnings (loss) per unit is computed by dividing net income available to common unit holders by the weighted-average number of common units outstanding inclusive of the incentive common units, using the treasury stock method, if dilutive.

For the years ended December 27, 2020 and December 29, 2019, the potential dilutive units related to the incentive common units were not included in the computation of diluted net loss per unit as the effect of including these units in the calculation would have been anti-dilutive.

PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
FOR THE YEARS ENDED DECEMBER 27, 2020 AND DECEMBER 29, 2019

The computations of basic and diluted earnings (loss) per unit for the year ended December 27, 2020 and December 29, 2019 are as follows (in thousands):

	<u>December 27, 2020</u>	<u>December 29, 2019</u>
Net income	\$ 12,263	\$ 5,555
Less: Redeemable preferred units accretion	(20,524)	(18,424)
Net loss attributable to common unit holders	<u>\$ (8,261)</u>	<u>\$ (12,869)</u>
Units:		
Weighted average number of common units outstanding-basic	378,634	378,536
Dilutive unit awards	—	—
Weighted average number of common units outstanding-diluted	378,634	378,536
Basic net loss per unit	\$ (0.02)	\$ (0.03)
Diluted net loss per unit	\$ (0.02)	\$ (0.03)

The following units were excluded from the calculation of diluted earnings per share because they would be anti-dilutive:

	<u>December 27, 2020</u>	<u>December 29, 2019</u>
Units subject to performance conditions	2,353	427
Units that were antidilutive	2,668	1,498
Total units excluded from diluted income (loss) per share	<u>5,021</u>	<u>1,925</u>

NOTE 15. COVID-19 PANDEMIC

In December 2019, the COVID-19 disease was reported and in January 2020, the World Health Organization (“WHO”) declared it a Public Health Emergency of International Concern. On February 28, 2020, the WHO raised its assessment of the COVID-19 threat from high to very high at a global level due to the continued increase in the number of cases and affected countries, and on March 11, 2020, the WHO characterized COVID-19 as a pandemic.

As a result of the COVID-19 pandemic, and in response to government mandates or recommendations, as well as decisions the Company made to protect the health and safety of its employees, consumers and communities, the Company temporarily closed the restaurant dining rooms; however, it was able to maintain operations through drive-thru and delivery.

The Company made certain investments during the COVID-19 pandemic related to safety and cleaning equipment and compensation for frontline team members. Finally, given the market uncertainty arising from COVID-19, the Borrower took a precautionary measure and borrowed \$40.0 million under its Revolving Facility during the second quarter of 2020, which was fully repaid throughout the remainder of second quarter of 2020.

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On April 30, 2020, the Company was granted a loan (the “Loan”) from Wintrust Bank, N.A. in the aggregate amount of \$10,000,000, pursuant to the Paycheck Protection Program (the “PPP”) under Division A, Title I of the CARES Act, which was enacted March 27, 2020. On May 5, 2020, the Company repaid the \$10.0 million proceeds from the loan.

The Company is closely monitoring the impact of the pandemic on all aspects of its business and is unable at this time to predict the continued impact that COVID-19 will have on its business, financial position and operating results in future periods due to numerous uncertainties.

NOTE 16. SUBSEQUENT EVENTS

The Company has evaluated subsequent events through July 16, 2021, the date the consolidated financial statements were available to be issued, and extended the evaluation through August 27, 2021 for the immaterial restatement described in Note 2. The Company is not aware of any significant or material subsequent event that would require disclosure.

PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
AS OF JUNE 27, 2021 AND DECEMBER 27, 2020
(In thousands, except common unit and per common unit data)
(Unaudited)

	<u>June 27, 2021</u>	<u>December 27, 2020</u>
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 54,157	\$ 41,211
Restricted cash	235	221
Accounts receivable	4,373	5,204
Inventory	3,573	5,075
Other current assets	3,995	2,915
Total current assets	<u>66,333</u>	<u>54,626</u>
Property and equipment, net	<u>180,907</u>	<u>174,769</u>
OTHER ASSETS:		
Goodwill	394,298	394,298
Intangible assets-net of accumulated amortization	261,795	266,180
Equity method investment	16,184	16,015
Other assets	4,516	4,334
Total other assets	<u>676,793</u>	<u>680,827</u>
TOTAL ASSETS	<u>\$ 924,033</u>	<u>\$ 910,222</u>
LIABILITIES, REDEEMABLE PREFERRED UNITS AND COMMON EQUITY		
CURRENT LIABILITIES:		
Accounts payable	20,642	21,427
Current portion of long-term debt	3,324	3,324
Current deferred revenue	4,414	6,774
Accrued expenses	37,621	34,827
Total current liabilities	<u>66,001</u>	<u>66,352</u>
LONG-TERM LIABILITIES:		
Long-term debt, net of current portion	466,638	466,380
Deferred rent	28,823	26,694
Other long-term liabilities	6,795	9,516
Total long-term liabilities	<u>502,256</u>	<u>502,590</u>
Total liabilities	<u>568,257</u>	<u>568,942</u>
COMMITMENTS AND CONTINGENCIES (NOTE 13)		
REDEEMABLE PREFERRED UNITS	<u>211,663</u>	<u>200,571</u>
COMMON EQUITY:		
Common units—378,790,682 and 378,659,104 units authorized, 378,790,682 and 378,659,104 units issued and outstanding as of June 27, 2021 and December 27, 2020, respectively	—	—
Stock subscription receivable	(249)	(499)
Additional paid-in-capital	141,581	141,208
Retained earnings	2,781	—
Total common equity	<u>144,113</u>	<u>140,709</u>
TOTAL LIABILITIES, REDEEMABLE PREFERRED UNITS AND COMMON EQUITY	<u>\$ 924,033</u>	<u>\$ 910,222</u>

See accompanying notes to condensed consolidated unaudited financial statements.

PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
FOR THE TWO QUARTERS ENDED JUNE 27, 2021 AND JUNE 28, 2020
(In thousands)
(Unaudited)

	Two Quarters Ended	
	June 27, 2021	June 28, 2020
REVENUES	\$ 258,041	\$ 217,260
COST AND EXPENSES:		
Restaurant operating expenses:		
Cost of goods sold, excluding depreciation and amortization	77,180	69,523
Labor	65,512	58,080
Occupancy	13,890	12,349
Other operating expenses	28,633	24,547
Total restaurant operating expenses	185,215	164,499
General and administrative expenses	24,005	18,212
Pre-opening expenses	1,960	294
Depreciation and amortization	12,709	12,266
Net income attributable to equity method investment	(359)	(232)
Other income, net	(803)	(578)
OPERATING INCOME	35,314	22,799
Interest expense	21,441	23,532
NET INCOME (LOSS)	13,873	(733)
Less: Redeemable preferred units accretion	(11,092)	(9,958)
NET INCOME (LOSS) ATTRIBUTABLE TO COMMON UNIT HOLDERS	\$ 2,781	\$ (10,691)
Earnings/(loss) per common unit:		
Basic	\$ 0.01	\$ (0.03)
Diluted	\$ 0.01	\$ (0.03)
Weighted-average common units outstanding:		
Basic	378,689,468	378,609,104
Diluted	381,402,258	378,609,104

See accompanying notes to condensed consolidated unaudited financial statements.

PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN REDEEMABLE PREFERRED UNITS AND COMMON EQUITY
FOR THE TWO QUARTERS ENDED JUNE 27, 2021 AND JUNE 28, 2020
(In thousands, except unit data)
(Unaudited)

	Preferred Units		Common Units					Total Common Equity
	Units	Amounts	Units	Amounts	Unit Subscription Receivable	Additional Paid-In Capital	Retained Earnings	
Balance, as of December 30, 2019	100,000	\$ 180,047	378,609,104	\$ —	\$ (749)	\$ 148,483	\$ —	\$ 147,734
Net loss	—	—	—	—	—	—	(733)	(733)
Unit-based compensation	—	—	—	—	—	377	—	377
Repayment of subscription receivable	—	—	—	—	250	—	—	250
Redeemable preferred units accretion	—	9,958	—	—	—	(9,958)	—	(9,958)
Balance, as of June 28, 2020	<u>100,000</u>	<u>\$ 190,005</u>	<u>378,609,104</u>	<u>\$ —</u>	<u>\$ (499)</u>	<u>\$ 138,902</u>	<u>\$ (733)</u>	<u>\$ 137,670</u>
Balance, as of December 28, 2020	100,000	\$ 200,571	378,659,104	\$ —	\$ (499)	\$ 141,208	\$ —	\$ 140,709
Net income	—	—	—	—	—	—	13,873	13,873
Unit-based compensation	—	—	—	—	—	273	—	273
Repayment of subscription receivable	—	—	—	—	250	—	—	250
Issuance of common units	—	—	131,578	—	—	100	—	100
Redeemable preferred units accretion	—	11,092	—	—	—	—	(11,092)	(11,092)
Balance, as of June 27, 2021	<u>100,000</u>	<u>\$ 211,663</u>	<u>378,790,682</u>	<u>\$ —</u>	<u>\$ (249)</u>	<u>\$ 141,581</u>	<u>\$ 2,781</u>	<u>\$ 144,113</u>

See accompanying notes to condensed consolidated unaudited financial statements.

PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE TWO QUARTERS ENDED JUNE 27, 2021 AND JUNE 28, 2020
(In thousands)
(Unaudited)

	Two Quarters Ended	
	June 27, 2021	June 28, 2020
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income (loss)	\$ 13,873	\$ (733)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	12,709	12,266
Amortization of debt issuance costs and discount	1,920	1,938
Loss on sales of assets	114	34
Unit-based compensation	273	377
Deferred rent and tenant allowance	2,083	1,632
Amortization of deferred lease incentives	(189)	(151)
Gift card breakage	(419)	(428)
Changes in operating assets and liabilities:		
Accounts receivables	535	928
Receivables from related parties	(159)	198
Inventory	1,502	520
Other current assets	(297)	305
Accounts payable	(532)	(1,887)
Accrued expenses and other liabilities	856	2,329
Deferred lease incentives	690	1,976
Other assets and liabilities	(142)	1,995
Net cash provided by operating activities	<u>32,817</u>	<u>21,299</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment	(18,468)	(3,515)
Purchase of investment securities	(200)	—
Proceeds from the sale of property and equipment	123	—
Net cash used in investing activities	<u>(18,545)</u>	<u>(3,515)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Repayments of short-term debt	—	(15,000)
Proceeds from Paycheck Protection Program loan	—	10,000
Payments of long-term debt	(1,662)	(11,662)
Proceeds from issuance of common units	100	—
Repayment of stock subscription receivable	250	250
Net cash used in financing activities	<u>(1,312)</u>	<u>(16,412)</u>
NET INCREASE IN CASH AND CASH EQUIVALENTS AND RESTRICTED CASH	12,960	1,372
CASH AND CASH EQUIVALENTS AND RESTRICTED CASH:		
Beginning of the period	41,432	22,629
End of the period	<u>\$ 54,392</u>	<u>\$ 24,001</u>
SUPPLEMENTAL CASH FLOW INFORMATION		
Interest Paid	19,378	14,305
NON-CASH INVESTING AND FINANCING ACTIVITIES:		
Accrued capital expenditures	1,259	373
Proceeds from the sale of property and equipment	16	7
Redeemable preferred units accretion	(11,092)	(9,958)
Deferred offering costs in accounts payable	783	—

See accompanying notes to condensed consolidated unaudited financial statements.

**PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
FOR THE TWO QUARTERS ENDED JUNE 27, 2021 AND JUNE 28, 2020**

NOTE 1. DESCRIPTION OF BUSINESS

PHD Group Holdings LLC (the “Company”) owns 100% of Portillo’s Holdings, LLC. Portillo’s Holdings, LLC, through its wholly owned subsidiary, Portillo’s Hot Dogs, LLC, operates fast-casual restaurants in Illinois, Indiana, California, Arizona, Florida, Wisconsin, Minnesota, Iowa and Michigan, along with two food production commissaries in Illinois. As of June 27, 2021 and June 28, 2020, the Company had 66 and 61 restaurants in operation, respectively. The Company also had 3 and 4 non-traditional locations in operation as of June 27, 2021 and June 28, 2020, respectively. These non-traditional locations include a food truck, ghost kitchen (small kitchen with no store-front presence, used to fill online orders), and concessions. PHD Card Services LLC, a wholly owned subsidiary of Portillo’s Hot Dogs, LLC, manages gift cards and was organized in the State of Florida as a separate legal entity. Portillo’s Hot Dogs, LLC additionally has a 50% interest in a single restaurant in Chicago, IL, that is referred to in Note 6. There were no restaurant closings during any period presented in the financial statements. The Company’s principal corporate offices are located in Oak Brook, IL. The Company has aggregated its operations into one operating segment and one reportable segment.

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation - The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America (“GAAP”) for interim financial information.

The Company has prepared the accompanying unaudited condensed consolidated financial statements in accordance with GAAP for interim financial statements and pursuant to the rules and regulations of the Securities and Exchange Commission. In the opinion of management, the accompanying unaudited condensed consolidated financial statements reflect all adjustments consisting of normal recurring adjustments necessary for a fair presentation of our financial position and results of operations. Interim results of operations are not necessarily indicative of the results that may be achieved for the full year. The financial statements and related notes do not include all information and footnotes required by GAAP for annual reports. This quarterly report should be read in conjunction with the consolidated financial statements.

All intercompany balances and transactions have been eliminated in consolidation.

The Company does not have any components of other comprehensive income (loss) recorded within its condensed consolidated financial statements, and therefore, does not separately present a statement of comprehensive income (loss).

Fiscal Year - We use a 52- or 53-week fiscal year ending the Sunday prior to December 31, effective beginning with the first quarter of 2019. In a 52-week fiscal year, each quarterly period is comprised of 13 weeks. The additional week in a 53-week fiscal year is added to the fourth quarter. Fiscal 2021 and 2020 each consist of 52 weeks. The fiscal period presented in this report are the two quarters ended June 27, 2021 and June 28, 2020, respectively.

Leases - In April 2020, the Financial Accounting Standards Board (“FASB”) issued guidance related to rent concessions resulting from the COVID-19 pandemic. This guidance allows entities an election to account for eligible concessions, regardless of their form, either by (1) applying the modification framework for these concessions in accordance with FASB Accounting Standards Codification (“ASC”) Topic 840, Leases or (2) accounting for the concessions as if they were made under the enforceable rights included in the original agreement. The election applies to any lessor-provided lease concession related to the impact of the COVID-19

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pandemic, provided the concession does not result in a substantial increase in the rights of the lessor or in the obligations of the lessee. During the year ended two quarters ended June 28, 2020, the Company received non-substantial concessions from certain landlords in the form of rent deferrals and abatements. The Company has elected to account for these rent concessions as if they were made under the enforceable rights included in the original agreements. The recognition of rent concessions resulting from the COVID-19 pandemic did not have a material impact on the Company's condensed consolidated financial statements as of June 27, 2021 or June 28, 2020.

Deferred Offering Costs - Deferred offering costs consist of costs incurred in connection with the anticipated sale of the Company's common stock in an initial public offering ("IPO") including certain legal, accounting, and other IPO related costs. After completion of the IPO, deferred offering costs are recorded in stockholders' equity as reduction from the proceeds of the offering. Should the Company terminate its planned IPO or there is a significant delay, the deferred offering costs would be expensed to general and administrative expenses in the consolidated statements of operations. No deferred offering costs were recorded as of December 27, 2020. As of June 27, 2021, \$0.8 million of deferred offering costs had been recorded in other current assets on the Company's consolidated balance sheets.

Recently Issued Accounting Standards - In February 2016, the FASB issued Accounting Standards Update ("ASU") No. 2016-02, *Leases (Topic 842)* ("ASC 842"). The pronouncement requires lessees to recognize a liability for lease obligations, which represents the discounted obligation to make future minimum lease payments, and a corresponding right-of-use asset on the balance sheet. The guidance requires disclosure of key information about leasing arrangements that is intended to give financial statement users the ability to assess the amount, timing, and potential uncertainty of cash flows related to leases. The update is effective for fiscal years beginning after December 15, 2021, with early adoption permitted. The Company is in the process of implementing ASC 842 and expects this guidance to materially impact the Company's consolidated financial statements by significantly increasing assets and liabilities on the consolidated balance sheet in order to record the right of use assets and related lease liabilities. However, the Company does not expect this guidance to have a significant impact to its consolidated statements of operations or consolidated statements of cash flows.

Recently Adopted Accounting Standards - In August 2018, the FASB issued ASU No. 2018-15, *Intangibles-Goodwill and Other-Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*, which clarifies the accounting for implementation costs in cloud computing arrangements that is a service contract. The update is effective for fiscal years beginning after December 15, 2020, with early adoption permitted. The Company adopted this standard effective December 28, 2020. Subsequent to the adoption of ASU 2018-15, the Company will capitalize such costs within other current assets or other assets on its condensed consolidated balance sheets. We will amortize the implementation costs once the system is ready for its intended use, on a straight-line basis, over the term of the related service agreements, including all reasonably certain renewals. The amortization expense related to cloud computing arrangements that are service contracts will be recorded within general and administrative expenses or other operating expenses on the Company's condensed consolidated statements of operations. The adoption of ASU 2018-15 did not result in a material change to its consolidated financial statements.

The Company reviewed all other recently issued accounting pronouncements and concluded that they were either not applicable or not expected to have a significant impact to the consolidated financial statements.

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NOTE 3. REVENUE RECOGNITION

Revenues from retail restaurants are presented net of discounts and recognized when food and beverage products are sold to the end customer. Sales taxes collected from customers are excluded from revenues and the obligation is included in accrued liabilities until the taxes are remitted to the appropriate taxing authorities.

The Company offers delivery services to its customers. Delivery services are fulfilled by the Company and third-party service providers. In some cases, the Company makes delivery sales through Portillos.com or the Portillo's App ("Dispatch Sales"). In other cases, the Company makes delivery sales through a non-Company owned channel, such as the delivery partner's website or app ("Marketplace Sales").

With respect to Dispatch Sales, delivery may be performed by the Company or through a third-party service provider. The Company generally recognizes revenue, including delivery fees, when the performance obligation is complete and the food is transferred to the customer. For these sales, the Company receives payment directly from the customer at the time of sale.

With respect to Marketplace Sales, the Company generally recognizes revenue, excluding delivery fees collected by the delivery partner, when the performance obligation is complete, and control of the food is transferred to the delivery partner. The Company receives payment subsequent to the transfer of food. The payment terms with respect to Marketplace Sales are short-term in nature.

The Company sells gift cards which do not have expiration dates. The Company records the sale of the gift card as a contract liability and recognizes revenue from gift cards when: (i) the gift card is redeemed by the customer; or (ii) in the event a gift card is not expected to be redeemed, in proportion to the pattern of rights exercised by the customer (gift card breakage). The Company has determined that 11% of gift card sales will not be redeemed and will be retained by us based on a portfolio assessment of historical data on gift card redemption patterns. Gift card breakage is recorded within revenues in the condensed consolidated statements of operations. The Company recognized gift card breakage of \$0.4 million for each of the two quarters ended June 27, 2021 and June 28, 2020, respectively.

The Company's only revenue related to performance obligations not yet satisfied is revenue from gift cards sold but not yet redeemed. The gift card liability included in current deferred revenue on the condensed consolidated balance sheets is as follows (in thousands):

	<u>June 27, 2021</u>	<u>December 27, 2020</u>
Gift card liability	\$ 4,299	\$ 6,216

Revenue recognized in the condensed consolidated statements of operations for the redemption of gift cards that were included in their respective liability balances at the beginning of the year is as follows (in thousands):

	<u>Two Quarters Ended</u>	
	<u>June 27, 2021</u>	<u>June 28, 2020</u>
Revenue recognized from gift card liability balance at the beginning of the year	\$ 2,459	\$ 2,447

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NOTE 4. PROPERTY & EQUIPMENT, NET

Property and equipment, net consisted of the following:

<i>(In thousands)</i>	<u>June 27, 2021</u>	<u>December 27, 2020</u>
Land improvements	15,268	15,039
Furniture, fixtures, and equipment	110,789	105,059
Leasehold improvements	129,741	115,695
Transportation equipment	2,151	2,285
Construction-in-progress	4,972	10,711
	<u>262,921</u>	<u>248,789</u>
Less accumulated depreciation	<u>(82,014)</u>	<u>(74,020)</u>
	<u>\$ 180,907</u>	<u>\$ 174,769</u>

Depreciation expense was \$8.3 million and \$7.9 million for the two quarters ended June 27, 2021 and June 28, 2020, respectively.

NOTE 5. GOODWILL & INTANGIBLE ASSETS

The Company has one reporting unit for goodwill which is evaluated for impairment annually. The Company used the income approach and market approach to test goodwill, and the relief-from-royalty method form of the income approach to test the trade names. Under the income approach, fair value is based on the present value of estimated future cash flows. The market approach utilized both the price-earnings multiples of comparable public companies, as well as transactional data from similar companies that were recently sold. Adjustments are then made for any dissimilarities, to appropriately compare and correlate the market transactions used in this method. In estimating the fair value of the Company under the market approach, the most significant assumptions include the selection of the guideline public companies used in the analysis and the selection of EBITDA multiples. The most significant assumptions utilized in the fair value estimate of the income approach include projected annual revenue, earnings before interest, taxes, depreciation and amortization ("EBITDA"), capital expenditures and the discount rate. Growth assumptions were primarily based on a combination of historical performance, expected comparable store sales growth, the number of new restaurant additions, and performance of new restaurants.

For indefinite-lived intangibles, the relief-from-royalty method estimates the fair value of an intangible asset based on what a third party would pay for the right to use that asset. The most significant assumptions utilized in the relief-from-royalty method are projected revenues and the royalty rate. No impairment charges were recognized for goodwill or indefinite-lived intangible assets for the two quarters ended June 27, 2021 and June 28, 2020.

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Intangibles, net consisted of the following:

<i>(In thousands)</i>	As of June 27, 2021		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Indefinite-lived intangible assets:			
Trade names	\$ 223,925	\$ —	\$ 223,925
Intangibles subject to amortization:			
Recipes	56,117	(19,982)	36,135
Covenants not-to-compete	40,799	(40,330)	469
Favorable rental contracts	2,991	(1,725)	1,266
	<u>\$ 323,832</u>	<u>\$ (62,037)</u>	<u>\$ 261,795</u>

<i>(In thousands)</i>	As of December 27, 2020		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Indefinite-lived intangible assets:			
Trade names	\$ 223,925	\$ —	\$ 223,925
Intangibles subject to amortization:			
Recipes	56,117	(18,538)	37,579
Covenants not-to-compete	40,799	(37,515)	3,284
Favorable rental contracts	2,991	(1,599)	1,392
	<u>\$ 323,832</u>	<u>\$ (57,652)</u>	<u>\$ 266,180</u>

Amortization expense was \$4.4 million for each of the two quarters ended June 27, 2021 and June 28, 2020, respectively.

The estimated aggregate amortization expense for the intangibles for the remainder of this year and the succeeding five years and thereafter are \$2.0 million, \$3.1 million, 3.1 million, \$3.1 million, \$3.0 million, \$2.9 million and \$20.7 million, respectively.

NOTE 6. EQUITY METHOD INVESTMENT

The Company has a 50% interest in C&O Chicago, L.L.C. ("C&O"). The Company accounts for the investment and financial results in the condensed consolidated financial statements under the equity method of accounting as the Company has significant influence but does not have control. The investment is adjusted to reflect the Company's share of C&O's earnings and losses to date and any distributions received.

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A summary of financial information for C&O is as follows:

<i>(In thousands)</i>	<u>June 27, 2021</u>	<u>December 27, 2020</u>
Assets:		
Current assets	\$ 1,971	\$ 1,349
Property, plant, and equipment, net of accumulated depreciation— \$5,892 and \$5,838 in 2021 and 2020, respectively	829	837
Total assets	<u>2,800</u>	<u>2,186</u>
Liabilities:		
Current liabilities	869	681
Non-current liabilities:		
Deferred rent	1,201	1,193
Total liabilities	<u>2,070</u>	<u>1,874</u>
Members' equity	730	312
Total liabilities and members' equity	<u>\$ 2,800</u>	<u>\$ 2,186</u>
		Two Quarters Ended
	<u>June 27, 2021</u>	<u>June 28, 2020</u>
Results from operations:		
Sales	\$ 5,597	\$ 5,665
Net income	718	466

NOTE 7. ACCRUED EXPENSES

Accrued expenses consisted of the following:

<i>(In thousands)</i>	<u>June 27, 2021</u>	<u>December 27, 2020</u>
Salaries, wages, and other compensation	\$ 17,005	\$ 15,243
Interest	9,347	9,377
Rent and real estate taxes	5,353	4,807
Insurance	2,811	2,837
Sales tax	2,205	1,609
Other accrued expenses	900	954
	<u>\$ 37,621</u>	<u>\$ 34,827</u>

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NOTE 8. DEBT

Debt consisted of the following:

<i>(In thousands)</i>	June 27, 2021	December 27, 2020
First Lien Term B-3 Loans	\$ 327,414	\$ 329,076
Revolving Loans	—	—
Second Lien Term B-3 Loans	155,000	155,000
Unamortized discount and debt issuance costs	(12,452)	(14,372)
Total debt, net	469,962	469,704
Less: current portion	(3,324)	(3,324)
Long-term debt, net	<u>\$ 466,638</u>	<u>\$ 466,380</u>

First Lien - PHD Intermediate LLC (“Holdings”), Portillo’s Holdings LLC (the “Borrower”) and certain of its subsidiaries entered into the First Lien Credit Agreement (“First Lien Credit Agreement”), dated as of August 1, 2014 and as amended October 25, 2016, May 18, 2018 and December 6, 2019, with UBS AG, Stamford Branch, as the administrative agent and collateral agent, and other lenders from time to time party thereto (the “First Lien Lenders”). The First Lien Lenders extended credit in the form of (i) first lien initial term loans in an initial aggregate principal amount of \$335.0 million and (ii) a revolving credit facility in an original principal amount equal to \$30.0 million, including a letter of credit sub-facility with a \$7.5 million sublimit (the “Revolving Facility” and the loans thereunder, the “Revolving Loans”).

On December 6, 2019, the Borrower entered a third amendment to the First Lien Credit Agreement (the “Third Amendment to First Lien Credit Agreement”) whereby the aggregate principal amount of the term loans as of the effective date of the Third Amendment to First Lien Credit Agreement was \$332.4 million (the “First Lien Term B-3 Loans”), and the Revolving Facility was increased by \$50 million. The maturity date with respect to the First Lien Term B-3 Loans was extended to September 6, 2024 and the maturity date with respect to the Revolving Loans date was extended to June 6, 2024.

In connection with Third Amendment to First Lien Credit Agreement, the interest rates spread for the First Lien Term B-3 Loans increased by 100 basis points to 5.50% for the adjusted London interbank offered rate (“Eurocurrency Rate”) loans. As of June 27, 2021, the interest rate on the Term Loans was 6.50%. As of June 27, 2021 and June 28, 2020, the effective interest rate on the Term Loans was 7.63% and 7.81%, respectively. Beginning with December 31, 2019, the Company is required to pay on the last business day of each calendar quarter, March 31, June 30, September 30, and December 31, an aggregate principal amount of \$0.8 million.

As of June 27, 2021 and June 28, 2020, the Borrower had \$0.0 million borrowings of Revolving Loans outstanding, respectively. As of June 27, 2021 and June 28, 2020, the interest rate on the Revolving Loans was 3.25% and 3.50%, respectively, subject to change based on a consolidated first lien net leverage ratio as defined in the First Lien Credit Agreement. As of June 27, 2021 and June 28, 2020, the commitment fee rate, pursuant to the First Lien Credit Agreement, was 0.250% and 0.375%, respectively. Also pursuant to the First Lien Credit Agreement, as of June 27, 2021 and June 28, 2020, letter of credit fronting fees were 0.125%. Commitment fees and letter of credit fronting fees are recorded as interest expense in the condensed consolidated statements of operations.

The Company had \$5.3 million and \$5.8 million of letters of credit issued against the Revolving Facility as of June 27, 2021 and December 27, 2020, respectively. As of June 27, 2021, the Company had \$44.7 million of availability under the Revolving Facility.

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Second Lien - Holdings, the Borrower and certain of its subsidiaries entered into the Second Lien Credit Agreement (the “Second Lien Credit Agreement”) dated as of August 1, 2014 and as amended on October 25, 2016 and December 6, 2019 with UBS AG, Stamford Branch, as administrative agent and collateral agent, and other lenders from time to time party thereto (the “Second Lien Lenders”). The Second Lien Lenders extended credit in the form of initial second lien term loans in an initial aggregate principal amount of \$80.0 million.

On December 6, 2019, the Borrower entered into second amendment to the Second Lien Credit Agreement (the “Second Amendment to Second Lien Credit Agreement”) whereby the aggregate principal amount of the term loans as of the effective date of the Second Amendment to the Second Lien Credit Agreement was \$155.0 million (the “Second Lien Term B-3 Loans”). The maturity date of the Second Lien Term B-3 Loans was extended to December 6, 2024 (the “Second Lien Maturity Date”). In addition to the increased principal amount, the interest rates spread for the Second Lien Term B-3 Loans increased by 150 basis points to 9.50% for Eurocurrency Rate loans. The Borrower has elected to determine interest on the Second Lien at the Eurocurrency Rate, plus 9.50%. As of June 27, 2021, the interest rate on the Second Lien Term B-3 Loans was 10.75%. As of June 27, 2021 and June 28, 2020, the effective interest rate on the Second Lien Term B-3 Loans was 11.99% and 11.91%, respectively. No principal payments are required. The aggregate principal is due on the Second Lien Maturity Date.

As of June 27, 2021 and December 27, 2020, the fair value of debt approximates the carrying value as it is variable rate debt. The fair value measurement of this debt is considered Level 2 of the fair value hierarchy as inputs to interest are observable, unadjusted quoted prices in active markets for similar assets or liabilities.

Discount and Debt Issuance Costs - In connection with entering into the Third Amendment to First Lien Credit Agreement and the Second Amendment to Second Lien Credit Agreement, in each case, dated as of December 6, 2019, the Borrower paid debt issuance costs of \$14.5 million, of which \$13.3 million were capitalized and are being amortized over the term of the related debt agreements, and \$1.2 million were expensed as incurred.

Borrowings under the First Lien Credit Agreement and Second Lien Credit Agreement are guaranteed by Holdings, the Borrower and certain of the Borrower’s subsidiaries, and Holdings, the Borrower and certain of the Borrower’s subsidiaries have pledged substantially all tangible and intangible assets as collateral, subject to certain exclusions and exceptions.

The Borrower amortized \$1.1 million of deferred financing costs, respectively, during each of the two quarters ended June 27, 2021 and June 28, 2020, which is included in interest expense in the condensed consolidated statements of operations. In addition, the Company also amortized \$0.8 million in original issue discount related to the long-term debt, which is included in interest expense in the condensed consolidated statements of operations in the two quarters ended June 27, 2021 and June 28, 2020, respectively. Total interest costs incurred were \$21.4 million and \$23.5 million for the two quarters ended June 27, 2021 and June 28, 2020, respectively. No interest amounts were capitalized into property and equipment during the two quarters ended June 27, 2021 and June 28, 2020.

The Borrower is subject to certain financial and reporting covenants pursuant to the terms of the First Lien and Second Lien. These covenants are customary for these types of debt agreements.

NOTE 9. REDEEMABLE PREFERRED UNITS

Pursuant to a unit purchase agreement, dated August 1, 2014, as amended October 25, 2016, between the Company and Broad Street Principal Investments (the “Preferred Investor”), the Company issued 100,000

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preferred units (the “Preferred Units”) on the Closing Date in exchange for a capital contribution of \$97.7 million, net of discounts and fees as agreed between the parties. The Preferred Units have all the rights, privileges, and obligations as provided for in the Amended and Restated Limited Liability Company Agreement of the Company (the “LLC Agreement”), which include redemption rights and the amounts payable upon liquidation, but exclude dividend and conversion rights.

Preferred Yield - Pursuant to the LLC Agreement, each Preferred Unit accrues on a daily basis the following applicable preferred rate, subject to certain triggering events as defined in the LLC Agreement that would result in an additional 2% to the prevailing rate below:

- 11% per year until the eighth anniversary of the Closing Date
- 12% per year from the eighth to the tenth anniversary of the Closing Date
- 13% per year thereafter

The preferred rate accrues daily and compounds semiannually on June 30 and December 31 of each year on the sum of the preferred unreturned capital contributions and the unpaid Preferred Yield outstanding that has compounded for all prior periods.

Call Rights - The Company can, on or after the first anniversary of the Closing Date (the “First Call Date”), choose to redeem the Preferred Units in whole or in part, by giving proper written notice as required in the LLC Agreement. The redemption price is a premium percentage applied to the sum of the unreturned capital contributions for the Preferred Units and the unpaid Preferred Yield (together, the “Preferred Liquidation Amount”). As of June 27, 2021, the percentage of Preferred Liquidation Amount is 101%.

Put Rights - The Preferred Units holder can also require the Company to redeem the Preferred Units, in whole or in part, by delivering proper written notice (i) immediately prior to or simultaneously with a sale of the Company or (ii) at any time from and after the twelfth anniversary of the Closing Date. The redemption price is specified in the LLC Agreement.

As of June 27, 2021 and December 27, 2020, the Company had recorded \$211.7 million and \$200.6 million, respectively, as Redeemable Preferred Units. These transactions were recorded in accordance with FASB ASC 480 *Distinguishing Between Liabilities and Equity*. As a result of the probability of the redemption by holder feature, the Preferred Units are classified outside of permanent equity within the condensed consolidated balance sheets.

NOTE 10. COMMON UNITS AND UNIT-BASED COMPENSATION

Common Units

As of June 27, 2021 and December 27, 2020, the Company had 378,790,682 and 378,659,104 Class A Common Units outstanding. The increase of 131,578 Class A Common Units was primarily attributable to the issuance of common units to a member of the Company’s Board of Managers during the two quarters ended June 27, 2021. The Company has 55,307,609 options authorized to purchase Class A Common Units as designated by the Company’s 2014 Equity Incentive Plan, as amended.

Equity Incentive Plan

The Company has granted common unit options under its 2014 Equity Incentive Plan, as amended, (the “2014 Plan”). The 2014 Plan permits the granting of awards to employees, officers, directors and consultants of the

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Company and affiliates in the form of options, unit appreciation rights, Restricted Class A Units, unrestricted Class A Units, Performance Awards and awards convertible into or otherwise based on Class A Units. The 2014 Plan gives broad powers to the Company's board of managers to administer and interpret the 2014 Plan, including the authority to select the individuals to be granted awards and rights to prescribe the particular form and conditions of each award to be granted.

As of June 27, 2021, the Company had 300,000 options available to be issued.

Under the 2014 Plan, the number of common units and exercise price of each option are determined by the board of managers (the "Board"), or a committee designated by the Board. The awards granted are generally exercisable within a 10-year period from the date of grant. As of June 27, 2021, the Company has issued options with time vesting, and other options with time and performance vesting. The Company's performance condition restricts certain option holders' ability to exercise vested options until a liquidity event and payback criteria to the Buyer are both met. Because these events, conditions or criteria are not considered probable, no compensation expense related to these unit options was recognized. For unit options granted without performance conditions, the Company records compensation expense on a graded-vesting basis over the vesting period based on the grant-date fair value of the option, determined using the Black-Scholes option pricing valuation model. Options issued and outstanding expire on various dates through the year 2031. The exercise price on all options outstanding as of June 27, 2021, range from \$0.44 to \$0.78, and the options vest over a range of immediately to five-year periods.

Activity under the 2014 Plan for the two quarters ended June 27, 2021, is as follows:

	Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Term (Years)
Outstanding-December 27, 2020	52,118	\$ 0.61	5.9
Granted	3,200	\$ 0.77	9.8
Exercised	—	\$ —	—
Cancelled	(410)	\$ 0.58	—
Outstanding-June 27, 2021	<u>54,908</u>	\$ 0.59	5.8
Vested-June 27, 2021	<u>21,417</u>	\$ 0.59	5.1
Vested and expected to vest-June 27, 2021	<u>28,794</u>	\$ 0.61	5.8

Unit-Based Compensation Expense - Unit-Based Compensation Expense In accordance with FASB ASC Topic 718, *Compensation-Stock Compensation*, unit-based compensation is measured at the grant date, based on the calculated fair value of the award, and is recognized as an expense over the requisite service period (generally the vesting period of the grant). The Company recognized \$0.3 million and \$0.4 million of unit-based compensation expense for the two quarters ended June 27, 2021 and June 28, 2020, respectively, with a corresponding increase to additional paid-in-capital. Unit-based compensation expense is calculated based on awards ultimately expected to vest and is reduced for estimated forfeitures. Forfeitures are revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates and an adjustment to unit-based compensation expense will be recognized at that time. Unit-based compensation expense is included in general and administrative expenses on the condensed consolidated statements of operations.

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NOTE 11. OPERATING LEASES

The Company leases retail restaurants, commissaries, and office space under various long-term operating lease agreements. The leases for the Company's restaurant locations generally have an initial term of 20 years and typically provide for renewal options in five-year increments, as well as rent escalations. These leases expire or become subject to renewal clauses at various dates from 2022 to 2068. Some of the leases provide for base rent, plus additional rent based on gross sales, as defined in each lease agreement. The Company is also generally obligated to pay certain real estate taxes, utilities, building operating expenses, insurance and various other expenses associated with the properties.

The Company does not own the real properties of any of its restaurant or commissary locations.

A summary of rent expense under operating lease agreements is as follows:

<i>(In thousands)</i>	Two Quarters Ended	
	June 27, 2021	June 28, 2020
Minimum rentals	\$ 10,919	\$ 9,634
Contingent rentals	303	223
Total rental expense	\$ 11,222	\$ 9,857

A schedule by year of future minimum rental payments required under operating leases, excluding contingent rent, that have initial or remaining noncancelable lease terms in excess of one year, as of June 27, 2021, is as follows *(in thousands)*:

	<u>Years Ending</u>	<u>Minimum Amount</u>
Remaining 2021		\$ 9,812
2022		20,243
2023		20,569
2024		20,921
2025		20,844
Thereafter		510,703
Total minimum payments required		\$ 603,092

NOTE 12. RELATED PARTY TRANSACTION

As of June 27, 2021 and December 27, 2020, the related parties' receivables consisted of a receivable balance due from C&O of \$0.3 million and \$0.2 million, respectively, which is included in accounts receivable in the condensed consolidated balance sheets.

The Company previously issued 1,449,275 common units to the CEO and President for a unit subscription receivable of \$1.0 million. As of June 27, 2021 and December 27, 2020, the Company had \$0.2 million and \$0.5 million recorded as subscription receivable, respectively. On August 13, 2021, the remaining stock subscription receivable of \$0.2 million was fully repaid.

Also, a member of the Company's Board of Managers is the founder and CEO of Mobo Systems, Inc. (also known as "Olo"), a platform the Company uses in connection with its mobile ordering application and delivery. The Company incurred \$0.5 million in net Olo-related expenses for the two quarters ended June 27, 2021. Of

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FOR THE TWO QUARTERS ENDED JUNE 27, 2021 AND JUNE 28, 2020

these expenses, \$0.2 million were included in cost of goods sold and \$0.3 million were included in operating expenses in the condensed consolidated statements of operations. The Company incurred \$0.6 million in net Olo-related expenses for the two quarters ended June 28, 2020. Of these expenses, \$0.3 million were included in cost of goods sold and \$0.3 million were included in operating expenses in the condensed consolidated statements of operations. As of June 27, 2021 and December 27, 2020, \$0.1 million and \$0.2 million was payable to Olo and was included in accounts payable in the condensed consolidated balance sheets.

Additionally, the Company leases 23 real properties from Richard Portillo. Mr. Portillo was the former President, CEO, and Owner of the Company, as comprised at the date of the 2014 purchase. The Company made \$3.9 million and \$3.6 million in rental payments related to the aforementioned 23 locations, during each of the two quarters ended June 27, 2021 and June 28, 2020. Mr. Portillo currently serves as a consultant under an agreement with Portillo's Holdings, LLC (the "Consulting Agreement"). On August 1, 2020, the Consulting Agreement was extended through July 2021. Under the terms of the Consulting Agreement, \$0.5 million is paid quarterly for various consulting services, which is included in general and administrative expenses in the condensed consolidated statements of operations.

The Consulting Agreement terminated on July 31, 2021 and has not been renewed.

NOTE 13. CONTINGENCIES

The Company is party to legal proceedings and potential claims arising in the normal conduct of business, including claims related to employment matters, contractual disputes, customer injuries, and property damage. Although the ultimate outcome of these claims and lawsuits cannot be predicted with certainty, management believes that the resulting liability, if any, will not have a material effect on the Company's condensed consolidated financial statements.

The Company is subject to unclaimed property laws by states in the ordinary course of business. These laws generally require entities to report and remit abandoned and unclaimed property to the state which includes unclaimed wages, gift card funds, vendor payments, and customer refunds. Failure to timely report and remit the property can result in assessments that could include interest and penalties, in addition to the payment of the escheat liability. The Company routinely remits payments to states in compliance with applicable unclaimed property laws. As of each of June 27, 2021 and December 27, 2020, the Company has recorded a \$0.9 million loss contingency related to the probable loss that may arise from an obligation to report and deliver unclaimed gift card funds, which is included in accrued expenses in the condensed consolidated balance sheets.

NOTE 14. EARNINGS (LOSS) PER UNIT

Basic earnings (loss) per unit is computed by dividing net income (loss) available to common unitholders by the weighted-average number of common units outstanding during the year.

Net income (loss) applicable to common unitholders is calculated after deducting any redeemable preferred unit accretion.

Diluted earnings (loss) per unit is computed by dividing net income available to common unit holders by the weighted-average number of common units outstanding inclusive of the incentive common units, using the treasury stock method, if dilutive.

For the two quarters ended June 28, 2020, the potential dilutive units related to the incentive common units were not included in the computation of diluted net loss per unit as the effect of including these units in the calculation would have been anti-dilutive.

PHD GROUP HOLDINGS LLC AND SUBSIDIARIES
NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
FOR THE TWO QUARTERS ENDED JUNE 27, 2021 AND JUNE 28, 2020

The computations of basic and diluted earnings (loss) per unit for the two quarters ended June 27, 2021 and June 28, 2020 are as follows (in thousands, except per share amounts):

	Two Quarters Ended	
	June 27, 2021	June 28, 2020
Net income (loss)	\$ 13,873	\$ (733)
Less: Redeemable preferred units accretion	(11,092)	(9,958)
Net income (loss) attributable to common unit holders	\$ 2,781	\$ (10,691)
Units:		
Weighted average number of common units outstanding-basic	378,689	378,609
Dilutive unit awards	2,713	—
Weighted average number of common units outstanding-diluted	381,402	378,609
Basic net income (loss) per unit	\$ 0.01	\$ (0.03)
Diluted net income (loss) per unit	\$ 0.01	\$ (0.03)

The following units were excluded from the calculation of diluted earnings per share because they would be anti-dilutive:

	Two Quarters Ended	
	June 27, 2021	June 28, 2020
Units subject to performance conditions	2,358	427
Units that were antidilutive	—	1,602
Total units excluded from diluted income (loss) per unit	2,358	2,029

NOTE 15. SUBSEQUENT EVENTS

The Company has evaluated subsequent events through August 27, 2021, the date the condensed consolidated financial statements were available to be issued. The Company is not aware of any significant or material subsequent event that would require disclosure.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors of Portillo's Inc.

Opinion on the Financial Statement

We have audited the accompanying balance sheet of Portillo's Inc. (the "Company") as of June 27, 2021 and the related notes (collectively referred to as the "financial statement"). In our opinion, the financial statement presents fairly, in all material respects, the financial position of the Company as of June 27, 2021, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

This financial statement is the responsibility of the Company's management. Our responsibility is to express an opinion on this financial statement based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the financial statement, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statement. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statement. We believe that our audit provides a reasonable basis for our opinion.

/s/ Deloitte & Touche LLP

Chicago, Illinois

September 27, 2021

We have served as the Company's auditor since 2021.

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PORTILLO'S INC.
BALANCE SHEET
AS OF June 27, 2021
(In thousands, except common share and per common share data)

	June 27, 2021
Assets	\$ —
Commitments and Contingencies	
Stockholder's Equity	
Common stock, par value \$0.01 per share, 100 shares authorized, none issued and outstanding	—
Total Stockholder's Equity	\$ —

NOTE 1. DESCRIPTION OF BUSINESS

Portillo's Inc. (the "Company") was formed and incorporated as a Delaware corporation on June 8, 2021. The Company was formed for the purpose of completing a public offering and related reorganization transactions (collectively "the Transactions") in order to carry on the business of PHD Group Holdings LLC ("Portillo's OpCo"). Following the consummation of the Transactions, the Company will be the sole managing member of Portillo's OpCo and will have the sole voting interest in, and control the management of, Portillo's OpCo.

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation—The balance sheet is presented in accordance with accounting principles generally accepted in the United States of America ("GAAP"). The preparation of the financial statement in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statement. As there has been no activity for this entity from its inception on June 8, 2021 through June 27, 2021, separate statements of operations, comprehensive income, changes in stockholder's equity, and cash flows have not been presented.

Fiscal Year—The Company uses a 52- or 53-week fiscal year ending the Sunday prior to December 31. In a 52-week fiscal year, each quarterly period is comprised of 13 weeks. The additional week in a 53-week fiscal year is added to the fourth quarter.

Offering Costs—In connection with the initial public offering ("IPO"), affiliates of the Company have or will incur certain legal, accounting, and other IPO related costs, which will be reimbursed by the Company upon the consummation of the IPO. Such costs will be deferred and recorded in stockholders' equity as reduction from the proceeds of the offer. Should the Company terminate its planned IPO or there is a significant delay, the deferred offering costs would be expensed. As of June 27, 2021, \$0.8 million of deferred offering costs had been recorded by affiliates of the Company.

NOTE 3. STOCKHOLDER'S EQUITY

The Company is authorized to issue 100 shares of common stock, par value \$0.01 per share, to Portillo's OpCo in exchange for a capital contribution in accordance with the Stock Subscription Agreement executed by Portillo's OpCo on June 8, 2021. None of the authorized shares of common stock were issued or outstanding as of June 27, 2021.

NOTE 4. SUBSEQUENT EVENTS

On August 11, 2021, the Company issued 100 shares of common stock to Portillo's OpCo for \$1,000. The excess paid over par value was recorded to additional paid-in capital.

The Company has evaluated subsequent events from June 27, 2021 through September 27, 2021, the date the financial statement was available to be issued. The Company is not aware of any significant or material subsequent event that would require disclosure.



Shares

Class A Common Stock

PRELIMINARY PROSPECTUS

Jefferies

Morgan Stanley

BofA Securities

Piper Sandler

Baird

UBS Investment Bank

William Blair

Guggenheim Securities

Stifel

Loop Capital Markets

Ramirez & Co., Inc.

, 2021

Until , 2021 (25 days after the date of this prospectus), all dealers that buy, sell or trade in shares of these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

PART II—INFORMATION NOT REQUIRED IN PROSPECTUS**Item 13. Other Expenses of Issuance and Distribution.**

The following table sets forth all costs and expenses, other than the underwriting discount, paid or payable by us in connection with the sale of the Class A common stock being registered. All amounts shown are estimates except for the SEC registration fee, the Financial Industry Regulatory Authority (“FINRA”) filing fee and the listing fee for the Nasdaq.

	Amount Paid or to be Paid
SEC registration fee	\$ *
FINRA filing fee	*
Stock exchange listing fee	*
Blue sky qualification fees and expenses	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Transfer agent and registrar fees and expenses	*
Miscellaneous expenses	*
Total	<u>\$ *</u>

* To be provided by amendment

Item 14. Indemnification of Officers and Directors.

The Registrant is governed by the DGCL. Section 145 of the DGCL provides that a corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person was or is an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such officer, director, employee or agent acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the corporation’s best interest and, for criminal proceedings, had no reasonable cause to believe that such person’s conduct was unlawful. A Delaware corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or contemplated action or suit by or in the right of such corporation, under the same conditions, except that such indemnification is limited to expenses (including attorneys’ fees) actually and reasonably incurred by such person, and except that no indemnification is permitted without judicial approval if such person is adjudged to be liable to such corporation. Where an officer or director of a corporation is successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to above, or any claim, issue or matter therein, the corporation must indemnify that person against the expenses (including attorneys’ fees) which such officer or director actually and reasonably incurred in connection therewith.

The Registrant’s amended and restated bylaws will authorize the indemnification of its officers and directors, consistent with Section 145 of the DGCL, as amended. The Registrant intends to enter into indemnification agreements with each of its directors and executive officers. These agreements, among other things, will require the Registrant to indemnify each director and executive officer to the fullest extent permitted by Delaware law, including indemnification of expenses such as attorneys’ fees, judgments, fines and settlement amounts incurred by the director or executive officer in any action or proceeding, including any action or proceeding by or in right of the Registrant, arising out of the person’s services as a director or executive officer.

Reference is made to Section 102(b)(7) of the DGCL, which enables a corporation in its original amended and restated certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for violations of the director's fiduciary duty, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL, which provides for liability of directors for unlawful payments of dividends of unlawful stock purchase or redemptions or (iv) for any transaction from which a director derived an improper personal benefit.

The Registrant expects to maintain standard policies of insurance that provide coverage (i) to its directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (ii) to the Registrant with respect to indemnification payments that it may make to such directors and officers.

The proposed form of Underwriting Agreement to be filed as Exhibit 1.1 to this Registration Statement provides for indemnification to the Registrant's directors and officers by the underwriters against certain liabilities.

Item 15. Recent Sales of Unregistered Securities

The following sets forth information regarding securities sold or issued by the predecessors to the registrant in the three years preceding the date of this registration statement. No underwriters were involved in these sales. There was no general solicitation of investors or advertising, and we did not pay or give, directly or indirectly, any commission or other remuneration, in connection with the offering of these shares. In each of the transactions described below, the recipients of the securities represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were affixed to the securities issued in these transactions.

LLC Unit Issuances

- (1) Since August 2018, PHD Group Holdings LLC has issued 2,477,904.83 LLC units to board members in exchange for capital contributions.
- (2) In December 2018, PHD Group Holdings LLC issued 2,173,913.04 LLC units to a management member in exchange for a capital contribution and promissory note payable to PHD Group Holdings LLC. In connection with such issuance, PHD Group Holdings LLC and the management member entered into a promissory note for \$1,000,000 whereby any dividends and distributions received from the LLC units will be used to pay off the principal amount under the promissory note.

Option Grants and Common Stock Issuances

- (3) Since October 2018, PHD Group Holdings LLC has granted to its directors, officers, employees and consultants options to purchase an aggregate of 23,315,176 LLC units under its 2014 Equity Incentive Plan, at exercise prices ranging from \$0.58 to \$0.78 per share.
- (4) In June 2021, Portillo's Inc. issued 100 shares of common stock to PHD Group Holdings LLC in exchange for a capital contribution.

The offers, sales and issuances of the securities described in (3) and (4) above were deemed to be exempt from registration in reliance upon Section 4(a)(2) of the Securities Act or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions between an issuer not involving any public offering within the meaning of Section 4(a)(2) of the Securities Act or pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. The recipients in each of these transactions acquired the securities for investment only and not with a view to or for sale in connection with any distribution thereof.

Item 16. Exhibits and Financial Statement Schedules

(a) Exhibits:

<u>Exhibit No.</u>	<u>Description</u>
1.1*	Form of Underwriting Agreement.
3.1*	Form of Amended and Restated Certificate of Incorporation of Portillo's Inc. to be in effect prior to the consummation of the offering made under this Registration Statement.
3.2*	Form of Amended and Restated Bylaws of Portillo's Inc. to be in effect prior to the consummation of the offering made under this Registration Statement.
3.3**	Certificate of Incorporation of Portillo's Inc., as currently in effect.
3.4**	Bylaws of Portillo's Inc., as currently in effect.
4.1*	Form of Certificate of Class A Common Stock.
5.1**	Opinion of Weil, Gotshal & Manges LLP.
10.1(a)**	First Lien Credit Agreement, dated as of August 1, 2014, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.
10.1(b)**	First Amendment to First Lien Credit Agreement, dated as of October 25, 2016, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.
10.1(c)**	Second Amendment to First Lien Credit Agreement, dated as of May 18, 2018, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.
10.1(d)**	Third Amendment to First Lien Credit Agreement, dated as of December 6, 2019, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.
10.2(a)**	Second Lien Credit Agreement, dated as of August 1, 2014, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.
10.2(b)**	First Amendment to Second Lien Credit Agreement, dated as of October 25, 2016, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.
10.2(c)**	Second Amendment to Second Lien Credit Agreement, dated as of December 6, 2019, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto.
10.3**	2014 Equity Incentive Plan.
10.4*	Portillo's Inc. 2021 Equity Incentive Plan.
10.5*	Form of equity award agreement under 2014 Equity Incentive Plan.
10.6*	Form of equity award agreement under Portillo's Inc. 2021 Equity Incentive Plan.
10.7*	Form of 2021 Executive Officer and Director Indemnification Agreement for Portillo's Inc.
10.8**	Employment Agreement between PHD Group Holdings LLC and Michael Osanloo, entered into as of August 3, 2018.

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<u>Exhibit No.</u>	<u>Description</u>
10.9**	Employment Agreement between PHD Group Holdings LLC and Sherri Abruscato, entered into as of August 1, 2014.
10.10**	Letter Agreement between PHD Group Holdings LLC and Michelle Hook entered into as of November 14, 2020.
10.11**	Letter Agreement between PHD Group Holdings LLC and Jill Waite entered into as of May 22, 2019.
10.12*	Form of Tax Receivable Agreement among Portillo's Inc. and the TRA Parties
10.13*	Form of Amended LLC Agreement
10.14*	Form of Registration Rights Agreement
21.1**	List of subsidiaries
23.1**	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm, for PHD Group Holdings LLC and subsidiaries
23.2**	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm, for Portillo's Inc.
23.3**	Consent of Weil, Gotshal & Manges LLP (included in Exhibit 5.1).
24.1**	Power of Attorney (included on signature page).

* To be filed by amendment.

** Filed herewith

Item 17. Undertakings

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreements, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

- (1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
- (2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Oak Brook, State of Illinois, on September 27, 2021.

PORTILLO'S INC.

By: /s/ Michelle Hook
Name: Michelle Hook
Title: Chief Financial Officer and Treasurer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned constitutes and appoints each of Michael Osanloo, Michelle Hook and Susan Shelton or any of them, each acting alone, his/her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in his/her name, place and stead, in any and all capacities, to sign this Registration Statement on Form S-1 (including all pre-effective and post-effective amendments and registration statements filed pursuant to Rule 462(b) under the Securities Act), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, each acting alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming that any such attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities indicated on September 27, 2021.

<u>Signature</u>	<u>Title</u>
<u>/s/ Michael Osanloo</u> Michael Osanloo	President, Chief Executive Officer and Director (Principal Executive Officer)
<u>/s/ Michelle Hook</u> Michelle Hook	Chief Financial Officer and Treasurer (Principal Financial Officer and Principal Accounting Officer)
<u>/s/ Ann Bordelon</u> Ann Bordelon	Director
<u>/s/ Noah Glass</u> Noah Glass	Director
<u>/s/ Gerard J. Hart</u> Gerard J. Hart	Director
<u>/s/ Richard K. Lubin</u> Richard K. Lubin	Director

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<u>Signature</u>	<u>Title</u>
<u>/s/ Joshua A. Lutzker</u> Joshua A. Lutzker	Director
<u>/s/ Michael A. Miles, Jr.</u> Michael A. Miles, Jr.	Director

CERTIFICATE OF INCORPORATION

OF

PORTILLO'S INC.

THE UNDERSIGNED, being a natural person for the purpose of organizing a corporation under the Delaware General Corporation Law, as amended from time to time (the "DGCL"), hereby certifies that:

FIRST: The name of the corporation is Portillo's Inc. (the "Corporation").

SECOND: The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose or purposes of the Corporation shall be to engage in any lawful acts or activities for which corporations may be organized under the DGCL.

FOURTH: The total number of shares of stock which the Corporation is authorized to issue is one thousand (1,000) shares of common stock, \$0.01 par value per share ("Common Stock"). The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) from time to time by the affirmative vote of the holders of at least a majority of the voting power of the Corporation's then outstanding shares of stock entitled to vote thereon, voting together as a single class, irrespective of the provisions of Sections 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of any Common Stock voting separately as a class shall be required therefor.

FIFTH: The name and mailing address of the incorporator of the Corporation is Maura L. Foley, c/o Weil, Gotshal & Manages LLP, 100 Federal Street, 34th Floor, Boston, MA 02110-1800.

SIXTH: In furtherance and not in limitation of the powers conferred by law, subject to any limitations contained in this Certificate of Incorporation, bylaws of the Corporation may be adopted, amended or repealed by a majority of the Board of Directors of the Corporation (the "Board of Directors"), but any bylaws adopted by the Board of Directors may be amended or repealed by the stockholders entitled to vote thereon. Election of directors need not be by written ballot.

SEVENTH: In addition to the powers and authority herein before or by statute expressly conferred upon them, the Board of Directors is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject to the provisions of the DGCL, this Certificate of Incorporation and the bylaws of the Corporation.

EIGHTH: The number of directors of the Corporation shall be fixed from time to time by the bylaws or amendment thereof adopted by the Board of Directors.

NINTH: To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL or any other law of the State of Delaware is amended after approval by the stockholders of this Article Ninth to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended. Any repeal or modification of the foregoing provisions of this Article Ninth by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

TENTH: The Corporation expressly elects not to be governed by Section 203 of the DGCL.

ELEVENTH: To the fullest extent permitted by Section 122(17) of the DGCL (or any successor provision thereto), the Corporation hereby renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any business opportunities that are presented to one or more of its officers, directors or stockholders, other than those officers, directors or stockholders who are employees of the Corporation or its subsidiaries. No amendment or repeal of this Article Eleventh shall apply to or have any effect on the liability or alleged liability of any officer, director or stockholder of the Corporation for or with respect to any opportunities of which such officer, director or stockholder becomes aware prior to such amendment or repeal.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Incorporation on this 8th day of June, 2021.

PORTILLO'S INC.

By: /s/ Maura Foley

Name: Maura Foley

Title: Sole Incorporator

[SIGNATURE PAGE TO CERTIFICATE OF INCORPORATION OF PORTILLO'S INC.]

**BYLAWS
OF
PORTILLO'S INC.**
(a Delaware corporation)

ARTICLE I

Stockholders

SECTION 1. Annual Meetings. Unless directors are elected by written consent in lieu of an annual meeting as permitted by the Delaware General Corporation Law, as it may be amended and supplemented from time to time (the "DGCL"), the annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held each year at such date and time, within or without the State of Delaware, as the Board of Directors shall determine.

SECTION 2. Special Meetings. Special meetings of stockholders for the transaction of such business as may properly come before the meeting or for any other purpose or purposes may be called by order of the Board of Directors or by stockholders holding together at least a majority of all the shares of the Corporation entitled to vote at the meeting, and shall be held at such date and time, within or without the State of Delaware, as may be specified by such order. Whenever the directors shall fail to fix such place, the meeting shall be held at the principal executive office of the Corporation.

SECTION 3. Notice of Meetings. Written notice of all meetings of the stockholders, stating the place (if any), date and hour of the meeting, the place within the city or other municipality or community at which the list of stockholders may be examined, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, shall be mailed or delivered (physically or electronically) to each stockholder entitled to notice of or to vote at such meeting not less than 10 nor more than 60 days prior to the meeting. Notice of any special meeting shall state in general terms the purpose or purposes for which the meeting is to be held, and at such special meeting, only such business shall be conducted as shall be specified in the notice of meeting. Stockholders may participate in any such meeting by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in meeting shall constitute presence at such meeting. Without limiting the manner by which notice otherwise may be given effectively to stockholders, notice of meetings may be given to stockholders by means of electronic transmission in accordance with applicable law. Notice of any meeting need not be given to any stockholder who shall, either before or after the meeting, submit a waiver of notice or who shall attend such meeting, except when the stockholder attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of the meeting shall be bound by the proceedings of the meeting in all respects as if due notice thereof had been given.

SECTION 4. Stockholder Lists. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number and class of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

SECTION 5. Quorum. Except as otherwise provided by law or the Corporation's Certificate of Incorporation, a quorum for the transaction of business at any meeting of stockholders shall consist of the holders of record of a majority of the issued and outstanding shares of the capital stock of the Corporation entitled to vote at the meeting, present in person or by proxy. At all meetings of the stockholders at which a quorum is present, all matters, except as otherwise provided by law or the Certificate of Incorporation, shall be decided by the vote of the holders of a majority of the shares entitled to vote thereat present in person or by proxy. If there be no such quorum, the holders of a majority of such shares so present or represented may adjourn the meeting from time to time, without further notice, until a quorum shall have been obtained. When a quorum is once present it is not broken by the subsequent withdrawal of any stockholder.

SECTION 6. Organization. Meetings of stockholders shall be presided over by the Chairman, if any, or if none or in the Chairman's absence, the President, if any, or if none or in the President's absence, a Vice-President, or, if none of the foregoing is present, by a chairman to be chosen by the stockholders entitled to vote who are present in person or by proxy at the meeting. The Secretary of the Corporation, or in the Secretary's absence an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the presiding officer of the meeting shall appoint any person present to act as secretary of the meeting.

SECTION 7. Voting; Proxies; Required Vote.

(a) At each meeting of stockholders, every stockholder entitled to vote at such meeting shall be entitled to vote in person or by proxy appointed by instrument in writing, subscribed by such stockholder or by such stockholder's duly authorized attorney-in-fact (but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period), and, unless the Certificate of Incorporation provides otherwise, shall have one vote for each share of stock entitled to vote registered in the name of such stockholder on the books of the Corporation on the applicable record date fixed pursuant to these Bylaws. At all elections of directors the

voting may but need not be by ballot and a plurality of the votes cast there shall elect such directors. Except as otherwise required by law or the Certificate of Incorporation, any other action shall be authorized by the vote of the majority of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter.

(b) Any action required or permitted to be taken at any meeting of stockholders may, except as otherwise required by law or the Certificate of Incorporation, be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of record of the issued and outstanding capital stock of the Corporation having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and the writing or writings are filed with the permanent records of the Corporation. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

SECTION 8. Inspectors. The Board of Directors, in advance of any meeting, may, but need not, appoint one or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not so appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by an appointment made by the directors in advance of the meeting or at the meeting by the person presiding thereat. No person who is a candidate for office at an election may serve as an inspector at such election. Each inspector, if any, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his or her ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders, the inspectors may consider such information as is permitted by applicable law. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by such inspector or inspectors and execute a certificate of any fact found by such inspector or inspectors.

SECTION 9. Written Consent of Stockholders Without a Meeting. Any action to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action to be so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered (physically or electronically) to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the

Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall, to the extent required by applicable law, be given to those stockholders who have not consented in writing, and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation

SECTION 10. Remote Communication. Stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication: (i) participate in a meeting of stockholders; and (ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

ARTICLE II

Board of Directors

SECTION 1. General Powers. The business, property and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors. The Board of Directors may adopt rules and procedures, not inconsistent with the Certificate of Incorporation, these Bylaws, or applicable law, as it may deem proper for the conduct of its meetings and the management of the Corporation.

SECTION 2. Qualification; Number; Term; Remuneration.

(a) Each director shall be at least 18 years of age. A director need not be a stockholder, a citizen of the United States, or a resident of the State of Delaware. The number of directors constituting the entire Board of Directors shall be one, or such greater number as may be fixed from time to time by the Board of Directors, one of whom may be selected by the Board of Directors to be its Chairman. The use of the phrase "entire Board of Directors" herein refers to the total number of directors which the Corporation would have if there were no vacancies.

(b) Directors who are elected at an annual meeting of stockholders, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next annual meeting of stockholders and until their successors are elected and qualified or until their earlier resignation or removal.

(c) (i) directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director; (ii) no such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor; and (iii) members of special or standing committees may be allowed like compensation for attending committee meetings.

SECTION 3. Quorum and Manner of Voting. Except as otherwise provided by law, a majority of the entire Board of Directors shall constitute a quorum. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting from time to time to another time and place without notice. The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. Each director shall be entitled to one vote on exactly the matter presented to the Board of Directors for approval.

SECTION 4. Places of Meetings. Meetings of the Board of Directors may be held at any place within or without the State of Delaware, as may from time to time be fixed by resolution of the Board of Directors, or as may be specified in the notice of meeting, if any.

SECTION 5. Annual Meeting. Following the annual meeting of stockholders, the newly elected Board of Directors shall meet for the purpose of the election of officers and the transaction of such other business as may properly come before the meeting. Such meeting may be held without notice (other than notice under these Bylaws) immediately after the annual meeting of stockholders at the same place at which such stockholders' meeting is held.

SECTION 6. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as the Board of Directors shall determine from time to time. Notice need not be given of regular meetings of the Board of Directors held at times and places fixed by resolution of the Board of Directors and promptly communicated to all directors then in office.

SECTION 7. Special Meetings. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, the President, or by a majority of the directors then in office.

SECTION 8. Notice of Meetings. Whenever required, notice of the place, date and time and the purpose or purposes of each meeting of the Board of Directors shall be given to each director not less than two calendar days before the day of the meeting by mail, telephone, facsimile, e-mail or by personal delivery.

SECTION 9. Meetings by Means of Conference Telephone. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting pursuant to this Section 9 shall constitute presence at such meeting.

SECTION 10. Organization. At all meetings of the Board of Directors, the Chairman, if any, or if none or in the Chairman's absence or inability to act the President, or in the President's absence or inability to act any Vice-President who is a member of the Board of Directors, or in such Vice-President's absence or inability to act a chairman chosen by the directors, shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board of Directors when present, and, in the Secretary's absence, the presiding officer may appoint any person to act as secretary.

SECTION 11. Resignation; Removal. Any director may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the President or Secretary, unless otherwise specified in the resignation. Any or all of the directors may be removed, with or without cause, by the holders of a majority of the shares of stock outstanding and entitled to vote for the election of directors.

SECTION 12. Vacancies. Unless otherwise provided in these Bylaws, vacancies on the Board of Directors, whether caused by resignation, death, disqualification, removal, an increase in the authorized number of directors or otherwise, may be filled by the affirmative vote of a majority of the remaining directors, although less than a quorum, or by a sole remaining director, or at a special meeting of the stockholders, by the holders of shares entitled to vote for the election of directors.

SECTION 13. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the directors consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors.

ARTICLE III

Committees

SECTION 1. Appointment. From time to time the Board of Directors by a resolution adopted by a majority of the entire Board may appoint any committee or committees for any purpose or purposes, to the extent lawful, which shall have powers as shall be determined and specified by the Board of Directors in the resolution of appointment.

SECTION 2. Procedures, Quorum and Manner of Acting. Each committee shall fix its own rules of procedure, and shall meet where and as provided by such rules or by resolution of the Board of Directors. Except as otherwise provided by law, the presence of a majority of the then appointed members of a committee shall constitute a quorum for the transaction of business by that committee, and in every case where a quorum is present the affirmative vote of a majority of the members of the committee present shall be the act of the committee. Each committee shall keep minutes of its proceedings, and actions taken by a committee shall be reported to the Board of Directors.

SECTION 3. Action by Written Consent. Any action required or permitted to be taken at any meeting of any committee of the Board of Directors may be taken without a meeting if all the members of the committee consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the committee.

SECTION 4. Term; Termination. In the event any person shall cease to be a director of the Corporation, such person shall simultaneously therewith cease to be a member of any committee appointed by the Board of Directors.

ARTICLE IV

Officers

SECTION 1. Election and Qualifications. The Board of Directors shall elect the officers of the Corporation, which shall include a President and a Secretary, and may include, by election or appointment by the Board of Directors, a Treasurer, one or more Vice- Presidents (any one or more of whom may be given an additional designation of rank or function), and such Assistant Secretaries, such Assistant Treasurers and such other officers as the Board of Directors may from time to time deem proper. Each officer shall have such powers and duties as may be prescribed by these Bylaws and as customarily and usually held and performed by like officers or corporations similar in organization and business purposes to the Corporation or as may be assigned by the Board of Directors or the President. Any two or more offices may be held by the same person.

SECTION 2. Term of Office and Remuneration. The term of office of all officers shall be one year and until their respective successors have been elected and qualified, but any officer may be removed from office, either with or without cause, at any time by the Board of Directors. Any vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the Board of Directors. The remuneration of all officers of the Corporation may be fixed by the Board of Directors or in such manner as the Board of Directors shall provide.

SECTION 3. Resignation; Removal. Any officer may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the President or Secretary, unless otherwise specified in the resignation. Any officer shall be subject to removal, with or without cause, at any time by vote of a majority of the entire Board of Directors.

SECTION 4. Chairman of the Board. The Chairman of the Board of Directors, if there be one, shall preside at all meetings of the Board of Directors and shall have such other powers and duties as may from time to time be assigned by the Board of Directors.

SECTION 5. President. The President shall have such duties as customarily pertain to that office and shall have such other powers and duties as may from time to time be assigned by the Board of Directors. The President may appoint and remove assistant

officers and other agents and employees; and may execute and deliver in the name of the Corporation powers of attorney, contracts, bonds and other obligations and instruments. If the Board of Directors has not elected a Chairman or in the absence or inability to act of the Chairman, the President shall exercise all of the powers and discharge all of the duties of the Chairman. As between the Corporation and third parties, any action taken by the President in the performance of the duties of the Chairman shall be conclusive evidence that there is no Chairman or that the Chairman is absent or unable to act.

SECTION 6. Vice-President. A Vice-President may execute and deliver in the name of the Corporation contracts and other obligations and instruments pertaining to the regular course of the duties of said office, and shall have such other authority as from time to time may be assigned by the Board of Directors or the President.

SECTION 7. Secretary. The Secretary shall in general have all the duties incident to the office of Secretary and such other duties as may be assigned by the Board of Directors or the President.

SECTION 8. Treasurer. The Treasurer shall in general have all the duties incident to the office of Treasurer and such other duties as may be assigned by the Board of Directors or the President.

SECTION 9. Assistant Officers. Any assistant officer shall have such powers and duties of the officer such assistant officer assists as such officer or the Board of Directors shall from time to time prescribe.

SECTION 10. Duties of Officers May Be Delegated. In case any officer is absent, or for any other reason that the Board of Directors may deem sufficient, the President or the Board of Directors may delegate for the time being the powers or duties of such officer to any other officer or to any director.

ARTICLE V

Books and Records

SECTION 1. Location. The books and records of the Corporation may be kept at such place or places within or outside the State of Delaware as the Board of Directors or the respective officers in charge thereof may from time to time determine. The record books containing the names and addresses of all stockholders, the number and class of shares of stock held by each and the dates when they respectively became the owners of record thereof shall be kept by the Secretary as prescribed in these Bylaws and by such officer or agent as shall be designated by the Board of Directors.

SECTION 2. Addresses of Stockholders. Notices of meetings and all other corporate notices may be delivered personally, electronically or mailed to each stockholder at the stockholder's address as it appears on the records of the Corporation.

SECTION 3. Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and if no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in this State, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by this article, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted and if no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

ARTICLE VI

Certificates Representing Stock

SECTION 1. Certificates; Signatures. The shares of the Corporation's stock may be certificated or uncertificated, as provided under the DGCL, and shall be entered in the books of the Corporation and registered as they are issued. Any certificates representing shares of stock shall be in such form as shall be approved by the Board of Directors. Every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate, signed by or in the name of the Corporation by any two authorized officers of the Corporation, representing the number of shares registered in certificate form. Any and all signatures on any such certificate may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. The name of the holder of record of the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the books of the Corporation.

SECTION 2. Transfers of Stock. Upon compliance with provisions restricting the transfer or registration of transfer of shares of stock, if any, shares of capital stock shall be transferable on the books of the Corporation only by the holder of record thereof in person, or by a duly authorized attorney, upon surrender and cancellation of certificates for a like number of shares, properly endorsed, and the payment of all taxes due thereon.

SECTION 3. Fractional Shares. The Corporation may, but shall not be required to, issue certificates for fractions of a share where necessary to effect authorized transactions, or the Corporation may pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or it may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the Corporation or of its agent, exchangeable as therein provided for full shares, but such scrip shall not entitle the holder to any rights of a stockholder except as therein provided.

SECTION 4. Rules and Regulations. The Board of Directors shall have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates representing shares of the Corporation.

SECTION 5. Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate of stock in place of any certificate, theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Board of Directors may require the owner of any lost, stolen or destroyed certificate, or his legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

ARTICLE VII

Dividends

Subject always to applicable law and the Certificate of Incorporation, the Board of Directors shall have full power to determine whether any, and, if any, what part of any, funds legally available for the payment of dividends shall be declared as dividends and paid to stockholders; the division of the whole or any part of such funds of the Corporation shall rest wholly within the lawful discretion of the Board of Directors, and it shall not be required at any time, against such discretion, to divide or pay any part of such funds among or to the stockholders as dividends or otherwise; and before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interest of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created. Subject to applicable law and the Certificate of Incorporation, dividends upon the shares of capital stock of the Corporation may be declared by the Board of Directors at any regular or special meeting of the Board of Directors. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock, unless otherwise provided by applicable law or the Certificate of Incorporation.

ARTICLE VIII

Ratification

Any transaction, questioned in any lawsuit on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer or stockholder, non-disclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board of Directors or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

ARTICLE IX

Corporate Seal

The corporation may have a corporate seal. The corporate seal shall have inscribed thereon the name of the Corporation and the year of its incorporation, and shall be in such form and contain such other words and/or figures as the Board of Directors shall determine. The corporate seal may be used by printing, engraving, lithographing, stamping or otherwise making, placing or affixing, or causing to be printed, engraved, lithographed, stamped or otherwise made, placed or affixed, upon any paper or document, by any process whatsoever, an impression, facsimile or other reproduction of said corporate seal, as may be prescribed by law, custom or by the Board of Directors.

ARTICLE X

Fiscal Year

The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors. Unless otherwise fixed by the Board of Directors, the fiscal year of the Corporation shall end on the Sunday nearest to December 31.

ARTICLE XI

Waiver of Notice

Whenever notice is required to be given by these Bylaws or by the Certificate of Incorporation or by law, a written waiver thereof, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

ARTICLE XII

Bank Accounts, Drafts, Contracts, Etc.

SECTION 1. Bank Accounts and Drafts. In addition to such bank accounts as may be authorized by the Board of Directors, the primary financial officer or any person designated by said primary financial officer, whether or not an employee of the Corporation, may authorize such bank accounts to be opened or maintained in the name and on behalf of the Corporation as he may deem necessary or appropriate, payments from such bank accounts to be made upon and according to the check of the Corporation in accordance with the written instructions of said primary financial officer, or other person so designated by the President.

SECTION 2. Contracts. The Board of Directors may authorize any person or persons, in the name and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

SECTION 3. Proxies; Powers of Attorney; Other Instruments. The Chairman, the President or any other person designated by either of them shall have the power and authority to execute and deliver proxies, powers of attorney and other instruments on behalf of the Corporation in connection with the rights and powers incident to the ownership of stock by the Corporation. The Chairman, the President or any other person authorized by proxy or power of attorney executed and delivered by either of them on behalf of the Corporation may attend and vote at any meeting of stockholders of any company in which the Corporation may hold stock, and may exercise on behalf of the Corporation any and all of the rights and powers incident to the ownership of such stock at any such meeting, or otherwise as specified in the proxy or power of attorney so authorizing any such person. The Board of Directors, from time to time, may confer like powers upon any other person.

SECTION 4. Financial Reports. The Board of Directors may appoint the primary financial officer or other fiscal officer and/or the Secretary or any other officer to cause to be prepared and furnished to stockholders entitled thereto any special financial notice and/or financial statement, as the case may be, which may be required by any provision of law.

ARTICLE XIII

Indemnification

SECTION 1. Right to Indemnification of Directors and Officers. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (an "Indemnified Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that such person, or a person for whom such person is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Indemnified Person in such Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section 3 of this Article XIII, the Corporation shall be required to indemnify an Indemnified Person in connection with a Proceeding (or part thereof) commenced by such Indemnified Person only if the commencement of such Proceeding (or part thereof) by the Indemnified Person was authorized in advance by the Board of Directors.

SECTION 2. Prepayment of Expenses of Directors and Officers. The Corporation shall pay the expenses (including attorneys' fees) incurred by an Indemnified Person in defending any Proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Indemnified Person to repay all amounts advanced if it should be ultimately determined that the Indemnified Person is not entitled to be indemnified under this Article XIII or otherwise.

SECTION 3. Claims by Directors and Officers. If a claim for indemnification or advancement of expenses under this Article XIII is not paid in full within 30 days after a written claim therefor by the Indemnified Person has been received by the Corporation, the Indemnified Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

SECTION 4. Indemnification of Employees and Agents. The Corporation may indemnify and advance expenses to any person who was or is made or is threatened to be made or is otherwise involved in any Proceeding by reason of the fact that such person, or a person for whom

such person is the legal representative, is or was an employee or agent of the Corporation or, while an employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorney's fees) reasonably incurred by such person in connection with such Proceeding. The ultimate determination of entitlement to indemnification of persons who are non-director or officer employees or agents shall be made in such manner as is determined by the Board of Directors in its sole discretion. Notwithstanding the foregoing sentence, the Corporation shall not be required to indemnify a person in connection with a Proceeding initiated by such person if the Proceeding was not authorized in advance by the Board of Directors.

SECTION 5. Advancement of Expenses of Employees and Agents. The Corporation may pay the expenses (including attorney's fees) incurred by an employee or agent in defending any Proceeding in advance of its final disposition on such terms and conditions as may be determined by the Board of Directors.

SECTION 6. Non-Exclusivity of Rights. The rights conferred on any person by this Article XIII shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws or any agreement, or pursuant to a vote of stockholders or disinterested directors or otherwise. The Corporation acknowledges that certain persons entitled to indemnification from the Corporation hereunder may have certain rights to indemnification, advancement of expenses and/or insurance provided by a stockholder of the Corporation or certain affiliates of such stockholder (collectively, the "Secondary Indemnitors"). The Corporation hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to such persons are primary and any obligation of the Secondary Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such persons are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by such persons and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by these Bylaws (or any other agreement between the Corporation and such person), without regard to any rights such person may have against the Secondary Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Secondary Indemnitors from any and all claims against the Secondary Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by the Secondary Indemnitors on behalf of such person with respect to any claim for which such person has sought indemnification from the Corporation shall affect the foregoing and the Secondary Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such person against the Corporation. The Corporation and such persons agree that the Secondary Indemnitors are express third party beneficiaries of the terms of this Section 6.

SECTION 7. Other Indemnification. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer or employee of another corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise.

SECTION 8. Insurance. The Board of Directors may, to the full extent permitted by applicable law as it presently exists, or may hereafter be amended from time to time, authorize an appropriate officer or officers to purchase and maintain at the Corporation's expense insurance: (i) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors, officers and employees under the provisions of this Article XIII and (ii) to indemnify or insure directors, officers and employees against liability in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article XIII.

SECTION 9. Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article XIII shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification. The rights provided hereunder shall inure to the benefit of any Indemnified Person and such person's heirs, executors and administrators.

ARTICLE XIV Amendments

The Board of Directors shall have the power to adopt, amend or repeal these Bylaws. Bylaws adopted by the Board of Directors may be repealed or changed, and new Bylaws made, by the stockholders, and the stockholders may prescribe that any Bylaw made by them shall not be altered, amended or repealed by the Board of Directors.

ARTICLE XV Exclusive Jurisdiction

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for: (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, the Certificate of Incorporation or these Bylaws, or (iv) any action asserting a claim governed by the internal affairs doctrine; in each case subject to said court having personal jurisdiction over the indispensable parties named as defendants therein. If any action the subject matter of which is within the scope of this Article XV is filed in a court other than a court located within the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to: (x) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce this Article XV (an "Enforcement Action"), and (y) having service of process made upon such stockholder in any such Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XV.

Well, Gotshal & Manges LLP

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New York, NY 10153-0119
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September 27, 2021

Portillo's Inc.
2001 Spring Road, Suite 400
Oak Brook, IL 60523

Ladies and Gentlemen:

We have acted as counsel to Portillo's Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission of the Company's Registration Statement on Form S-1, as amended, and including any subsequent registration statement on Form S-1 filed pursuant to Rule 462(b), (the "Registration Statement"), under the Securities Act of 1933, as amended (the "Act"), relating to the registration of the offer, issuance and sale by the Company of the number of shares of Class A common stock, par value \$0.01 per share (the "Common Stock") of the Company specified in the Registration Statement (together with any additional shares of Common Stock that may be sold by the Company pursuant to Rule 462(b) under the Act, the "Shares"). The Shares are to be issued and sold by the Company pursuant to an underwriting agreement among the Company and the underwriters named therein (the "Underwriting Agreement"), the form of which will be filed as Exhibit 1.1 to the Registration Statement.

In so acting, we have examined originals or copies (certified or otherwise identified to our satisfaction) of (i) the form of the Amended and Restated Certificate of Incorporation of the Company to be filed with the Secretary of State of the State of Delaware prior to the consummation of the initial public offering contemplated by the Registration Statement, filed as Exhibit 3.1 to the Registration Statement; (ii) the form of the Amended and Restated Bylaws of the Company to be in effect at the time of the consummation of the initial public offering contemplated by the Registration Statement, filed as Exhibit 3.2 to the Registration Statement; (iii) the Registration Statement; (iv) the prospectus contained within the Registration Statement; (v) the form of the Underwriting Agreement; (vi) the form of the Certificate of Class A Common Stock of the Company, filed as Exhibit 4.1 to the Registration Statement; and (vii) such corporate records, agreements, documents and other instruments, and such certificates or comparable documents of public officials and of officers and representatives of the Company, and have made such inquiries of such officers and representatives, as we have deemed relevant and necessary as a basis for the opinion hereinafter set forth.

In such examination, we have assumed that the Amended and Restated Certificate of Incorporation that will be filed with the Secretary of State of the State of Delaware will be substantially identical to the form of the Amended and Restated Certificate of Incorporation reviewed by us, the Amended and

Restated Bylaws that will be in effect at the time of the consummation of the initial public offering contemplated by the Registration Statement will be substantially identical to the form of the Amended and Restated Bylaws reviewed by us, the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed or photostatic copies, and the authenticity of the originals of such latter documents. As to all questions of fact material to this opinion that have not been independently established, we have relied upon certificates or comparable documents of officers and representatives of the Company.

Based on the foregoing, and subject to the qualifications stated herein, we are of the opinion that the Shares, when issued and sold as contemplated in the Registration Statement and the Underwriting Agreement, and upon payment and delivery in accordance with the Underwriting Agreement, will be validly issued, fully paid and non-assessable.

The opinion expressed herein is limited to the corporate laws of the State of Delaware and we express no opinion as to the effect on the matters covered by this letter of the laws of any other jurisdiction.

We hereby consent to the filing of this letter as an exhibit to the Registration Statement, to the incorporation by reference of this letter into any subsequent registration statement on Form S-1 filed by the Company pursuant to Rule 462(b) of the Act with respect to the Shares and to the reference to our firm under the caption "Legal Matters" in the prospectus which is a part of the Registration Statement. In giving such consent we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Securities and Exchange Commission.

Very truly yours,

/s/ Weil, Gotshal & Manges LLP

FIRST LIEN CREDIT AGREEMENT

Dated as of August 1, 2014

Among

PHD INTERMEDIATE LLC,
as Holdings,

PHD MERGER SUB LLC
(to be merged with and into PORTILLO'S HOLDINGS, LLC),
as the Borrower,

UBS AG, STAMFORD BRANCH,
as Administrative Agent,

UBS AG, STAMFORD BRANCH,
as L/C Issuer and Swing Line Lender,

and

THE OTHER LENDERS PARTY HERETO FROM TIME TO TIME

UBS SECURITIES LLC and
JEFFERIES FINANCE LLC,
as Joint Arrangers,

UBS SECURITIES LLC and
JEFFERIES FINANCE LLC,
as Joint Lead Bookrunners,

and

JEFFERIES FINANCE LLC,
as Syndication Agent

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FIRST LIEN CREDIT AGREEMENT

This FIRST LIEN CREDIT AGREEMENT is entered into as of August 1, 2014, among PHD INTERMEDIATE LLC, a Delaware limited liability company (“**Holdings**”), PHD MERGER SUB LLC, a Delaware limited liability company (“**Merger Sub**”), to be merged with and into PORTILLO’S HOLDINGS, LLC, a Delaware limited liability company (the “**Company**”), the other Guarantors party hereto from time to time, UBS AG, STAMFORD BRANCH, as Administrative Agent, each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”) and UBS AG, STAMFORD BRANCH, as L/C Issuer and Swing Line Lender.

PRELIMINARY STATEMENTS

Pursuant to the Agreement and Plan of Merger, dated as of June 27, 2014 (the “**Merger Agreement**”), by and among Holdings, Merger Sub, the Company, and RP & SP Holdings, Inc., a Delaware corporation, Merger Sub will, immediately following the initial funding hereunder, be merged with and into the Company with the Company surviving (the “**Merger**”).

The Borrower has requested that, substantially simultaneously with the consummation of (and in order to fund a portion of consideration for) the Merger, the Lenders extend credit to the Borrower in the form of (i) Term B Loans (as this and other capitalized terms used in these preliminary statements are defined in Section 1.01 below) on the Closing Date in an initial aggregate principal amount of \$335,000,000 and (ii) Initial Revolving Credit Commitments in an initial aggregate principal amount of \$30,000,000. The Initial Revolving Credit Commitments permit the issuance of one or more Letters of Credit from time to time and the making of one or more Swing Line Loans from time to time.

The proceeds of the Term B Loans, together with (i) the proceeds of the Second Lien Initial Term Loans, (ii) the proceeds of the Initial Revolving Borrowing, (iii) the proceeds from the issuance of the Superholdco Preferred Stock and (iv) the proceeds of the Equity Contribution, will be used by the Borrower to pay the Merger Consideration and Transaction Expenses and to refinance certain Indebtedness.

The applicable Lenders have indicated their willingness to lend and the L/C Issuer has indicated its willingness to so issue Letters of Credit, in each case, on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

“**Acceptable Discount**” has the meaning set forth in Section 2.05(a)(v)(D)(2).

“**Acceptable Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Acceptance and Prepayment Notice**” means a notice of the Borrower’s acceptance of the Acceptable Discount in substantially the form of Exhibit E-3.

“**Acceptance Date**” has the meaning set forth in Section 2.05(a)(v)(D)(2).

“**Acquired Indebtedness**” means, with respect to any specified Person,

(a) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

(b) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“**Acquisition**” means the acquisition of the Company pursuant to the Merger Agreement.

“**Additional Lender**” means any Person that is not an existing Lender and has agreed to provide Incremental Commitments pursuant to Section 2.14 or Refinancing Commitments pursuant to Section 2.15.

“**Administrative Agent**” means UBS, in its capacity as administrative agent and collateral agent under any of the Loan Documents, or any successor administrative agent and collateral agent.

“**Administrative Agent’s Office**” means the Administrative Agent’s address and account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. “**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Affiliated Lender**” means, at any time, any Lender that is the Sponsor or an Affiliate of the Sponsor, but in any event excluding (1) Holdings, the Borrower or any of their respective Subsidiaries and (2) any Debt Fund Affiliate.

“**Affiliated Lender Assignment and Assumption**” has the meaning set forth in Section 10.07(k)(i).

“**Affiliated Lender Cap**” has the meaning set forth in Section 10.07(k)(iv).

“**Agent Parties**” has the meaning specified in Section 10.02(b).

“**Agent-Related Distress Event**” means, with respect to the Administrative Agent or any Person that directly or indirectly Controls the Administrative Agent (each, a “**Distressed Agent-Related Person**”), a voluntary or involuntary case with respect to such Distressed Agent-Related Person under any Debtor Relief Law, or a custodian, conservator, receiver or similar official is appointed for such Distressed Agent-Related Person or any substantial part of such Distressed Agent-Related Person’s assets, or such Distressed Agent-Related Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Agent-Related Person to be, insolvent or bankrupt; *provided* that an Agent-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in the Administrative Agent or any Person that directly or indirectly Controls the Administrative Agent by a Governmental Authority or an instrumentality thereof.

“**Agent-Related Persons**” means the Agents, together with their respective Affiliates, officers, directors, employees, partners, agents, advisors and other representatives.

“**Agents**” means, collectively, the Administrative Agent, the Syndication Agent, the Arrangers and the Bookrunners.

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” means this First Lien Credit Agreement, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“**All-In Yield**” means, as to any Indebtedness, the yield thereof, whether in the form of interest rate, margin, OID, upfront fees, a Eurocurrency Rate or Base Rate floor, or otherwise, in each case, incurred or payable by the Borrower generally to all lenders of such Indebtedness; *provided* that OID and upfront fees shall be equated to interest rate assuming a four (4)-year life to maturity (e.g. 100 basis points of original issue discount equals 25 basis points of interest rate margin for a four (4) year average life to maturity); and *provided, further*, that “**All-In Yield**” shall not include amendment fees, arrangement fees, structuring fees, ticking fees, unused line fees, commitment fees, underwriting fees and similar fees or other fees not paid generally to all lenders in the primary syndication of such Indebtedness.

“**Anti-Corruption Laws**” means all laws, rules, and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption applicable to Holdings or its Subsidiaries by virtue of such Person being organized or operating in such jurisdiction.

“**Applicable Discount**” has the meaning set forth in Section 2.05(a)(v)(C)(2).

“**Applicable ECF Percentage**” means, for any fiscal year, (a) 50% if the Secured Net Leverage Ratio as of the last day of such fiscal year is greater than 5.50 to 1.00, (b) 25% if the Secured Net Leverage Ratio as of the last day of such fiscal year is less than or equal to 5.50 to 1.00 and greater than 5.00 to 1.00 and (c) 0% if the Secured Net Leverage Ratio as of the last day of such fiscal year is less than or equal to 5.00 to 1.00.

“**Applicable Rate**” means a percentage per annum equal to with respect to: (a) Term B Loans, (A) for Eurocurrency Rate Loans, 3.75%, (B) for Base Rate Loans, 2.75% and (b) Revolving Credit Loans (including Swing Line Loans), unused Revolving Credit Commitments and Letter of Credit fees, (i) until delivery of financial statements for the first full fiscal quarter ending after the Closing Date pursuant to Section 6.01, (A) for Eurocurrency Rate Loans and Letter of Credit fees, 3.75%, (B) for Base Rate Loans, 2.75% and (C) for unused commitment fees, 0.50% and (ii) thereafter, the following percentages per annum, based upon the Consolidated First Lien Net Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

Applicable Rate

Pricing Level	Consolidated First Lien Net Leverage Ratio	Eurocurrency Rate	Base Rate	
		Revolving Credit Loans and Letters of Credit	Revolving Credit Loans	Commitment Fee Rate
1	>4.25:1.00	3.75%	2.75%	0.500%
2	£4.25:1.00 and >3.75:1.00	3.50%	2.50%	0.375%
3	£3.75:1.00	3.25%	2.25%	0.250%

Any increase or decrease in the Applicable Rate pursuant to clause (b) above resulting from a change in the Consolidated First Lien Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); *provided* that if notification is provided to the Borrower that the Administrative Agent or the Required Revolving Credit Lenders have so elected, with respect to Revolving Credit Loans, Swing Line Loans, and unused Revolving Credit Commitments and Letter of Credit Fees, “Pricing Level 1” (immediately above) shall apply (x) as of the first Business Day after the date on which a Compliance Certificate was required to have been delivered but was not delivered, and shall continue to so apply to and including the date on which such Compliance Certificate is so delivered (and thereafter the pricing level otherwise determined in accordance with this definition shall apply) and (y) as of the first Business Day after an Event of Default under Section 8.01(a) shall have occurred and be continuing, and shall continue to so apply to but excluding the date on which such Event of Default is cured or waived (and thereafter the pricing level otherwise determined in accordance with this definition shall apply).

“**Appropriate Lender**” means, at any time, (a) with respect to Loans of any Class, the Lenders of such Class of Loans, (b) with respect to Letters of Credit, (i) the relevant L/C Issuers and (ii) the Revolving Credit Lenders and (c) with respect to Swing Line Loans, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Revolving Credit Lenders.

“**Approved Bank**” has the meaning set forth in clause (c) of the definition of “Cash Equivalents.”

“**Approved Fund**” means any Fund that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

“**Arrangers**” means each of UBS Securities LLC and Jefferies Finance LLC, each in its capacity as a joint lead arranger under this Agreement.

“**Assignees**” has the meaning set forth in Section 10.07(b)(i).

“**Assignment and Assumption**” means an Assignment and Assumption substantially in the form of Exhibit E-1 hereto.

“**Assignment Taxes**” has the meaning set forth in Section 3.01(b).

“**Attorney Costs**” means all reasonable and documented fees, expenses and disbursements of any law firm or other external legal counsel.

“**Attributable Indebtedness**” means, subject to the second paragraph of Section 1.03, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“**Auction Agent**” means (a) the Administrative Agent or (b) any other financial institution or advisor employed by the Borrower (whether or not an Affiliate of the Administrative Agent) with the consent of the Administrative Agent (not to be unreasonably withheld or delayed) to act as an arranger in connection with any Discounted Term Loan Prepayment pursuant to Section 2.05(a)(v); *provided* that the Borrower shall not designate the Administrative Agent as the Auction Agent without the prior written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Agent); *provided, further*, that neither the Borrower nor any of its Affiliates may act as the Auction Agent.

“**Audited Financial Statements**” has the meaning specified in the Merger Agreement (as in effect on the date hereof).

“**Auto-Extension Letter of Credit**” has the meaning set forth in Section 2.03(b)(iii).

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as the Administrative Agent’s “prime rate” and (c) the Eurocurrency Rate plus 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day); *provided* that in no event shall the Base Rate with respect to Term B Loans be less than 2.00% per annum. The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate made by the Administrative Agent shall take effect at the opening of business on the day of such change.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Big Boy Letter” means a letter from a Lender (i) acknowledging that (1) an Affiliated Lender may have information regarding Holdings and its Subsidiaries that has not previously been disclosed to the Administrative Agent and the Lenders (**“Excluded Information”**), (2) the Excluded Information may not be available to such Lender, (3) such Lender has independently and without reliance on any other party made its own analysis and determined to assign Term Loans to an Affiliated Lender pursuant to Section 10.07(k) notwithstanding its lack of knowledge of the Excluded Information and (4) such Lender waives and releases any claims it may have against the Administrative Agent, such Affiliated Lender, Holdings and its Subsidiaries with respect to the nondisclosure of the Excluded Information; or (ii) otherwise in form and substance reasonably satisfactory to the Administrative Agent, such Affiliated Lender and the assigning Lender.

“Board of Directors” means, for any Person, the board of directors or managers, the managing member or other governing body of such Person or, if such Person does not have such governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, **“Board of Directors”** means the Board of Directors of the Borrower.

“Bookrunner” means each of UBS Securities LLC and Jefferies Finance LLC, each in its capacity as a joint bookrunner.

“Borrower” means (a) prior to the consummation of the Merger, Merger Sub and (b) upon and after the consummation of the Merger, the Company.

“Borrower Materials” has the meaning specified in Section 6.01.

“Borrower Offer of Specified Discount Prepayment” means the offer by any Company Party to make a voluntary prepayment of Term Loans at a Specified Discount to par pursuant to Section 2.05(a)(v)(B).

“Borrower Retained Prepayment Amounts” has the meaning specified in Section 2.05(b)(vii).

“Borrower Solicitation of Discount Range Prepayment Offers” means the solicitation by any Company Party of offers for, and the corresponding acceptance by a Lender of, a voluntary prepayment of Term Loans at a specified range of discounts to par pursuant to Section 2.05(a)(v)(C).

“**Borrower Solicitation of Discounted Prepayment Offers**” means the solicitation by any Company Party of offers for, and the subsequent acceptance, if any, by a Lender of, a voluntary prepayment of Term Loans at a discount to par pursuant to Section 2.05(a)(v)(D).

“**Borrowing**” means a Revolving Credit Borrowing, a Swing Line Borrowing, or a Term Borrowing, as the context may require.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, New York City, and if such day relates to any Eurocurrency Rate Loan, means any such day that is also a London Banking Day.

“**Capital Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Leases) by the Borrower and its Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries.

“**Capitalized Lease Obligation**” means, subject to the second paragraph of Section 1.03, at the time any determination thereof is to be made, the amount of the liability in respect of a Capitalized Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

“**Capitalized Leases**” means, subject to the second paragraph of Section 1.03, all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; *provided* that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“**Capitalized Software Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and the Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries.

“**Captive Insurance Subsidiary**” means any Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

“**Cash Collateral**” has the meaning specified in Section 2.03(g).

“**Cash Collateral Account**” means a blocked account at the Administrative Agent (or another commercial bank selected by the Administrative Agent) in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

“Cash Collateralize” has the meaning specified in Section 2.03(g).

“Cash Equivalents” means to the extent owned by Holdings, the Borrower or any Restricted Subsidiary:

(a) (1) Dollars, pound sterling, Canadian dollars, yen or euros or any national currency of any Participating Member State of the EMU; and

(2) in the case of any Foreign Subsidiary that is a Restricted Subsidiary or any jurisdiction in which the Borrower and its Restricted Subsidiaries conducts business, such local currencies held by it from time to time in the ordinary course of business and not for speculation;

(b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of the United States having average maturities of not more than twenty-four (24) months from the date of acquisition thereof; *provided* that the full faith and credit of the United States is pledged in support thereof;

(c) time deposits or eurodollar time deposits with, insured certificates of deposit, bankers’ acceptances or overnight bank deposits of, or letters of credit issued by, any commercial bank that (i) is a Lender or (ii) (A) is organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development or is the principal banking Subsidiary of a bank holding company organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development and is a member of the Federal Reserve System, and (B) has combined capital and surplus of not less than \$250,000,000 in the case of U.S. domestic banks and \$100,000,000 (or the Dollar equivalent as of the date of determination) in the case of foreign banks (any such bank in the foregoing clause (i) or (ii) being an “**Approved Bank**”), in each case with maturities not exceeding twenty four (24) months from the date of acquisition thereof;

(d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation (other than structured investment vehicles and other than corporations used in structured financing transactions) rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody’s, in each case with average maturities of not more than twenty-four (24) months from the date of acquisition thereof;

(e) marketable short-term money market and similar funds having a rating of at least P-2 or A-2 from either Moody’s or S&P, respectively (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower);

(f) repurchase obligations for underlying securities of the types described in clauses (b), (c) and (e) above entered into with any Approved Bank;

(g) securities with average maturities of twenty-four (24) months or less from the date of acquisition issued or fully guaranteed (i) by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by (ii) any foreign government, in each case, having an investment grade rating from either S&P or Moody's (or the equivalent thereof);

(h) Investments (other than in structured investment vehicles and structured financing transactions) with average maturities of twelve (12) months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;

(i) securities with maturities of twelve (12) months or less from the date of acquisition backed by standby letters of credit issued by any Approved Bank;

(j) instruments equivalent to those referred to in clauses (a) through (i) above denominated in euros or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized in such jurisdiction;

(k) Investments, classified in accordance with GAAP as Current Assets of the Borrower or any Restricted Subsidiary, in money market investment programs which are registered under the Investment Company Act of 1940 or which are administered by financial institutions having capital of not less than \$250,000,000 in the case of U.S. domestic banks and \$100,000,000 (or the Dollar equivalent as of the date of determination) in the case of foreign banks, and, in either case, the portfolios of which are limited such that substantially all of such Investments are of the character, quality and maturity described in clauses (a) through (i) of this definition; and

(l) investment funds investing at least 90% of their assets in securities of the types described in clauses (a) through (k) above.

In the case of Investments by any Foreign Subsidiary that is a Restricted Subsidiary or Investments made in a country outside the United States, Cash Equivalents shall also include (i) investments of the type and maturity described in clauses (a) through (l) (other than clause (g)(ii) above) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries that are Restricted Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (a) through (l) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those specified in clause (a) above; *provided* that such amounts are converted into any currency listed in clause (a) above as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

“**Cash Management Obligations**” means obligations owed by the Borrower or any Restricted Subsidiary to any Lender, any Agent or any Affiliate of a Lender or an Agent and to any Person that was a Lender, an Agent or an Affiliate of a Lender or an Agent at the time of entering into any such services in respect of any overdraft and related liabilities arising from treasury, depository and cash management services or any automated clearing house transfers of funds.

“**Casualty Event**” means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or Real Property (including any improvements thereon) to replace or repair such equipment, fixed assets or Real Property.

“**CFC**” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“**CFC Holdco**” means any Domestic Subsidiary that has no material assets other than equity interests (or equity interests and indebtedness) of one or more Foreign Subsidiaries that are CFCs or any other Domestic Subsidiary that itself is a CFC Holdco.

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. It is understood and agreed that (i) the Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173), all Laws relating thereto, all interpretations and applications thereof and any request, rule, guideline or directive relating thereto and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall, in each case, for the purposes of this Agreement, be deemed to be adopted and taking effect subsequent to the date of this Agreement; *provided* that a Lender shall be entitled to compensation with respect to any such adoption or taking effect, change, administration, interpretation or application, making or issuance, in each case, becoming effective after the date of this Agreement only if it is the applicable Lender’s general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

“**Change of Control**” shall be deemed to occur if:

(a) (i) at any time prior to a Qualified IPO, the Permitted Holders cease to own, in the aggregate, directly or indirectly, beneficially, Equity Interests representing at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings, or

(ii) at any time upon or after the consummation of a Qualified IPO (1) any person (other than a Permitted Holder) or (2) Persons (other than one or more Permitted Holders) constituting a “**group**” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended, but excluding any employee benefit plan of such person and its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), becomes the “**beneficial owner**” (as defined in Rules 13(d)-3 and 13(d)-5 under such Act), directly or indirectly, of Equity Interests representing more than 40% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of Holdings beneficially owned, directly or indirectly, in the aggregate by the Permitted Holders;

unless, in the case of either clause (a)(i) or (a)(ii) above, the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the Board of Directors of Holdings;

(b) a “**change of control**” (or similar event) shall occur in any document pertaining to the Second Lien Credit Agreement, any Incremental Equivalent Debt, any Refinancing Equivalent Debt, any Second Lien Incremental Equivalent Debt, any Second Lien Refinancing Equivalent Debt or, in each case, any Permitted Refinancing thereof and, in the case of any such Indebtedness which is unsecured or secured by a Lien on the Collateral which is junior to the Lien securing the Term B Loans or the Initial Revolving Credit Commitments, such Indebtedness is in an aggregate outstanding principal amount in excess of the Threshold Amount; or

(c) Holdings shall cease to own 100% of the Equity Interests of the Borrower free of Liens (other than nonconsensual Liens permitted under Section 7.01 and Liens permitted under Sections 7.01(a), (bb) (solely to the extent the Obligations under the Term Loans and Revolving Credit Loans that are secured on a first lien basis shall be secured on a *pari passu* or senior basis with such Liens), (dd) and (gg)).

“**Class**” means (i) with respect to Commitments or Loans, those of such Commitments or Loans that have the same terms and conditions (without regard to differences in the Type of Loan, Interest Period, upfront fees, OID or similar fees paid or payable in connection with such Commitments or Loans, or differences in tax treatment (e.g., “fungibility”)); *provided* that such Commitments or Loans may be designated in writing by the Borrower and Lenders holding such Commitments or Loans as a separate Class from other Commitments or Loans that have the same terms and conditions and (ii) with respect to Lenders, those of such Lenders that have Commitments or Loans of a particular Class.

“**Closing Date**” means August 1, 2014.

“**Closing Fee**” has the meaning set forth in Section 2.09(c).

“Co-Investor” means (a) any Person (other than any Sponsor or Management Stockholder) who becomes a holder of Equity Interests in Holdings (or any of the direct or indirect parent companies of Holdings) on the Closing Date in connection with the Acquisition, (b) a Person, if any, that acquires, within sixty (60) days of the Closing Date, any Equity Interests in Holdings (or any of the direct or indirect parent companies of Holdings) held by any Sponsor as of the Closing Date, and (c) in each of clauses (a) and (b), an Affiliate of any such Person; *provided*, that, for purposes of the definition of “Permitted Holder”, Co-Investors shall only include for purposes of clauses (a) and (b) those Persons that have been disclosed in writing prior to the Closing Date to (and, solely in the case of clause (b) above, are reasonably acceptable to) the Arrangers.

“Code” means the U.S. Internal Revenue Code of 1986, and the United States Treasury Department regulations promulgated thereunder, as amended from time to time.

“Collateral” means the “Collateral” as defined in the Security Agreement and all the “Collateral” or “Pledged Assets” as defined in any other Collateral Document and any other assets pledged pursuant to any Collateral Document.

“Collateral and Guarantee Requirement” means, at any time, the requirement that:

(a) the Administrative Agent shall have received each Collateral Document required to be delivered (i) on the Closing Date, pursuant to Section 4.01(a)(iv) and (ii) at such time as may be designated therein, pursuant to the Collateral Documents, Section 6.11 or 6.13, subject, in each case, to the limitations and exceptions of this Agreement and the Collateral Documents, duly executed by each Loan Party thereto;

(b) all Obligations (other than, with respect to any Guarantor, any Excluded Swap Obligations of such Guarantor) shall have been unconditionally guaranteed by Holdings and each Restricted Subsidiary of the Borrower that is a wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) including those that are listed on Schedule I hereto (each, a **“Guarantor”**);

(c) the Obligations and the Guaranty shall have been secured by a first-priority security interest (subject to Liens permitted by Section 7.01) in (i) all the Equity Interests of the Borrower, (ii) all Equity Interests of each Restricted Subsidiary that is a Domestic Subsidiary (other than a Domestic Subsidiary described in the following clause (iii)(A) or (B)) that is directly owned by the Borrower or any Subsidiary Guarantor and (iii) 65% of the issued and outstanding Equity Interests directly owned by the Borrower or any Subsidiary Guarantor of (A) each Restricted Subsidiary that is a CFC Holdco, (B) each Restricted Subsidiary that is a Disregarded Domestic Person and (C) each Restricted Subsidiary that is a Foreign Subsidiary that is a CFC;

(d) except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 7.01, or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected first-priority security interest (to the extent such security interest may be perfected by delivering Mortgages, certificated securities or instruments, filing financing statements under the Uniform Commercial Code or making any necessary filings with the United States Patent and Trademark Office or United States Copyright Office or to the extent required in the Security Agreement) in substantially all tangible and intangible assets of the Borrower and each

Guarantor (including accounts receivable, inventory, equipment, investment property, contract rights, applications and registrations of intellectual property filed in the United States, other general intangibles, Material Real Property, intercompany notes and proceeds of the foregoing), in each case, with the priority required by the Collateral Documents, in each case subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents; and

(e) the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Material Real Property required to be delivered pursuant to Section 6.11 and Section 6.13 (the "**Mortgaged Properties**") duly executed and delivered by the applicable Loan Party, (ii) a title insurance policy or a marked-up commitment or signed pro forma thereof for such property available in each applicable jurisdiction (the "**Mortgage Policies**") insuring the Lien of each such Mortgage as a valid first priority Lien on the property described therein, free of any other Liens except as expressly permitted by Section 7.01, together with such endorsements, coinsurance and reinsurance and in such amounts as the Administrative Agent may reasonably request and which are available at commercially reasonable rates in the jurisdiction where the Mortgaged Property is located, (iii) a completed Life-of-Loan Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and the applicable Loan Party if any improvements on any Mortgaged Property are located within an area designated a "special flood hazard area") and if any improvements on such Mortgaged Property are so located in a "special flood hazard area," copy of, or a certificate as to coverage under, and a copy of the flood insurance policy and a declaration page relating to, the insurance policies required by Section 6.07 and the applicable provisions of the Collateral Documents and shall be in form and substance reasonably satisfactory to the Administrative Agent, (iv) either ALTA surveys in form and substance reasonably acceptable to the Administrative Agent or such existing surveys together with no change affidavits sufficient for the title company to remove all standard survey exceptions from the Mortgage Policies and issue the endorsements required in (ii) above to the extent such coverage and endorsements are available in the applicable jurisdictions and at commercially reasonable rates, (v) copies of any existing abstracts and existing appraisals, (vi) opinions, addressed to the Administrative Agent and the Lenders, from local counsel in each jurisdiction (i) where a Mortgaged Property is located regarding the enforceability of the Mortgage and (ii) where the applicable Loan Party granting the Mortgage on said Mortgaged Property is organized, regarding the due authorization, execution and delivery of such Mortgage, and in each case, such other matters as may be in form and substance reasonably satisfactory to the Administrative Agent, (vii) evidence reasonably acceptable to the Administrative Agent of payment by Obligors of all Mortgage Policy premiums, search and examination charges, escrow charges and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgage and issuance of the Mortgage Policies referred to above and (viii) such other documents as the Administrative Agent may reasonably request with respect to any such Mortgaged Property;

provided, however, that the foregoing definition shall not require and the Loan Documents shall not contain any requirements as to the creation or perfection of pledges of, security interests in, Mortgages on, or the obtaining of title insurance, surveys, abstracts or appraisals or taking other actions with respect to any Excluded Assets.

The Administrative Agent may grant extensions of time for the perfection of security interests in, or the delivery of the Mortgages and the obtaining of title insurance and surveys with respect to, particular assets and the delivery of assets (including extensions beyond the Closing Date for the perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents. Notwithstanding any provision of any Loan Document to the contrary, if a mortgage tax or any similar tax or charge will be owed on the entire amount of the Obligations evidenced hereby, then the amount secured by the applicable Mortgage shall be limited to 100% of the fair market value of the Mortgaged Property at the time the Mortgage is entered into if such limitation results in such mortgage tax or similar tax or charge being calculated based upon such fair market value.

No actions in any non-U.S. jurisdiction or required by the Laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the U.S. or to perfect such security interests, including any intellectual property registered in any non-U.S. jurisdiction (it being understood that there shall be no security agreements or pledge agreements governed under the Laws of any non-U.S. jurisdiction). No actions shall be required with respect to Collateral requiring perfection through control agreements or perfection by "control" (as defined in the UCC) (including deposit accounts or other bank accounts or securities accounts) or possession, other than in respect of (i) certificated Equity Interests of the Borrower and wholly owned Restricted Subsidiaries that are Material Subsidiaries directly owned by the Borrower or by any Subsidiary Guarantor otherwise required to be pledged pursuant to the provisions of clause (c) of this definition of "Collateral and Guarantee Requirement" and not otherwise constituting an Excluded Asset and (ii) Pledged Debt (as defined in the Security Agreement) to the extent required to be delivered to the Administrative Agent pursuant to the terms of the Security Agreement.

"**Collateral Documents**" means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Mortgages, collateral assignments, Security Agreement Supplements, security agreements, pledge agreements, intellectual property security agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 4.01(a)(iv), Section 6.11 or Section 6.13, the Intercreditor Agreements (if any) and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

"**Commitment**" means a Revolving Credit Commitment or Term Commitment, as the context may require.

"**Committed Loan Notice**" means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A hereto.

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**Company**” has the meaning specified in the introductory paragraph to this Agreement.

“**Company Parties**” means the collective reference to Holdings and its Subsidiaries, including the Borrower, and “**Company Party**” means any one of them.

“**Compensation Period**” has the meaning set forth in Section 2.12(c)(ii).

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit D-1 hereto.

“**Compliance Date**” means the last day of any Test Period (commencing with the first full fiscal quarter of the Borrower ending after the Closing Date) if on such day the aggregate Revolving Credit Exposure in respect of the Revolving Credit Commitments of the Revolving Credit Lenders exceeds 35% of the aggregate Revolving Credit Commitments, excluding, for purposes of calculating such Revolving Credit Exposure, (a) L/C Obligations in respect of Letters of Credit that have been Cash Collateralized or backstopped in a manner reasonably acceptable to the L/C Issuer in an amount equal to 100% of the then-available face amount thereof, (b) L/C Obligations in respect of undrawn Letters of Credit that have not been Cash Collateralized or backstopped in an aggregate amount not exceeding \$5,000,000 and (c) for the first two (2) full fiscal quarters ending after the Closing Date, any Revolving Credit Loans borrowed on the Closing Date to finance a portion of the Transactions and/or the payment of any Transaction Expenses.

“**Consolidated Cash Interest Coverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated EBITDA to (b) Consolidated Interest Expense.

“**Consolidated EBITDA**” means, for any period, the Consolidated Net Income for such period, plus:

(a) without duplication and, except with respect to clauses (viii), (x) and, to the extent consisting of “run rate” cost savings, (xiv) below, to the extent deducted (and not added back or excluded) in arriving at such Consolidated Net Income, the sum of the following amounts for such period with respect to the Borrower and its Restricted Subsidiaries:

(i) total interest expense determined in accordance with GAAP and, to the extent not reflected in such total interest expense, any expense or loss on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations, and costs of surety bonds in connection with financing activities (whether amortized or immediately expensed),

(ii) provision for taxes and Tax Distributions based on income, profits or capital gains of the Borrower and the Restricted Subsidiaries, including, without limitation, federal, state, local, franchise and similar taxes and foreign withholding taxes paid or accrued during such period including penalties and interest related to such taxes or arising from any tax examinations,

(iii) depreciation and amortization (including amortization of intangible assets, including Capitalized Software Expenditures),

(iv) (A) duplicative running costs, relocation costs or expenses, integration costs, site acquisition costs, transition costs, pre-opening, opening, closing and consolidation costs for facilities, signing, retention and completion bonuses, costs associated with preparations for and implementation of compliance with the requirements of the Sarbanes-Oxley Act of 2002 and other Public Company Costs, costs incurred in connection with any strategic initiatives, costs incurred in connection with acquisitions and non-recurring product and intellectual property development, other business optimization expenses (including costs and expenses relating to business optimization programs and new systems design, retention charges, systems establishment costs (including information technology systems) and implementation costs), project start-up costs, severance and other restructuring charges representing cash items (including restructuring costs related to acquisitions and to closure of facilities, and excess pension charges), and litigation settlements or losses and related expenses,

(B) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses, compensation or otherwise) and adjustments thereof and purchase price adjustments, in each case in connection with acquisitions and

(C) Transaction Expenses,

(v) the amount of any expense or reduction of Consolidated Net Income consisting of Restricted Subsidiary income attributable to minority interests or non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary,

(vi) the amount of management, monitoring, consulting and advisory fees (including transaction and termination fees) and related expenses and indemnities paid or accrued to the Sponsor under the Sponsor Management Agreement,

(vii) any Equity Funded Employee Plan Costs,

(viii) (i) cost savings, operating expense reductions and synergies related to the Transactions that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within twenty-four (24) months after the Closing Date (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the

first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period) and (ii) cost savings, operating expense reductions and synergies related to mergers and other business combinations, acquisitions, divestitures, restructurings, cost savings initiatives and other similar initiatives and actions that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within twenty-four (24) months after a merger or other business combination, acquisition or divestiture is consummated or any other restructuring, cost savings initiative or other initiative or action (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period), net of the amount of actual benefits realized during such period from such actions; *provided* that no cost savings, operating expense reductions and synergies shall be added back pursuant to this clause (viii) to the extent duplicative of any expenses or charges otherwise added back to Consolidated EBITDA, whether through a *pro forma* adjustment or otherwise, for such period,

(ix) any expense or net loss from asset retirement obligations, disposed, abandoned or discontinued operations (excluding held-for-sale discontinued operations until actually disposed of),

(x) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (b) below for any previous period and not added back,

(xi) non-cash expenses (including the excess of GAAP rent expense over actual cash rent paid, including the benefit of lease incentives, during such period), charges and losses (including reserves, impairment charges or asset write-offs, write-offs of deferred financing fees, losses from investments recorded using the equity method, stock-based awards compensation expense), in each case other than (A) any non-cash charge representing amortization of a prepaid cash item that was paid and not expensed in a prior period and (B) any non-cash charge relating to write-offs, write-downs or reserves with respect to accounts receivable in the normal course or inventory; *provided* that if any non-cash charges referred to in this clause (xi) represents an accrual or reserve for potential cash items in any future period, (1) the Borrower may elect not to add back such non-cash charge in the current period and (2) to the extent the Borrower elects to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA in such future period to such extent paid,

(xii) pre-opening, opening, consolidation and closing costs, losses and expenses, in each case, for restaurants and other facilities, start-up losses, charges and expenses for new restaurants and other new facilities and losses, charges and expenses for closed restaurants and other closed facilities,

(xiii) the amount of loss on sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Financing, and

(xiv) other adjustments and add-backs of the type identified in the Quality of Earnings Analysis dated June 25, 2014,

less (b) without duplication and to the extent included in arriving at such Consolidated Net Income, (i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period or the amortization of income associated with a prior period cash receipt), (ii) any net gain from disposed, abandoned or discontinued operations (excluding held-for-sale discontinued operations until actually disposed of) and (iii) the amount of any minority interest income consisting of Restricted Subsidiary losses attributable to minority interests or non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary; *provided* that, for the avoidance of doubt, any gain representing the reversal of any non-cash charge referred to in clause (a)(xi)(B) above for a prior period shall be added (together with, without duplication, any amounts received in respect thereof to the extent not increasing Consolidated Net Income) to Consolidated EBITDA in any subsequent period to such extent so reversed (or received);

provided that:

(A) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA (x) currency translation or transaction gains and losses related to currency remeasurements of Indebtedness (including the net loss or gain (i) resulting from Swap Contracts for currency exchange risk and (ii) resulting from intercompany indebtedness) and (y) all other foreign currency translation or transaction gains or losses to the extent such gains or losses are non-cash items,

(B) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any adjustments resulting from the application of FASB Accounting Standards Codification 815 and International Accounting Standard No. 39 and their respective related pronouncements and interpretations,

(C) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any income (loss or expenses) for such period attributable to the early extinguishment of (i) Indebtedness, (ii) obligations under any Swap Contracts or (iii) other derivative instruments.

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated EBITDA under this Agreement for any period that includes any of the fiscal quarters ended June 30, 2014, March 31, 2014, December 31, 2013 and September 30, 2013, Consolidated EBITDA for such fiscal quarters shall be \$20,900,000, \$12,600,000, \$18,200,000 and \$18,100,000, respectively, in each case, as may be subject to addbacks and adjustments (without duplication) pursuant to clauses (a)(iv)(A) and (a)(viii) above and Section 1.09(c) for the applicable Test Period. For the avoidance of doubt, Consolidated EBITDA shall be calculated, including pro forma adjustments, in accordance with Section 1.09.

“Consolidated First Lien Net Debt” means, as of any date of determination, (1) any Indebtedness described in clause (a) of the definition of “Consolidated Total Net Debt” outstanding on such date that is secured by a Lien on Collateral but excluding any such Indebtedness in which the applicable Liens are expressly subordinated or junior to the Liens securing the Obligations under Term Loans and Revolving Credit Loans required to be secured on a first lien basis minus (2) the aggregate amount of Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01, Liens permitted by Section 7.01(a), Section 7.01(b), clauses (ii) and (iii) of Section 7.01(k), Section 7.01(m), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(v), Section 7.01(w), Section 7.01(aa), Section 7.01(bb), Section 7.01(cc), Section 7.01(dd) and Section 7.01(gg)); *provided* that Consolidated First Lien Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided further* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated First Lien Net Debt until three (3) Business Days after such amount is drawn, (ii) Unrestricted Subsidiaries and (iii) any Qualified Securitization Financing; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated First Lien Net Debt.

“Consolidated First Lien Net Leverage Ratio” means, with respect to any Test Period, the ratio of (a) Consolidated First Lien Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“Consolidated Interest Expense” means, for any period, the sum, without duplication, of

(i) the cash interest expense (including that attributable to Capitalized Leases), net of cash interest income, of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, with respect to all outstanding Indebtedness of the Borrower and its Restricted Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net cash costs under Swap Contracts, and

(ii) any cash payments made during such period in respect of obligations referred to in clause (b) below relating to Funded Debt that were amortized or accrued in a previous period;

provided that there shall be excluded from Consolidated Interest Expense for any period:

(a) deferred financing costs, debt issuance costs, commissions, fees (including amendment and contract fees) and expenses and, in each case, the amortization thereof, and any other amounts of non-cash interest,

(b) the accretion or accrual of discounted liabilities and any prepayment premium or penalty during such period,

(c) non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations under Swap Contracts or other derivative instruments pursuant to FASB Accounting Standards Codification 815,

(d) any cash costs associated with breakage in respect of hedging agreements for interest rates,

(e) all non-recurring cash interest expense consisting of liquidated damages for failure to timely comply with registration rights obligations and financing fees, all as calculated on a consolidated basis in accordance with GAAP,

(f) Transaction Expenses,

(g) annual agency fees paid to the Administrative Agent and the Second Lien Administrative Agent,

(h) costs associated with obtaining Swap Contracts,

(i) any expense resulting from the discounting of any Indebtedness in connection with the application of recapitalization accounting or, if applicable, acquisition accounting in connection with the Transactions or any acquisition,

(j) the cash interest expense (or income) of all Unrestricted Subsidiaries for such period to the extent otherwise included in Consolidated Interest Expense, and

(k) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Qualified Securitization Financing.

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated Interest Expense (i) for any period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense shall be an amount equal to actual Consolidated Interest Expense from the Closing Date through the date of determination multiplied by a fraction the numerator of which is three hundred sixty-five (365) and the denominator of which is the number of days from the Closing Date through the date of determination and (ii) shall exclude the acquisition accounting effects described in the last sentence of the definition of Consolidated Net Income.

“**Consolidated Net Income**” means, for any period, the net income (loss) of the Borrower and the Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; *provided, however*, that, without duplication:

(a) any after-tax (including after Tax Distributions) effect of extraordinary, non-recurring or unusual items (including gains or losses and all fees and expenses relating thereto) for such period shall be excluded,

(b) the cumulative effect of a change in accounting principles during such period to the extent included in Consolidated Net Income shall be excluded,

(c) any fees and expenses incurred during such period (including, without limitation, any premiums, make-whole or penalty payments), or any amortization thereof for such period, in connection with any acquisition, investment, asset disposition, issuance or repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of any debt instrument (in each case, including any such transaction consummated on or prior to the Closing Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for the avoidance of doubt the effects of expensing all transaction related expenses in accordance with FASB Accounting Standards Codification 805 and gains or losses associated with FASB Accounting Standards Codification 460) shall be excluded,

(d) accruals and reserves that are established or adjusted within two (2) years after the Closing Date that are so required to be established as a result of the Transactions (or within two (2) years after the closing of any acquisition that are so required to be established as a result of such acquisition) in accordance with GAAP shall be excluded,

(e) any net after-tax (including after Tax Distributions) effect of gains or losses on disposed, abandoned or discontinued operations shall be excluded,

(f) any net after-tax (including after Tax Distributions) effect of gains or losses (less all fees, expenses and charges relating thereto) attributable to asset dispositions or abandonments or the sale or other disposition of any Equity Interests of any Person in each case other than in the ordinary course of business, as determined in good faith by the Borrower, shall be excluded,

(g) the net income (loss) for such period of any Person that is not a Subsidiary of the Borrower, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; *provided* that Consolidated Net Income of the Borrower shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent subsequently converted into cash or Cash Equivalents) to the Borrower or a Restricted Subsidiary thereof in respect of such period,

(h) any impairment charge or asset write-off or write-down, including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets, investments in debt and equity securities or as a result of a change in law or regulation, in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(i) any non-cash compensation charge or expense, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights or equity incentive programs or any other equity-based compensation shall be excluded, and any cash charges associated with the rollover, acceleration or payout of Equity Interests by management of the Borrower or any of its direct or indirect parents in connection with the Transactions, shall be excluded,

(j) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within three hundred sixty-five (365) days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such three hundred sixty-five (365) day period), shall be excluded,

(k) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is in fact reimbursed within three hundred sixty-five (365) days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such three hundred sixty-five (365) days), expenses, charges or losses with respect to liability or casualty events or business interruption shall be excluded,

(l) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of FASB Accounting Standards Codification 712 and 715, Statement on Financial Accounting Standards Nos. 87, 106 and 112, and any other items of a similar nature, shall be excluded,

(m) the income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary of Borrower or is merged into or consolidated with Borrower or any of its Subsidiaries or that Person's assets are acquired by Borrower or any of its Restricted Subsidiaries shall be excluded (except to the extent required for any calculation of Consolidated EBITDA on a Pro Forma Basis in accordance with Section 1.09),

(n) solely for the purpose of determining the Cumulative Credit pursuant to clause (a) of the definition thereof, the income of any Restricted Subsidiary of Borrower that is not a Guarantor to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary (which has not been waived) shall be excluded, except (solely to the extent permitted to be paid) to the extent of the amount of dividends or other distributions actually paid to Borrower or any of its Restricted Subsidiaries that are Guarantors by such Person during such period in accordance with such documents and regulations, and

(o) any gains or losses in connection with Sale Leaseback Transactions shall be excluded.

There shall be excluded from Consolidated Net Income for any period the acquisition accounting effects of adjustments in component amounts required or permitted by GAAP pursuant to FASB Accounting Standards Codification 805 (including, but not limited to, in the inventory, property and equipment, fair value of leased property, software, goodwill, intangible assets, in-process research and development, deferred revenue, deferred rent, contingent considerations and debt line items thereof) and related authoritative pronouncements (including the effects of such adjustments pushed down to the Borrower and the Restricted Subsidiaries), as a result of the Transactions, any acquisition constituting an Investment permitted under this Agreement consummated prior to or after the Closing Date, or the amortization or write-off of any amounts thereof. For the avoidance of doubt, Consolidated Net Income shall be calculated, including pro forma adjustments, in accordance with Section 1.09.

“Consolidated Secured Net Debt” means, as of any date of determination, (1) any Indebtedness described in clause (a) of the definition of “Consolidated Total Net Debt” outstanding on such date that is secured by a Lien on Collateral minus (2) the aggregate amount of Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01, Liens permitted by Section 7.01(a), Section 7.01(b), clauses (ii) and (iii) of Section 7.01(k), Section 7.01(m), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(v), Section 7.01(w), Section 7.01(aa), Section 7.01(bb), Section 7.01(cc), Section 7.01(dd) and Section 7.01(gg)); *provided* that Consolidated Secured Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided further* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Secured Net Debt until three (3) Business Days after such amount is drawn, (ii) Unrestricted Subsidiaries and (iii) any Qualified Securitization Financing; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated Secured Net Debt.

“Consolidated Total Net Debt” means, as of any date of determination, (a) the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of acquisition accounting in connection with the Transactions or any acquisition constituting an Investment permitted under this Agreement) consisting of Indebtedness for borrowed money, Attributable Indebtedness, and

debt obligations evidenced by promissory notes or similar instruments and all Guarantees of Indebtedness of such type that is owed by a Person that is not the Borrower or a Restricted Subsidiary, minus (b) the aggregate amount of Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01, Liens permitted by Section 7.01(a), Section 7.01(b), clauses (ii) and (iii) of Section 7.01(k), Section 7.01(m), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(v), Section 7.01(w), Section 7.01(aa), Section 7.01(bb), Section 7.01(cc), Section 7.01(dd) and Section 7.01(gg)); *provided* that Consolidated Total Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided further* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Total Net Debt until three (3) Business Days after such amount is drawn, (ii) Unrestricted Subsidiaries and (iii) any Qualified Securitization Financing; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated Total Net Debt.

“**Consolidated Working Capital**” means, with respect to the Borrower and its Restricted Subsidiaries on a consolidated basis at any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; *provided* that increases or decreases in Consolidated Working Capital shall be calculated without regard to (i) any changes in Current Assets or Current Liabilities as a result of any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent and (ii) the application of acquisition accounting.

“**Contingent Obligations**” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (“**primary obligations**”) of any other Person (for purposes of this definition, the “**primary obligor**”) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent,

(a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(b) to advance or supply funds

(i) for the purchase or payment of any such primary obligation, or

(ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“**Contract Consideration**” has the meaning set forth in the definition of “Excess Cash Flow.”

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“**Control**”, “**Controlled**” and “**Controlling**” have the meaning specified in the definition of “Affiliate.”

“**Credit Extension**” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“**Cumulative Credit**” means, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

(a) (i) \$30,000,000 plus (ii) the Cumulative Retained Excess Cash Flow Amount at such time, plus

(b) (i) the cumulative amount of Cash Equivalent proceeds from the sale of Qualified Equity Interests of the Borrower or Equity Interests of any direct or indirect parent of the Borrower after the Closing Date and on or prior to such time (including upon exercise of warrants or options) (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of “Permitted Investments”, (x) designated as a Cure Amount, (y) used for Equity Funded Employee Plan Costs or (z) used to incur Indebtedness pursuant to Section 7.03(x)), which proceeds have been contributed as common equity to the capital of the Borrower and (ii) in the event that Qualified Equity Interests of the Borrower (or Equity Interests of any direct or indirect parent of Borrower) (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of “Permitted Investments”, (x) designated as a Cure Amount, (y) used for Equity Funded Employee Plan Costs or (z) used to incur Indebtedness pursuant to Section 7.03(x)) have been issued upon conversion of Indebtedness (other than Indebtedness that is contractually subordinated to the Obligations) of the Borrower or any Restricted Subsidiary of the Borrower owed to a Person other than a Loan Party or a Restricted Subsidiary of a Loan Party in satisfaction of such Indebtedness, the aggregate principal amount of such Indebtedness, plus

(c) 100% of the aggregate amount of contributions to the common capital of the Borrower received in Cash Equivalents after the Closing Date (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of “Permitted Investments”, (x) designated as a Cure Amount, (y) used for Equity Funded Employee Plan Costs or (z) used to incur Indebtedness pursuant to Section 7.03(x)), plus

(d) 100% of the aggregate amount received by the Borrower or any Restricted Subsidiary of the Borrower after the Closing Date in Cash Equivalents from:

(A) the sale (other than to the Borrower or any such Restricted Subsidiary) of the Equity Interests of an Unrestricted Subsidiary or any minority Investments, or

(B) any dividend or other distribution by an Unrestricted Subsidiary or received in respect of minority Investments, or

(C) any interest, returns of principal, repayments and similar payments by such Unrestricted Subsidiary or received in respect of any minority Investments;

provided that in the case of clauses (A), (B), and (C), in each case, to the extent that the Investment corresponding to the designation of such Subsidiary as an Unrestricted Subsidiary or any subsequent Investment in such Unrestricted Subsidiary or minority Investment, as applicable, was made pursuant to Section 7.06(g)(y), plus

(e) in the event any Unrestricted Subsidiary has been re-designated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary, the fair market value of the Investments of the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable) so long as such Investments were originally made pursuant to Sections 7.06(g)(y), plus

(f) an amount equal to any returns in Cash Equivalents (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received by the Borrower or any Restricted Subsidiary in respect of any Investments made pursuant to Section 7.06(g)(y), plus

(g) Borrower Retained Prepayment Amounts, plus

(h) the amount actually paid by the applicable Affiliated Lender or Debt Fund Affiliate in respect of Term Loans or Second Lien Term Loans contributed, assigned or transferred by such Affiliated Lender or any Debt Fund Affiliate, directly or indirectly, to the Borrower and cancelled pursuant to the last paragraph of Section 10.07(k) (or pursuant to the last paragraph of Section 10.07(k) of the Second Lien Credit Agreement), minus

(i) any amount of the Cumulative Credit used to make Restricted Payments pursuant to Section 7.06(f)(A) or 7.06(g) after the Closing Date and prior to such time, minus

(j) any amount of the Cumulative Credit used to make payments or distributions in respect of Junior Financings pursuant to Section 7.13 after the Closing Date and prior to such time.

“Cumulative Retained Excess Cash Flow Amount” means, at any time, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to the aggregate cumulative sum of the Retained Percentage of Excess Cash Flow for all Excess Cash Flow Periods ending after the Closing Date and prior to such date.

“Cure Amount” has the meaning set forth in Section 8.04(a).

“**Cure Expiration Date**” has the meaning set forth in Section 8.04(a).

“**Current Assets**” means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all assets (other than cash and Cash Equivalents) that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current assets at such date of determination, other than amounts related to current or deferred Taxes based on income or profits, assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees and derivative financial instruments.

“**Current Liabilities**” means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current liabilities at such date of determination (including deferred revenue), other than (a) the current portion of any Funded Debt and derivative financial instruments, (b) the current portion of accrued interest, (c) liabilities relating to current or deferred Taxes based on income or profits, (d) accruals of any costs or expenses related to restructuring reserves or severance, (e) any other liabilities that are not Indebtedness and will not be settled in cash or Cash Equivalents during the next succeeding twelve (12) month period after such date, (f) any Revolving Credit Exposure, Revolving Credit Loans or any loans or letters of credit under any other revolving facility, (g) liabilities in respect of unpaid earn-outs, (h) accrued litigation settlement costs, (i) non-cash compensation costs and expenses and (j) the current portion of any other long-term liabilities.

“**Debt Fund Affiliate**” means any Sponsor that is a bona fide debt fund or an investment vehicle that is engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of business, in each case with respect to which the persons making investment decisions for such applicable affiliate are not primarily engaged in the making, acquiring or holding of equity investments in Holdings or any of its Subsidiaries.

“**Debtor Relief Laws**” means the Bankruptcy Code of the United States and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“**Declined Proceeds**” has the meaning specified in Section 2.05(b)(vii).

“**Default**” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“**Default Rate**” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate, if any, applicable to Base Rate Loans plus (c) 2.0% per annum; *provided* that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2.0% per annum, in each case, to the fullest extent permitted by applicable Laws.

“Defaulting Lender” means, subject to Section 2.17(b), any Lender that, as reasonably determined by the Administrative Agent (a) has refused (which refusal may be given verbally or in writing and has not been retracted) or failed to perform any of its funding obligations hereunder, including in respect of its Loans or participations in respect of L/C Obligations or Swing Line Loans, which refusal or failure is not cured within one (1) Business Day after the date of such refusal or failure, (b) has notified the Borrower or Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, after the date of this Agreement, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17(b)) upon delivery of written notice of such determination to the Borrower, the Issuing Bank, the Swing Line Lender and each Lender.

“Deferred Loan Party” has the meaning set forth in Section 4.01(a).

“Discount Prepayment Accepting Lender” has the meaning set forth in Section 2.05(a)(v)(B)(2).

“Discount Range” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“Discount Range Prepayment Amount” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“Discount Range Prepayment Notice” means a written notice of a Borrower Solicitation of Discount Range Prepayment Offers made pursuant to Section 2.05(a)(v)(C) substantially in the form of Exhibit E-4.

“Discount Range Prepayment Offer” means the irrevocable written offer by a Lender, substantially in the form of Exhibit E-5, submitted in response to an invitation to submit offers following the Auction Agent’s receipt of a Discount Range Prepayment Notice.

“Discount Range Prepayment Response Date” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“Discount Range Proration” has the meaning set forth in Section 2.05(a)(v)(C)(3).

“Discounted Prepayment Determination Date” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“Discounted Prepayment Effective Date” means in the case of a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offer or Borrower Solicitation of Discounted Prepayment Offer, five (5) Business Days following the Specified Discount Prepayment Response Date, the Discount Range Prepayment Response Date or the Solicited Discounted Prepayment Response Date, as applicable, in accordance with Section 2.05(a)(v)(B)(1), Section 2.05(a)(v)(C)(1) or Section 2.05(a)(v)(D)(1), respectively, unless a shorter period is agreed to between the Borrower and the Auction Agent.

“Discounted Term Loan Prepayment” has the meaning set forth in Section 2.05(a)(v)(A).

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any Sale Leaseback and any sale or issuance of Equity Interests in a Restricted Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, whether in a single transaction or a series of related transactions; provided that “Disposition” and “Dispose” shall not include any issuance by Holdings of any of its Equity Interests to another Person.

“Disqualified Equity Interests” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements) that are accrued and payable and the termination of the Commitments and the termination of all outstanding Letters of Credit (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized, back-stopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer)), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests and other than as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements) that are accrued and payable and the termination of the

Commitments and the termination of all outstanding Letters of Credit (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized, back-stopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer)), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Latest Maturity Date at the time of issuance of such Equity Interests; *provided*, that if such Equity Interests are issued pursuant to a plan for the benefit of future, current or former employees, directors, officers, members of management or consultants of Holdings (or any direct or indirect parent thereof), the Borrower or the Restricted Subsidiaries or by any such plan to such employees, directors, officers, members of management or consultants, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be permitted to be repurchased by the Borrower or its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's or consultant's termination of employment or service, as applicable, death or disability.

"Disqualified Institutions" means those Persons (the list of all such Persons, the **"Disqualified Institutions List"**) that are (i) identified in writing by the Borrower to the Administrative Agent prior to the initial allocation of the loans to be funded on the Closing Date, (ii) competitors of the Borrower and its Subsidiaries (other than bona fide fixed income investors or debt funds) that are identified in writing by the Borrower from time to time or (iii) Affiliates of such Persons set forth in clauses (i) and (ii) above (in the case of Affiliates of such Persons set forth in clause (ii) above, other than bona fide fixed income investors or debt funds) that are either (a) identified in writing by the Borrower or the Sponsor from time to time or (b) reasonably identifiable as an Affiliate thereof; *provided, that*, to the extent Persons are identified as Disqualified Institutions in writing by the Borrower to the Administrative Agent after the Closing Date pursuant to clauses (ii) or (iii)(a), the inclusion of such Persons as Disqualified Institutions shall not retroactively apply to prior assignments or participations in respect of any Loan under this Agreement. Until the disclosure of the identity of a Disqualified Institution to the Lenders generally by the Administrative Agent, such Person shall not constitute a Disqualified Institution for purposes of a sale of a participation in a Loan (as opposed to an assignment of a Loan) by a Lender; *provided*, that no disclosure of the Disqualified Institutions List (or the identity of any Person that constitutes a Disqualified Institution) to the Lenders shall be made by the Administrative Agent without the prior written consent of the Borrower. Notwithstanding the foregoing, the Borrower, by written notice to the Administrative Agent, may from time to time in its sole discretion remove any entity from the Disqualified Institutions List (or otherwise modify such list to exclude any particular entity), and such entity removed or excluded from the Disqualified Institutions List shall no longer be a Disqualified Institution for any purpose under this Agreement or any other Loan Document.

"Disqualified Institutions List" has the meaning set forth in the definition of Disqualified Institutions.

“**Disregarded Domestic Person**” means any Domestic Subsidiary that is a “disregarded entity” for federal income tax purposes substantially all of whose assets consists of Equity Interests in one or more Foreign Subsidiaries that is a CFC.

“**Dollar**” and “**\$**” mean lawful money of the United States.

“**Domestic Subsidiary**” means any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“**Duly Authorized Documents**” has the meaning set forth in Section 4.01(a).

“**Eligible Assignee**” has the meaning set forth in Section 10.07(a)(i). For the avoidance of doubt, “Eligible Assignee” shall not include any Disqualified Institution.

“**EMU**” means the economic and monetary union as contemplated in the Treaty on European Union.

“**Environment**” means indoor air, ambient air, surface water, groundwater, drinking water, land surface, subsurface strata, and natural resources such as wetlands, flora and fauna.

“**Environmental Laws**” means any applicable Law relating to the prevention of pollution or the protection of the Environment and natural resources, and the protection of human health and safety as it relates to Hazardous Materials.

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of investigation and remediation, fines, penalties or indemnities), of the Loan Parties or any Restricted Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage or treatment of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**Environmental Permit**” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“**Equity Contribution**” means, collectively, the direct or indirect contribution on the Closing Date by the Sponsor, Co-Investors and Management Stockholders to the Borrower of an aggregate amount of cash and rollover equity (which, in respect of any equity of the Borrower other than common equity, shall be on terms reasonably acceptable to the Arrangers) that represents not less than 30% of the sum of (1) the aggregate gross proceeds of Term B Loans, excluding the aggregate gross proceeds of any increase in the Term B Loans to fund OID or upfront fees, (2) the aggregate gross proceeds received from the Initial Revolving Borrowing to the extent funding the Transactions or fees and expenses related to the Transactions (excluding OID or upfront fees resulting from the exercise of “Market Flex” by the Arrangers as set forth in the Fee Letter), (3) the aggregate gross proceeds of the Second Lien Initial Term Loans, excluding any increase in the gross proceeds of the Second Lien Initial Term Loans to fund OID or upfront fees and (4) the amount of such cash and rollover equity contributed, in each case on the Closing Date (such sum, the “**Funded Capitalization**”).

“Equity Funded Employee Plan Costs” means cash costs or expenses, incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent funded with cash proceeds contributed to the capital of the Borrower or net cash proceeds of an issuance of Qualified Equity Interests of the Borrower or Equity Interests of any direct or indirect parent of the Borrower (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of “Permitted Investments”, (x) designated as a Cure Amount, (y) used to make Investments, Restricted Payments or prepayments, redemptions, purchase, defeasance or other payments of Junior Financings in reliance on clause (b) or (c) of the definition of “Cumulative Credit” or (z) used to incur Indebtedness pursuant to Section 7.03(x)).

“Equity Interests” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is under common control with a Loan Party within the meaning of Section 414(b) or (c) of the Code or Section 4001 of ERISA (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by a Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by a Loan Party or any ERISA Affiliate from a Multiemployer Plan or written notification that a Multiemployer Plan is in reorganization (within the meaning of Section 4241 of ERISA) or insolvent (within the meaning of Section 4245 of ERISA) or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) a written determination that any Pension Plan is in “at risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (e) the filing of a notice of intent to terminate, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for, and that could reasonably be expected to result in, the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) with respect to a Pension Plan, the failure to satisfy the minimum funding standard of Section 412 of the Code, whether or not waived; (h) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to a Loan Party; or (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon a Loan Party or any ERISA Affiliate.

“Eurocurrency Rate” means:

(a) for any Interest Period with respect to a Eurocurrency Rate Loan, the rate per annum equal to (i) the ICE Benchmark Administration LIBOR Rate or such other rate per annum as is widely recognized as the successor thereto if the ICE Benchmark Administration is no longer making a LIBOR Rate available (“**LIBOR**”), as published by Bloomberg (or such other commercially available source providing quotations of LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (ii) if such published rate is not available at such time for any reason, then the “Eurocurrency Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the Eurocurrency Rate Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by the Administrative Agent’s London Branch to major banks in the London interbank Eurodollar market at their request at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to (i) LIBOR, at approximately 11:00 a.m., London time determined two (2) London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one (1) month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in Same Day Funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one (1) month would be offered by the Administrative Agent’s London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination;

provided that in the case of clause (a), the Eurocurrency Rate with respect to Term B Loans shall not be less than 1.00% per annum.

“Eurocurrency Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurocurrency Rate.”

“Event of Default” has the meaning specified in Section 8.01.

“Excess Cash Flow” means, for any period, an amount equal to:

(a) the sum, without duplication, of

(i) Consolidated Net Income for such period,

(ii) an amount equal to the amount of all non-cash charges (including depreciation and amortization) to the extent deducted in arriving at such Consolidated Net Income, but excluding any such non-cash charges representing an accrual or reserve for potential cash items in any future period,

(iii) decreases in Consolidated Working Capital for such period (other than any such decreases arising from acquisitions or Dispositions by the Borrower and its Restricted Subsidiaries completed during such period or the application of acquisition accounting),

(iv) an amount equal to the aggregate net non-cash loss on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income,

(v) an amount equal to all cash received for such period on account of any net non-cash gain or income from Investments deducted in a previous period pursuant to clause (b)(iv)(B) of this definition,

(vi) an amount deducted as tax expense in determining Consolidated Net Income to the extent in excess of cash taxes paid in such period,

(vii) cash payments received in respect of Swap Contracts during such period to the extent not included in arriving at such Consolidated Net Income, and

(viii) the aggregate net non-cash loss or expense on Dispositions in connection with Sale Leaseback Transactions,

minus

(b) the sum, without duplication, of

(i) an amount equal to (x) the amount of all non-cash credits (including, to the extent constituting non-cash credits, without limitation, amortization of deferred revenue acquired as a result of any Permitted Acquisition) included in arriving at such Consolidated Net Income (but excluding any non-cash credit to the extent representing the reversal of an accrual or reserve described in clause (a)(ii) above) and (y) cash charges, losses or expenses excluded in arriving at such Consolidated Net Income by virtue of clauses (a) through (m) of the definition of Consolidated Net Income,

(ii) without duplication of amounts deducted pursuant to clause (xi) below in prior periods, the amount of Capital Expenditures or acquisitions of intellectual property to the extent not expensed and Capitalized Software Expenditures accrued or made in cash during such period, to the extent financed with Internally Generated Cash,

(iii) the aggregate amount of all principal payments and repayments of Indebtedness of the Borrower and its Restricted Subsidiaries to the extent financed with Internally Generated Cash, but in any event excluding principal payments and repayments of (A) Revolving Credit Loans, Swing Line Loans and Letters of Credit (unless there is a corresponding reduction in the aggregate Revolving Credit Commitments), (B) Indebtedness in respect of any other revolving credit facility (unless there is a corresponding reduction in commitments thereunder), (C) Term Loans pursuant to Section 2.05(b) (other than pursuant to Section 2.05(b)(ii) to the extent required due to a Disposition or Casualty Event that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase), (D) Indebtedness to the extent otherwise deducted from the Applicable ECF Percentage of Excess Cash Flow pursuant to Section 2.05(b)(i)(B) and (E) any Junior Financing to the extent not permitted to be made pursuant to Section 7.13(a),

(iv) an amount equal to the sum of (A) the aggregate net non-cash gain on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income, (B) the aggregate net non-cash gain or income from Investments (other than Investments made in the ordinary course of business) to the extent included in arriving at Consolidated Net Income and (C) the aggregate net non-cash gain or income on Dispositions in connection with Sale Leaseback Transactions,

(v) increases in Consolidated Working Capital for such period (other than any such increases arising from acquisitions or Dispositions by the Borrower and its Restricted Subsidiaries completed during such period or the application of acquisition accounting),

(vi) cash payments by the Borrower and its Restricted Subsidiaries during such period in respect of long-term liabilities (including pension, deferred compensation and other post-retirement obligations) of the Borrower and its Restricted Subsidiaries other than Indebtedness to the extent such payments are not expensed during such period or are not deducted (or were excluded) in calculating Consolidated Net Income and to the extent financed with Internally Generated Cash,

(vii) without duplication of amounts deducted pursuant to clause (xi) below in prior periods, the amount of Investments made pursuant to clauses (3), (13), (15), (16), (19) (to the extent not deducted in arriving at such Consolidated Net Income), (24) and (25) of the definition of "Permitted Investment" to the extent such Investments were financed with Internally Generated Cash,

(viii) the amount of Restricted Payments paid during such period pursuant to Sections 7.06(f), (g)(x), (h), (i), (j)(i) and (k) to the extent such Restricted Payments were financed with Internally Generated Cash,

(ix) the aggregate amount of expenditures actually made by the Borrower and its Restricted Subsidiaries from Internally Generated Cash of the Borrower and its Restricted Subsidiaries during such period (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such period or are not deducted (or were excluded) in calculating Consolidated Net Income,

(x) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and its Restricted Subsidiaries during such period that are required to be made in connection with any prepayment of Indebtedness,

(xi) without duplication of amounts deducted from Excess Cash Flow in prior periods and, at the option of the Borrower, the aggregate consideration required to be paid in cash by the Borrower and its Restricted Subsidiaries pursuant to binding contracts (the "**Contract Consideration**") entered into prior to or during such period relating to Permitted Acquisitions, Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property to the extent expected to be consummated or made, in each case during the period of four consecutive fiscal quarters of the Borrower following the end of such period provided that to the extent the aggregate amount of Internally Generated Cash actually utilized to finance such Permitted Acquisitions, Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property during such period of four consecutive fiscal quarters is less than the Contract Consideration, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive fiscal quarters,

(xii) the amount of cash taxes and Tax Distributions paid in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(xiii) cash expenditures in respect of Swap Contracts during such period to the extent not deducted in arriving at such Consolidated Net Income, and

(xiv) any payment of cash to be amortized or expensed over a future period and recorded as a long-term asset.

Notwithstanding anything in the definition of any term used in the definition of Excess Cash Flow to the contrary, all components of Excess Cash Flow shall be computed for the Borrower and its Restricted Subsidiaries on a consolidated basis.

“Excess Cash Flow Period” means (i) each fiscal year of the Borrower commencing with and including the fiscal year ending December 31, 2015 but in all cases for purposes of calculating the Cumulative Retained Excess Cash Flow Amount shall only include such fiscal years for which financial statements and a Compliance Certificate have been delivered in accordance with Sections 6.01(a) and 6.02(a) and for which any prepayments required by Section 2.05(b)(i) (if any) have been made (it being understood that the Retained Percentage of Excess Cash Flow for any Excess Cash Flow Period shall be included in the Cumulative Retained Excess Cash Flow Amount regardless of whether a prepayment is required by Section 2.05(b)(i)).

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Assets” means (i) any fee owned Real Property (other than Material Real Properties) and any leasehold rights and interests in Real Property (including landlord waivers, estoppels and collateral access letters), (ii) motor vehicles, aircraft and other assets subject to certificates of title, except to the extent a security interest therein can be perfected by the filing of a UCC financing statement, (iii) commercial tort claims where the amount of damages claimed by the applicable Loan Party is less than \$2,500,000, (iv) governmental licenses or state or local franchises, charters and authorizations and any other property and assets to the extent that the Administrative Agent may not validly possess a security interest therein under applicable Laws (including, without limitation, rules and regulations of any Governmental Authority or agency) or the pledge or creation of a security interest in which would require governmental consent, approval, license or authorization, other than to the extent such prohibition or limitation is rendered ineffective under the UCC or other applicable Law notwithstanding such prohibition, (v) any particular asset or right under contract, if the pledge thereof or the security interest therein is prohibited or restricted by applicable Law (including, without limitation, rules and regulations of any Governmental Authority or agency) or any third party (so long as any agreement with such third party that provides for such prohibition or restriction was not entered into in contemplation of the acquisition of such assets or entering into of such contract or for the purpose of creating such prohibition or restriction), other than to the extent such prohibition or restriction is rendered ineffective under the UCC or other applicable Law, notwithstanding such prohibition, (vi) any written agreement, license or lease or any property subject to a purchase money security interest, capital lease obligations or similar arrangement permitted hereunder, in each case, to the extent the grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money or similar arrangement or would give rise to a termination right in favor of any other party thereto (other than Holdings or any of its Subsidiaries) after giving effect to the applicable anti-assignment provisions of the UCC or other applicable Laws, in each case, only to the extent that such limitation on such pledge or security interest is otherwise permitted under Section 7.09, other than proceeds and receivable thereof, the assignment of which is expressly deemed effective under the UCC or other applicable Laws, notwithstanding such prohibition, (vii) (A) Margin Stock, (B) Equity Interests in any Unrestricted Subsidiaries and (C) Equity Interests in any non-wholly owned Subsidiaries and any entities which do not constitute Subsidiaries, but only to the extent that (x) the Organizational Documents or other agreements with equity holders of such non-wholly owned Restricted Subsidiaries or other entities do not permit or restrict the pledge of such Equity Interests, or (y) the pledge of such Equity Interests (including any exercise of remedies) would result in a change of control, repurchase obligation or other adverse consequence to any of the Loan Parties or such

non-wholly owned Restricted Subsidiary or other entity, (viii) any property or assets for which the creation or perfection of pledges of, or security interests in, pursuant to the Collateral Documents would result in material adverse tax consequences to Holdings, the Borrower or any of its Subsidiaries, as reasonably determined by the Borrower in consultation with the Administrative Agent, (ix) letter of credit rights, except as to which perfection of the security interest is accomplished by the filing of a UCC financing statement (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a UCC financing statement), (x) (A) payroll and other employee wage and benefit accounts, (B) tax accounts, including, without limitation, sales tax accounts, (C) escrow accounts, and (D) fiduciary or trust accounts and, in the case of clauses (A) through (D), the funds or other property held in or maintained in any such account (as long as the accounts described in clauses (A) through (D) are used solely for such purposes), (xi) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law and (xii) assets in circumstances where the cost of obtaining a security interest in such assets, including, without limitation, the cost of title insurance, surveys or flood insurance (if necessary) would be excessive in light of the practical benefit to the Lenders afforded thereby as reasonably determined by the Borrower and the Administrative Agent; *provided, however*, that Excluded Assets shall not include any Proceeds, substitutions or replacements of any Excluded Assets referred to in clause (i) through (xii) (unless such Proceeds, substitutions or replacements would independently constitute Excluded Assets referred to in clauses (i) through (xii)).

"Excluded Subsidiary" means (a) any Subsidiary that is not a wholly owned Subsidiary of the Borrower or a Guarantor, (b) any Subsidiary that is prohibited by applicable Law or by Contractual Obligations existing on the Closing Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from guaranteeing the Obligations or if guaranteeing the Obligation would require governmental (including regulatory) consent, approval, license or authorization, (c) any Subsidiary where the Administrative Agent and the Borrower agree that the cost of obtaining a Guarantee by such Subsidiary would be excessive in light of the practical benefit to the Lenders afforded thereby, (d) any Foreign Subsidiary, (e) any non-for-profit Subsidiaries, (f) any Unrestricted Subsidiaries, (g) any special purpose securitization vehicle (or similar entity), including any Securitization Subsidiary or special purpose vehicle used to effectuate a Sale Leaseback Transaction, (h) any CFC Holdco, (i) any Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC, (j) any Disregarded Domestic Person, (k) any Subsidiary which holds no material assets other than the Sale Leaseback Properties that are the subject of any Sale Leaseback Transaction, (l) any Subsidiary, the obtaining of a Guarantee with respect to which would result in material adverse tax consequences as reasonably determined by the Borrower in consultation with the Administrative Agent and (m) any Captive Insurance Subsidiary.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, as applicable, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (a) by virtue of such Guarantor’s failure to constitute an “eligible contract participant,” as defined in the Commodity Exchange Act and the regulations thereunder, at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation or (b) in the case of a Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Guarantor is a “financial entity,” as defined in section 2(h)(7)(C) of the Commodity Exchange Act, at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such guarantee or security interest is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof).

“Existing L/C Issuer” means Wintrust Bank (f/k/a North Shore Community Bank & Trust Company) and each other bank which issued Existing Letters of Credit.

“Existing Letters of Credit” means any letters of credit outstanding on the Closing Date described in Schedule 1.01F.

“Existing Revolver Tranche” has the meaning provided in Section 2.16(b).

“Existing Term Loan Tranche” has the meaning provided in Section 2.16(a).

“Expiring Credit Commitment” has the meaning provided in Section 2.04(g).

“Extended Revolving Credit Commitments” has the meaning provided in Section 2.16(b).

“Extended Term Loans” has the meaning provided in Section 2.16(a).

“Extending Revolving Credit Lender” has the meaning provided in Section 2.16(c).

“Extending Term Lender” has the meaning provided in Section 2.16(c).

“Extension” means the establishment of an Extension Series by amending a Loan pursuant to Section 2.16 and the applicable Extension Amendment.

“Extension Amendment” has the meaning provided in Section 2.16(d).

“Extension Election” has the meaning provided in Section 2.16(c).

“Extension Minimum Condition” means a condition to consummating any Extension that a minimum amount (to be determined and specified in the relevant Extension Request, in the Borrower’s sole discretion) of any or all applicable Classes be submitted for Extension.

“**Extension Request**” means any Term Loan Extension Request or a Revolver Extension Request, as the case may be.

“**Extension Series**” means any Term Loan Extension Series or a Revolver Extension Series, as the case may be.

“**Facility**” means a given Class of Term Loans or Revolving Credit Commitments, as the context may require.

“**fair market value**” means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Borrower in good faith.

“**FATCA**” means current Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version thereof that is substantively comparable) or any Treasury regulations or other administrative guidance promulgated thereunder and any intergovernmental or foreign financial institution agreement implementing the foregoing.

“**Federal Funds Rate**” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“**Fee Letter**” means the Amended and Restated Fee Letter, dated as of July 23, 2014, among Merger Sub, UBS AG, Stamford Branch, UBS Securities LLC, and Jefferies Finance LLC.

“**Financial Covenant**” has the meaning specified in Section 7.11. “**First Lien Intercreditor Agreement**” means an intercreditor agreement substantially in the form of Exhibit J hereto (which agreement in such form, or with immaterial changes thereto, the Administrative Agent is authorized to enter into) together with any material changes thereto which are reasonably acceptable to the Administrative Agent and which material changes shall be posted to the Lenders not less than five (5) Business Days before execution thereof and, if the Required Lenders shall not have objected to such changes within five (5) Business Days after posting, then the Required Lenders shall be deemed to have agreed that the Administrative Agent’s entry into such intercreditor agreement (with such changes) is reasonable and to have consented to such intercreditor agreement (with such changes) and to the Administrative Agent’s execution thereof.

“Flood Insurance Laws” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Foreign Casualty Event” has the meaning specified in Section 2.05(b)(viii).

“Foreign Disposition” has the meaning set forth in Section 2.05(b)(viii).

“Foreign Subsidiary” means any direct or indirect Restricted Subsidiary of the Borrower which is not a Domestic Subsidiary.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, such Defaulting Lender’s Pro Rata Share or other applicable share provided under this Agreement of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender’s Pro Rata Share or other applicable share provided under this Agreement of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

“Funded Debt” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one (1) year from the date of its creation or matures within one (1) year from such date that is renewable or extendable, at the option of such Person, to a date more than one (1) year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one (1) year from such date, including Indebtedness in respect of the Loans.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time; *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof (including through conforming changes made consistent with IFRS) on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof (including through conforming changes made consistent with IFRS), then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Granting Lender**” has the meaning specified in Section 10.07(h).

“**Guarantee**” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“**Guaranteed Obligations**” has the meaning specified in Section 11.01.

“**Guarantors**” has the meaning set forth in the definition of “Collateral and Guarantee Requirement” and shall include each Restricted Subsidiary that shall have become a Guarantor pursuant to Section 6.11. For avoidance of doubt, the Borrower in its sole discretion may cause any Restricted Subsidiary that is not a Guarantor to Guarantee the Obligations by causing such Restricted Subsidiary to execute a joinder to this Agreement in form and substance reasonably satisfactory to the Administrative Agent, and any such Restricted Subsidiary shall be a Guarantor, Loan Party and Subsidiary Guarantor hereunder for all purposes. In addition, the Borrower shall be a Guarantor in respect of Secured Hedge Agreements and Treasury Services Agreements to which the Borrower is not party.

“**Guaranty**” means, collectively, the guaranty of the Obligations by the Guarantors pursuant to this Agreement.

“Hazardous Materials” means all materials, pollutants, contaminants, chemicals, compounds, constituents, substances or wastes, in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, mold, electromagnetic radio frequency or microwave emissions that are regulated pursuant to, or which could give rise to liability under, applicable Environmental Law.

“Hedge Bank” means any Person which is a party to a Secured Hedge Agreement or a Treasury Services Agreement and that is a Lender, an Agent or an Affiliate of a Lender or an Agent on the Closing Date or at the time it enters into such Secured Hedge Agreement or a Treasury Services Agreement, as applicable, in its capacity as a party thereto and that, in the case of a Secured Hedge Agreement is designated a “Hedge Bank” with respect to such Secured Hedge Agreement in a writing from the Borrower to the Administrative Agent, and (other than a Person already party hereto as a Lender) that delivers to the Administrative Agent a letter agreement reasonably satisfactory to it (i) appointing the Administrative Agent as its agent under the applicable Loan Documents and (ii) agreeing to be bound by Sections 10.05, 10.15 and 10.16 and Article IX as if it were a Lender.

“Holdings” has the meaning specified in the introductory paragraph to this Agreement.

“Honor Date” has the meaning set forth in Section 2.03(c)(i).

“Identified Participating Lenders” has the meaning set forth in Section 2.05(a)(v)(C)(3).

“Identified Qualifying Lenders” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“IFRS” means international accounting standards as promulgated by the International Accounting Standards Board.

“Incremental Amendment” has the meaning set forth in Section 2.14(f).

“Incremental Amendment Date” has the meaning set forth in Section 2.14(d).

“Incremental Commitments” has the meaning set forth in Section 2.14(a).

“Incremental Equivalent Debt” has the meaning specified in Section 2.14(h).

“Incremental Facility Closing Date” has the meaning set forth in Section 2.14(b).

“Incremental Lenders” has the meaning set forth in Section 2.14(c).

“Incremental Loan” has the meaning set forth in Section 2.14(b).

“Incremental Loan Request” has the meaning set forth in Section 2.14(a).

“Incremental Revolving Credit Commitments” has the meaning set forth in Section 2.14(a).

“Incremental Revolving Credit Lender” has the meaning set forth in Section 2.14(c).

“**Incremental Revolving Loan**” has the meaning set forth in Section 2.14(b).

“**Incremental Term Commitments**” has the meaning set forth in Section 2.14(a).

“**Incremental Term Lender**” has the meaning set forth in Section 2.14(c).

“**Incremental Term Loan**” has the meaning set forth in Section 2.14(b).

“**Indebtedness**” means, as to any Person at a particular time, without duplication, all of the following:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all outstanding letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) any earn-out or similar obligation, unless such obligation has not been paid within thirty (30) days after becoming due and payable and becomes a liability on the balance sheet of such Person in accordance with GAAP and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Equity Interests; if and to the extent that the foregoing would constitute indebtedness or a liability in accordance with GAAP; and

(h) to the extent not otherwise included above, all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (A) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Net Debt and (B) in the case of the Borrower and its Subsidiaries, exclude all intercompany Indebtedness having a term not exceeding three hundred sixty-four (364) days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby.

"Indemnified Liabilities" has the meaning set forth in Section 10.05.

"Indemnified Taxes" means, with respect to any Agent or any Lender, all Taxes imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document, other than (i) any Taxes imposed on or measured by its income, however denominated, and franchise (and similar) Taxes imposed on it in lieu of net income Taxes, imposed, in each case, by a jurisdiction as a result of such recipient being organized in or having its principal office or applicable lending office in such jurisdiction, or as a result of any other connection between such Lender or Agent and such jurisdiction other than any connections arising solely from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, receiving payments under, receiving or perfecting a security interest under, engaging in any other transaction pursuant to, and/or enforcing, any Loan Document, (ii) any Taxes (other than Taxes described in clause (i) above) imposed by a jurisdiction as a result of such recipient being organized in or having its principal office or applicable lending office in such jurisdiction, or as a result of any other connection between such Lender or Agent and such jurisdiction other than any connections arising from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, receiving payments under, receiving or perfecting a security interest under, engaging in any other transaction pursuant to, and/or enforcing, any Loan Document, (iii) any Taxes attributable to the failure by such Agent or Lender to comply with Section 3.01(d), (iv) any branch profits Taxes imposed by the United States under Section 884(a) of the Code or any similar Tax imposed by any other jurisdiction described in (i), (v) in the case of a Lender (other than an assignee pursuant to a request by Borrower under Section 3.07(a)), any U.S. federal Tax required to be withheld imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date (which, for the avoidance of doubt, is no earlier than the date hereof) on which such Lender (a) acquires such interest in the applicable Commitment or, if such Lender did not fund the applicable Loan pursuant to a prior Commitment, on the date such Lender acquires its interest in such Loan or (b) or designates a new Lending Office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender immediately before it designated a new Lending Office, (vi) any Taxes imposed under FATCA and (vii) for the avoidance of doubt, interest, penalties, and additions to tax on the amounts described in clauses (i) through (vi) hereof.

"Indemnitees" has the meaning set forth in Section 10.05.

“Independent Financial Advisor” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Borrower, qualified to perform the task for which it has been engaged and that is independent of the Borrower and its Affiliates.

“Information” has the meaning set forth in Section 10.08.

“Initial Revolving Borrowing” means one or more borrowings of Revolving Credit Loans on the Closing Date in an amount not to exceed the aggregate amounts specified or referred to in the definition of the term “Permitted Initial Revolving Credit Borrowing Purposes”; *provided*, that, without limitation, Letters of Credit may be issued on the Closing Date to backstop or replace letters of credit, guarantees and performance or similar bonds outstanding on the Closing Date (including deemed issuances of Letters of Credit under this Agreement resulting from an Existing L/C Issuer agreeing to become an L/C Issuer under this Agreement).

“Initial Revolving Credit Commitment” means, as to each Revolving Credit Lender, its Revolving Credit Commitment as of the Closing Date, as may be increased from time to time pursuant to a Revolving Commitment Increase. The aggregate amount of Initial Revolving Credit Commitments is \$30,000,000.

“Intellectual Property Security Agreement” has the meaning set forth in the Security Agreement.

“Intercompany Note” means a promissory note substantially in the form of Exhibit G.

“Intercreditor Agreements” means the First Lien Intercreditor Agreement, the Second Lien Intercreditor Agreement and the Subordination Agreement, collectively, in each case to the extent in effect.

“Interest Payment Date” means, (a) as to any Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; *provided* that if any Interest Period for a Eurocurrency Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates and (b) as to any Base Rate Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made.

“Interest Period” means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two, three or six (6) months thereafter or, to the extent agreed by each Lender of such Eurocurrency Rate Loan, twelve (12) months or less than one (1) month thereafter, as selected by the Borrower in its Committed Loan Notice; *provided* that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period (other than an Interest Period having a duration of less than one (1) month) that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the applicable Maturity Date.

“Internally Generated Cash” means, with respect to any Person, funds of such Person and its Restricted Subsidiaries not constituting (x) proceeds of the issuance of (or contributions in respect of) Equity Interests of or a capital contribution to such Person, (y) proceeds of the incurrence of Indebtedness (other than the incurrence of Revolving Credit Loans or extensions of credit under any other revolving credit or similar facility) by such Person or any of its Restricted Subsidiaries or (z) proceeds of Dispositions and Casualty Events.

“Investment” means, as to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, manufacturers and consultants, in each case made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person (excluding, in the case of the Borrower and its Subsidiaries, intercompany loans, advances or Indebtedness having a term not exceeding three hundred sixty-four (364) days (inclusive of any roll over or extensions of terms) and made in the ordinary course of business). For purposes of the definition of “Unrestricted Subsidiary” and the covenants described under Sections 6.14 and 7.06:

(1) “Investments” shall include the portion (proportionate to the Borrower’s Equity Interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Borrower at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Borrower shall be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Borrower’s “Investment” in such Subsidiary at the time of such redesignation; less

(b) the portion (proportionate to the Borrower’s Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Borrower or a Restricted Subsidiary in respect of such Investment.

“**IP Rights**” has the meaning set forth in Section 5.15.

“**ISP**” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“**Junior Financing**” has the meaning set forth in Section 7.13(a).

“**Junior Financing Documentation**” means any documentation governing any Junior Financing.

“**Latest Maturity Date**” means, at any date of determination and with respect to the specified Loans or Commitments (or in the absence of any such specification, all outstanding Loans and Commitments hereunder), the latest Maturity Date applicable to any such Loans or Commitments hereunder at such time, including the latest maturity date of any Extended Term Loan, any Extended Revolving Credit Commitment, any Incremental Term Loans, any Incremental Revolving Credit Commitments, any Refinancing Term Loans or any Refinancing Revolving Credit Commitments, in each case as extended in accordance with this Agreement from time to time.

“**Laws**” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“**L/C Advance**” means, with respect to each Revolving Credit Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Pro Rata Share or other applicable share provided for under this Agreement.

“**L/C Borrowing**” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

“**L/C Credit Extension**” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

“**L/C Issuer**” means UBS AG, Stamford Branch, the Existing L/C Issuer, and any other Lender that becomes an L/C Issuer in accordance with Section 2.03(k) or 10.07(j), in each case, in its capacity as an issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“**L/C Obligations**” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“**Lender**” has the meaning specified in the introductory paragraph to this Agreement and, as the context requires, includes an L/C Issuer and the Swing Line Lender, and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender.”

“**Lending Office**” means, as to any Lender, such office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“**Letter of Credit**” means any letter of credit issued hereunder, including, for the avoidance of doubt, all Existing Letters of Credit. A Letter of Credit may be a commercial letter of credit or a standby letter of credit; *provided, however*, that any commercial letter of credit issued hereunder shall provide solely for cash payment upon presentation of a sight draft.

“**Letter of Credit Application**” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the relevant L/C Issuer.

“**Letter of Credit Expiration Date**” means the day that is five (5) Business Days prior to the scheduled Latest Maturity Date then in effect for the Participating Revolving Credit Commitments (taking into account the Maturity Date of any conditional Participating Revolving Credit Commitment that will automatically go into effect on or prior to such Maturity Date (or, if such day is not a Business Day, the next preceding Business Day)).

“**Letter of Credit Sublimit**” means an amount equal to the lesser of (a) \$7,500,000 (as may be adjusted pursuant to Section 2.14(e)(ii)(D)) and (b) the aggregate amount of the Participating Revolving Credit Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the Participating Revolving Credit Commitments.

“**LIBOR**” has the meaning set forth in clause (a) of the definition of “Eurocurrency Rate”.

“**Lien**” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing); provided that in no event shall an operating lease in and of itself be deemed a Lien.

“**Limited Condition Transaction**” means (i) any Permitted Acquisition whose consummation is not conditioned on the availability of, or on obtaining, third party financing and (ii) any redemption or repayment of Indebtedness requiring irrevocable notice in advance of such redemption or repayment.

“Limited Originator Recourse” means a letter of credit, cash collateral account or other such credit enhancement issued in connection with the incurrence of Indebtedness by a Securitization Subsidiary under a Qualified Securitization Financing.

“Loan” means an extension of credit under Article II by a Lender (x) to the Borrower in the form of a Term Loan, and (y) to the Borrower in the form of a Revolving Credit Loan or a Swing Line Loan.

“Loan Documents” means, collectively, (i) this Agreement, (ii) the Notes, (iii) the Collateral Documents, (iv) any Refinancing Amendment, Incremental Amendment or Extension Amendment, (v) each Letter of Credit Application and (vi) any Intercreditor Agreement.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Management Stockholders” means the members of management of Holdings, the Borrower or any of its Subsidiaries who are investors in Holdings or any direct or indirect parent thereof.

“Margin Stock” shall have the meaning assigned to such term in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“Master Agreement” has the meaning specified in the definition of “Swap Contract.”

“Material Adverse Effect” means a (a) material adverse effect on the business, operations, assets or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole; (b) material adverse effect on the ability of the Loan Parties (taken as a whole) to fully and timely perform any of their payment obligations under any Loan Document to which the Borrower or any of the Loan Parties is a party; or (c) material adverse effect on the rights and remedies available to the Lenders or the Administrative Agent under any Loan Document.

“Material Domestic Subsidiary” means, at any date of determination, each of the Borrower’s Domestic Subsidiaries (a) whose total assets (when combined with the assets of such Subsidiary’s Subsidiaries after eliminating intercompany obligations) at the last day of the most recent Test Period were equal to or greater than 2.5% of Total Assets at such date or (b) whose gross revenues (when combined with the revenues of such Subsidiary’s Subsidiaries, after eliminating intercompany obligations) for such Test Period were equal to or greater than 2.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; provided that if, at any time and from time to time after the Closing Date, Domestic Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in clause (a) or (b) comprise in the aggregate more than 5% of Total Assets as of the end of the most recently ended fiscal quarter of the Borrower for which financial statements have been delivered pursuant to Section 6.01 or more than 5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such quarter are required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Domestic Subsidiaries as “Material Domestic Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 applicable to such Subsidiary.

“Material Foreign Subsidiary” means, at any date of determination, each of the Borrower’s Foreign Subsidiaries (a) whose total assets (when combined with the assets of such Subsidiary’s Subsidiaries after eliminating intercompany obligations) at the last day of the most recent Test Period were equal to or greater than 2.5% of Total Assets at such date or (b) whose gross revenues (when combined with the revenues of such Subsidiary’s Subsidiaries, after eliminating intercompany obligations) for such Test Period were equal to or greater than 2.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; *provided* that if, at any time and from time to time after the Closing Date, Foreign Subsidiaries not meeting the thresholds set forth in clause (a) or (b) comprise in the aggregate more than 5% of Total Assets as of the end of the most recently ended fiscal quarter of the Borrower for which financial statements have been delivered pursuant to Section 6.01 or more than 5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such quarter are required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Foreign Subsidiaries as “Material Foreign Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of the definition of “Collateral and Guarantee Requirement.”

“Material Real Property” means any fee-owned Real Property (other than any Sale Leaseback Properties) located in the United States that is owned by any Loan Party and that has a fair market value in excess of \$5,000,000 (at the Closing Date or, with respect to fee-owned Real Property located in the United States acquired after the Closing Date, at the time of acquisition).

“Material Subsidiary” means any Material Domestic Subsidiary or any Material Foreign Subsidiary.

“Maturity Date” means (i) with respect to the Term B Loans, the seventh anniversary of the Closing Date; (ii) with respect to the Initial Revolving Credit Commitments, the fifth anniversary of the Closing Date; (iii) with respect to any Class of Extended Term Loans or Extended Revolving Credit Commitments, the final maturity date as specified in the applicable Extension Request accepted by the respective Lender or Lenders, (iv) with respect to any Refinancing Term Loans or Refinancing Revolving Credit Commitments, the final maturity date as specified in the applicable Refinancing Amendment and (v) with respect to any Incremental Loans or Incremental Revolving Credit Commitments, the final maturity date as specified in the applicable Incremental Amendment; *provided* that, in each case, if such day is not a Business Day, the Maturity Date shall be the Business Day immediately succeeding such day.

“Maximum Rate” has the meaning specified in Section 10.10.

“**Merger**” has the meaning specified in the preliminary statements to this Agreement.

“**Merger Agreement**” has the meaning specified in the preliminary statements to this Agreement.

“**Merger Consideration**” means the total funds required to consummate the Acquisition.

“**Merger Sub**” has the meaning specified in the preliminary statements to this Agreement.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor thereto.

“**Mortgage Policies**” has the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“**Mortgaged Properties**” has the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“**Mortgages**” means, collectively, the deeds of trust, trust deeds, hypothecs and mortgages made by the Loan Parties in favor of or for the benefit of the Administrative Agent on behalf of the Secured Parties creating and evidencing a Lien on a Mortgaged Property in form and substance reasonably satisfactory to the Administrative Agent (taking account of relevant local Law matters), and any other mortgages executed and delivered pursuant to Section 6.11, in each case, as the same may from time to time be amended, restated, supplemented or otherwise modified.

“**Multiemployer Plan**” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which a Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding six (6) plan years, has made or been obligated to make contributions.

“**Net Proceeds**” means:

(a) 100% of the cash proceeds actually received by the Borrower or any of the Restricted Subsidiaries (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation awards, but in each case only as and when received) from any Disposition or Casualty Event, net of (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith, (ii) the principal amount of any Indebtedness that is secured by a Lien (other than a Lien that ranks *pari passu* with or is subordinated to the Liens securing the Obligations) on the asset subject to such Disposition or Casualty Event and that is required to be repaid in connection with such Disposition or Casualty Event (other than Indebtedness under the Loan Documents), together with any applicable premium, penalty, interest and breakage costs, (iii) in the case of any Disposition or Casualty Event by a non-wholly owned

Restricted Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (iii)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Restricted Subsidiary as a result thereof, (iv) taxes and Tax Distributions paid or reasonably estimated to be payable, directly or indirectly, as a result thereof (including taxes that are or would be imposed on the distribution or repatriation of any such Net Proceeds), and (v) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of the Restricted Subsidiaries including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (*provided, however*, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition or Casualty Event occurring on the date of such reduction); *provided* that, at the option of the Borrower, the Borrower may use all or any portion of such proceeds to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Borrower or its Restricted Subsidiaries or to make Permitted Acquisitions (or any subsequent Investment made in a Person, division or line of business previously acquired), in each case within twelve (12) months of such receipt, and such proceeds shall not constitute Net Proceeds except to the extent not, within twelve (12) months of such receipt, so used or contractually committed to be so used (it being understood that if any portion of such proceeds are not so used within such twelve (12) month period but within such twelve (12) month period are contractually committed to be used, then upon the termination of such contract or if such Net Proceeds are not so used within such twelve (12) month period or, if later, one hundred eighty (180) days from the entry into such contractual commitment, then such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso); *provided, further*, that no proceeds realized in a single transaction or series of related transactions shall constitute Net Proceeds unless (x) such proceeds shall exceed \$10,000,000 or (y) the aggregate net proceeds exceed \$20,000,000 in any fiscal year (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (a)), and

(b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any of the Restricted Subsidiaries of any Indebtedness, net of all taxes and Tax Distributions paid or reasonably estimated to be payable, directly or indirectly, as a result thereof and fees (including investment banking fees, underwriting fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to the Borrower shall be disregarded.

“**Non-Consenting Lender**” has the meaning set forth in Section 3.07.

“**Non-Defaulting Lender**” means, at any time, a Lender that is not a Defaulting Lender.

“**non-Expiring Credit Commitment**” has the meaning provided in Section 2.04(g).

“**Non-extension Notice Date**” has the meaning specified in Section 2.03(b)(iii).

“**Non-Loan Party**” means any Restricted Subsidiary of the Borrower that is not a Loan Party.

“**Note**” means a Term Note, a Revolving Credit Note or a Swing Line Note, as the context may require.

“**Obligations**” means all (x) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party and its Restricted Subsidiaries arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or Restricted Subsidiary of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding and (y) obligations of any Loan Party arising under any Secured Hedge Agreement or any Treasury Services Agreement. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and of their Restricted Subsidiaries to the extent they have obligations under the Loan Documents) include (a) the obligation (including guarantee obligations) to pay principal, interest, Letter of Credit fees, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

“**Offered Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Offered Discount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**OID**” means original issue discount. “**Organization Documents**” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Other Applicable Indebtedness**” has the meaning specified in Section 2.05(b)(ii).

“**Other Taxes**” has the meaning specified in Section 3.01(b).

“Outstanding Amount” means (a) with respect to the Term Loans, Revolving Credit Loans and Swing Line Loans on any date, the outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans, Revolving Credit Loans (including any refinancing of outstanding Unreimbursed Amounts under Letters of Credit or L/C Credit Extensions as a Revolving Credit Borrowing) and Swing Line Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the outstanding amount thereof on such date after giving effect to any related L/C Credit Extension occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding Unreimbursed Amounts under related Letters of Credit (including any refinancing of outstanding Unreimbursed Amounts under related Letters of Credit or related L/C Credit Extensions as a Revolving Credit Borrowing) or any reductions in the maximum amount available for drawing under related Letters of Credit taking effect on such date.

“Overnight Rate” means, for any day, the greater of the Federal Funds Rate and an overnight rate determined by the Administrative Agent, an L/C Issuer, or the Swing Line Lender, as applicable, in accordance with banking industry rules on interbank compensation.

“Participant” has the meaning specified in Section 10.07(e).

“Participant Register” has the meaning specified in Section 10.07(e).

“Participating Lender” has the meaning set forth in Section 2.05(a)(v)(C)(2).

“Participating Revolving Credit Commitments” means (1) the Initial Revolving Credit Commitments (including any Extended Revolving Credit Commitments in respect thereof) and (2) those additional Revolving Credit Commitments (and both (x) Revolving Commitment Increases to such Class and (y) Extended Revolving Credit Commitments in respect thereof) established pursuant to an Incremental Amendment or Refinancing Amendment for which an election has been made to include such Commitments for purposes of the issuance of Letters of Credit or the making of Swing Line Loans; *provided, that*, with respect to clause (2), the effectiveness of such election may be made conditional upon the maturity of one or more other Participating Revolving Credit Commitments. At any time at which there is more than one Class of Participating Revolving Credit Commitments outstanding, the mechanics and arrangements with respect to the allocation of Letters of Credit and Swing Line Loans among such Classes will be subject to procedures agreed to by the Borrower and the Administrative Agent.

“Participating Revolving Credit Lender” means any Lender holding a Participating Revolving Credit Commitment.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA or Section 412 of the Code and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five (5) plan years.

“Perfection Certificate” means a certificate in the form of Exhibit II to the Security Agreement or any other form reasonably approved by the Administrative Agent, as the same shall be supplemented from time to time.

“Permitted Acquisition” means any Investment of the type described in clause (3) of the definition of “Permitted Investments” and any Investment or other acquisition by Borrower or a Restricted Subsidiary of assets constituting a business unit, line of business or division of, or all or substantially all of the Equity Interests of, another Person.

“Permitted Holder” means the Sponsor, any Management Stockholders and any of the Co-Investors; *provided* that if Management Stockholders own beneficially or of record more than 20% of the outstanding voting stock of Holdings in the aggregate, they shall be treated as Permitted Holders of only 20% of the outstanding voting stock of Holdings at such time.

“Permitted Holdings Debt” means unsecured Indebtedness of Holdings (A) that is not subject to any Guarantee by any Subsidiary of Holdings, (B) that will not mature until after the Latest Maturity Date in effect on the date of issuance or incurrence thereof, (C) that is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligation (other than customary offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) prior to the Latest Maturity Date (it being understood that such Indebtedness may have mandatory prepayment, repurchase or redemption provisions satisfying the requirements of clause (D) below prior to such date), (D) that does not require any payments in cash of interest or other amounts in respect of the principal thereof prior to the earlier to occur of (1) a date that is four (4) years from the date of the issuance or incurrence thereof and (2) a date that is after the Latest Maturity Date in effect on the date of such issuance or incurrence, and (E) that has covenant, default and remedy provisions no more restrictive (taken as a whole) than those set forth in this Agreement (taken as a whole) (except in a manner customary for holding company debt securities, including senior discount notes), as reasonably determined by the Borrower.

“Permitted Initial Revolving Credit Borrowing Purposes” means (a) one or more Borrowings of Revolving Credit Loans that do not, in the aggregate, exceed \$10,000,000 to finance (i) the Transactions and (ii) fees and expenses related to the Transactions (including OID and upfront fees, but excluding OID and upfront fees contemplated by clause (c) below), (b) one or more Borrowings of Revolving Credit Loans to fund working capital adjustments under the Merger Agreement and (c) one or more Borrowings of Revolving Credit Loans to fund any or all OID or upfront fees resulting from the exercise of “Market Flex” by the Arrangers as set forth in the Fee Letter.

“Permitted Investments” means:

(1) any Investment in the Borrower or any of its Restricted Subsidiaries; *provided* that, other than with respect to Investments in the form of cash or Cash Equivalents, the aggregate fair market value of Investments resulting from Dispositions by a Loan Party to a Non-Loan Party (including by way of merger or consolidation or otherwise) pursuant to clause (a), (c) or (e) of Section 7.04 or Section 7.05(d) shall not exceed an aggregate amount outstanding from time to time equal to the greater of (x) \$25,000,000 and (y) 2.20% of Total Assets (with the amount of each Investment and Total Assets being measured at the time of each such Disposition and without giving effect to subsequent changes in value of the resulting Investment, but subject to adjustment as set forth in the definition of Investment);

(2) any Investment in Cash Equivalents;

(3) any Investment by the Borrower or any of its Restricted Subsidiaries in a Person (including, to the extent constituting an Investment, in assets of a Person that represent substantially all of its assets or a division, business unit or product line, including research and development and related assets in respect of any product) that is engaged in a business permitted pursuant to Section 7.07 if as a result of such Investment:

(i) such Person becomes a Restricted Subsidiary; or

(ii) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets (or such division, business unit or product line) to, or is liquidated into, the Borrower or a Restricted Subsidiary;

and, in each case, any Investment held by such Person; *provided*, that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation consolidation or transfer;

(4) any Investment in securities or other assets not constituting Cash Equivalents and received in connection with a Disposition made pursuant to Section 7.05 hereof or any other disposition of assets not constituting a Disposition;

(5) any Investment existing on the Closing Date or made pursuant to binding commitments in effect on the Closing Date, in each case as listed on Schedule II, or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any such Investment or binding commitment existing on the Closing Date; *provided*, that the amount of any such Investment or binding commitment may be increased (a) as required by the terms of such Investment or binding commitment as in existence on the Closing Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted under this Agreement;

(6) any Investment acquired by the Borrower or any of its Restricted Subsidiaries:

(i) consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business; or

(ii) in exchange for any other Investment, accounts receivable or endorsements for collection or deposit held by the Borrower or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts of the issuer of such other Investment or accounts receivable (including any trade creditor or customer); or

(iii) in satisfaction of judgments against other Persons; or

(iv) as a result of a foreclosure by the Borrower or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(7) Swap Contracts permitted under Section 7.03(f) hereof;

(8) distributions or payments of Securitization Fees;

(9) Investments the payment for which consists of Equity Interests (other than Disqualified Equity Interests) of the Borrower or any of its direct or indirect parent companies; *provided*, that such Equity Interests will not increase the Cumulative Credit;

(10) guarantees of Indebtedness permitted under Section 7.03, performance guarantees and Contingent Obligations incurred in the ordinary course of business (as long as the primary obligor with respect to such Contingent Obligation is the Borrower or any Restricted Subsidiary) and the creation of Liens on the assets of the Borrower or any Restricted Subsidiary in compliance with Section 7.01;

(11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 7.08 (except transactions described in clauses (f), (g), (l), (n), (q) and (r) of such Section);

(12) Investments consisting of purchases or other acquisitions of inventory, supplies, services, material or equipment or the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(13) Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding, not to exceed the greater of (i) \$40,000,000 and (ii) 4.50% of Total Assets (with the amount of each Investment and Total Assets being measured at the time such Investment is made and without giving effect to subsequent changes in value but subject to adjustment as set forth in the definition of Investment);

(14) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Borrower are necessary or advisable to effect any Qualified Securitization Financing or any repurchase obligation in connection therewith;

(15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants and members of management not in excess of \$5,000,000 outstanding at any one time, in the aggregate (excluding, for the avoidance of doubt, loans and advances described in clause (16) of this definition);

(16) loans and advances to employees, directors, officers, managers and consultants (i) for business-related travel expenses, entertainment expenses, moving expenses and other similar expenses or payroll advances, in each case incurred in the ordinary course of business or consistent with past practices or (ii) to fund such Person's purchase of Equity Interests of the Borrower or any direct or indirect parent company thereof;

(17) advances, loans or extensions of trade credit in the ordinary course of business by the Borrower or any of its Restricted Subsidiaries;

(18) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business;

(19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business;

(20) [Reserved];

(21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business;

(22) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

(23) Investments consisting of promissory notes issued by the Borrower or any Guarantor to future, present or former officers, directors and employees, members of management, or consultants of the Borrower or any of its Subsidiaries or their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower or any direct or indirect parent thereof, to the extent the applicable Restricted Payment is permitted by Section 7.06 hereof;

(24) any Investment by any Captive Insurance Subsidiary in connection with its provision of insurance to the Borrower or any of its Subsidiaries, which Investment is made in the ordinary course of business of such Captive Insurance Subsidiary, or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable; and

(25) loans and advances to any direct or indirect parent of the Borrower not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made to such parent in accordance with Sections 7.06(f), (g) or (h), such Investment being treated for purposes of the applicable clause of Section 7.06, including any limitations, as a Restricted Payment made pursuant to such clause.

For purposes of determining whether an Investment is a Permitted Investment or is otherwise a Restricted Investment permitted to be made pursuant to Section 7.06, in the event that an Investment (or any portion thereof) at any time, whether at the time of making of such Investment or upon or subsequently, meets the criteria of more than one of the categories of Permitted Investments described in clauses (1) through (25) above or any other provision of Section 7.06, the Borrower, in its sole discretion, will classify and may subsequently reclassify such Investment (or any portion thereof) in any one or more of the types of Investments described in clauses (1) through (25) above or any other applicable clause in Section 7.06 and will only be required to include the amount and type of such Investment in such of the above clauses or clauses in Section 7.06 as determined by the Borrower at such time.

“**Permitted Junior Secured Refinancing Debt**” has the meaning set forth in Section 2.15(h)(i).

“**Permitted Pari Passu Secured Refinancing Debt**” has the meaning set forth in Section 2.15(h)(i).

“**Permitted Ratio Debt**” means Indebtedness (including Acquired Indebtedness) incurred or assumed by the Borrower and any Restricted Subsidiary if and to the extent the Consolidated Cash Interest Coverage Ratio of the Borrower for the Borrower’s most recently ended Test Period preceding the date on which such Indebtedness is incurred or assumed would have been equal to or greater than 2.0 to 1.0, determined on a Pro Forma Basis giving effect to such assumption or incurrence and the use of proceeds thereof; *provided*, that (i) immediately after the incurrence or assumption of such Indebtedness and the use of proceeds thereof, no Event of Default shall be continuing or result therefrom, (ii) such Indebtedness that is incurred (but not assumed) to finance any Permitted Acquisition and any Permitted Refinancing thereof does not mature or have scheduled amortization or payments of principal (other than customary “AHYDO catch-up payments”, customary offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) prior to the Maturity Date of the Term B Loans at the time such Indebtedness is incurred or issued and (iii) Non-Loan Parties may not incur Indebtedness pursuant to this definition if, after giving Pro Forma Effect to such incurrence, the aggregate amount of Indebtedness of Non-Loan Parties incurred pursuant to this paragraph then outstanding would exceed the greater of (x) \$20,000,000 and (y) 2.00% of Total Assets, in each case determined at the such time of incurrence; *provided* that a certificate of the Borrower as to the satisfaction of the Consolidated Cash Interest Coverage Ratio condition described above delivered prior to, on or after the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy such Consolidated Cash Interest Coverage Ratio condition, shall be conclusive unless the Administrative Agent notifies the Borrower within five (5) Business Days of receipt of such certificate that it disagrees with such determination (including a description of the basis upon which it disagrees).

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Indebtedness of such Person; *provided* that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced or extended except by an amount equal to unpaid accrued interest and premium thereon plus other amounts owing or paid related to such Indebtedness, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, replacement or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e), such modification, refinancing, refunding, renewal, replacement or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e) or (f), at the time thereof, no Event of Default shall have occurred and be continuing, (d) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is Junior Financing, to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, as reasonably determined by the Borrower, (e) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is secured by the Collateral and/or subject to intercreditor arrangements for the benefit of the Lenders, such modification, refinancing, refunding, renewal, replacement or extension is either (1) unsecured or (2) secured and, if secured, subject to intercreditor arrangements on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, as reasonably determined by the Borrower, and such modification, refinancing, refunding, renewal, replacement or extension is incurred by one or more Persons who is an obligor of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (f) any such modification, refinancing, renewal, replacement or extension has the same primary obligor and the same (or fewer) guarantors as the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended and (g) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is unsecured, such modification, refinancing, refunding, renewal, replacement or extension is either unsecured or subject to Liens only to the extent permitted by Section 7.01(bb) or (cc). Any reference to a Permitted Refinancing in this Agreement or any other Loan Document shall be interpreted to mean (a) a Permitted Refinancing of the subject Indebtedness and (b) any further refinancings constituting a Permitted Refinancing of the Indebtedness resulting from a prior Permitted Refinancing.

“Permitted Unsecured Refinancing Debt” has the meaning set forth in Section 2.15(h)(i).

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“**Plan**” means any material “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established or maintained by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

“**Platform**” has the meaning set forth in Section 6.01.

“**Pledged Debt**” has the meaning set forth in the Security Agreement.

“**Pledged Equity**” has the meaning set forth in the Security Agreement.

“**Portillo Restaurant Group**” means, collectively, Portillo’s Hot Dogs, Inc., Golden Dogs, Inc., Portillo’s Food Service, Inc. and C&O Chicago, L.L.C.

“**Proceeding**” has the meaning set forth in Section 10.05.

“**Proceeds**” has the meaning set forth in the Security Agreement.

“**Pro Forma Basis**” and “**Pro Forma Effect**” means, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.09.

“**Pro Rata Share**” means, with respect to each Lender, at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments and, if applicable and without duplication, Term Loans of such Lender under the applicable Facility or Facilities at such time and the denominator of which is the amount of the Aggregate Commitments under the applicable Facility or Facilities and, if applicable and without duplication, Term Loans under the applicable Facility or Facilities at such time; *provided* that, in the case of the Revolving Credit Commitments of any Class, if such Commitments have been terminated, then the Pro Rata Share of each Lender shall be determined based on the Pro Rata Share of such Lender immediately prior to such termination and after giving effect to any subsequent assignments made pursuant to the terms hereof.

“**Projections**” has the meaning set forth in Section 6.01(c).

“**Public Company Costs**” means costs relating to compliance with the provisions of the Securities Act and the Exchange Act, in each case as applicable to companies with equity or debt securities held by the public, the rules of national securities exchange companies with listed equity or debt securities, directors’ compensation, fees and expense reimbursement, costs relating to investor relations, shareholder meetings and reports to shareholders or debtholders, directors’ and officers’ insurance, listing fees and all executive, legal and professional fees related to the foregoing.

“**Public Lender**” has the meaning set forth in Section 6.01.

“Qualified ECP Guarantor” means in respect of any Swap Obligation, each Loan Party that, at the time the relevant guarantee (or grant of the relevant security interest, as applicable) becomes or would become effective with respect to such Swap Obligation, has total assets exceeding \$10,000,000 or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and which may cause another person to qualify as an “eligible contract participant” with respect to such Swap Obligation at such time by entering into a keepwell pursuant to section 1a(18)(A)(v)(II) of the Commodity Exchange Act (or any successor provision thereto).

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

“Qualified IPO” means the issuance by Borrower or any direct or indirect parent of Borrower of its common Equity Interests in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the U.S. Securities and Exchange Commission in accordance with the Securities Act (whether alone or in connection with a secondary public offering).

“Qualified Securitization Financing” means any Securitization Financing of a Securitization Subsidiary that meets the following conditions: (a) all sales and/or contributions of Securitization Assets and related assets to the Securitization Subsidiary are made at fair market value and (b) the financing terms, covenants, termination events and other provisions thereof, including any Standard Securitization Undertakings, shall be on market terms, as reasonably determined by the Borrower. The grant of a security interest in any Securitization Assets of the Borrower or any of the Restricted Subsidiaries (other than a Securitization Subsidiary) to secure Indebtedness under this Agreement prior to engaging in any Securitization Financing shall not be deemed a Qualified Securitization Financing.

“Qualifying Lender” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“Real Property” means, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned or leased by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Refinanced Debt” has the meaning set forth in Section 2.15(a).

“Refinanced Term Loans” has the meaning set forth in Section 2.15(h)(i).

“Refinancing” means the prepayment in full of all indebtedness under the Credit Agreement, dated as of December 16, 2010, among the Borrower, Barney’s Bar-B-Q, Inc., the several lenders from time to time party thereto and North Shore Community Bank & Trust, as administrative agent, as amended, restated, modified or supplemented from time to time, and the termination and release of all commitments, security interests and guaranties in connection therewith.

“Refinancing Amendment” has the meaning set forth in Section 2.15(f).

“Refinancing Commitments” has the meaning set forth in Section 2.15(a).

“**Refinancing Equivalent Debt**” has the meaning specified in Section 2.15(h)(i).

“**Refinancing Facility Closing Date**” has the meaning set forth in Section 2.15(d).

“**Refinancing Lender**” has the meaning set forth in Section 2.15(c).

“**Refinancing Loan**” has the meaning set forth in Section 2.15(b).

“**Refinancing Loan Request**” has the meaning set forth in Section 2.15(a).

“**Refinancing Revolving Credit Commitments**” has the meaning set forth in Section 2.15(a).

“**Refinancing Revolving Credit Lender**” has the meaning set forth in Section 2.15(c).

“**Refinancing Revolving Loan**” has the meaning set forth in Section 2.15(b).

“**Refinancing Term Commitments**” has the meaning set forth in Section 2.15(a).

“**Refinancing Term Lender**” has the meaning set forth in Section 2.15(c).

“**Refinancing Term Loan**” has the meaning set forth in Section 2.15(b).

“**Register**” has the meaning set forth in Section 10.07(d).

“**Registered Equivalent Notes**” means, with respect to any notes originally issued in an offering pursuant to Rule 144A under the Securities Act or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“**Rejection Notice**” has the meaning specified in Section 2.05(b)(vii).

“**Related Indemnified Person**” of an Agent, Lender, Arranger or Bookrunner means (1) any controlling Person or controlled Affiliate of such Person, (2) the respective directors, officers, or employees of such Person or any of its controlling Persons or controlled Affiliates and (3) the respective agents or representatives of such Person or any of its controlling Persons or controlled Affiliates, in the case of this clause (3), acting on behalf of or at the instructions of such Person, controlling person or such controlled Affiliate; *provided* that each reference to a controlled Affiliate, director, officer or employee in this definition pertains to a controlled Affiliate, director, officer or employee involved in the negotiation or syndication of this Agreement and the Facilities.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

“**Release**” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing or migrating in, into, onto or through the Environment.

“**Replaced Term Loans**” has the meaning specified in Section 10.01.

“**Replacement Term Loans**” has the meaning specified in Section 10.01.

“**Reportable Event**” means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the otherwise applicable notice period has been waived by regulation or otherwise by the PBGC.

“**Repricing Transaction**” means (a) any prepayment or repayment of Term B Loans with the proceeds of, or any conversion of Term B Loans into, any new or replacement tranche of secured term loans the primary purpose of which is to reduce the All-in Yield applicable to such Term B Loans or (b) any amendment, amendment and restatement or other modification to this Agreement, the primary purpose of which is to reduce the All-in Yield applicable to Term B Loans; *provided* that any refinancing or repricing of Term B Loans in connection with a Qualified IPO, any Permitted Acquisition or in connection with a transaction that would result in a Change of Control shall not constitute a Repricing Transaction.

“**Request for Credit Extension**” means (a) with respect to a Borrowing, continuation or conversion of Term Loans or Revolving Credit Loans, a Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“**Required Class Lenders**” means, as of any date of determination, with respect to one or more Facilities, Lenders having more than 50% of the sum of (a) the Total Outstandings under such Facility or Facilities (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans, as applicable, under such Facility or Facilities being deemed “held” by such Lender for purposes of this definition) and (b) the aggregate unused Commitments under such Facility or Facilities; *provided* that the unused Commitments of, and the portion of the Total Outstandings under such Facility or Facilities held, or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of the Required Class Lenders; *provided, further, that, the Loans of any Affiliated Lender shall be excluded for purposes of making a determination of Required Class Lenders as set forth in Section 10.07(m).*

“**Required Lenders**” means, as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Lender for purposes of this definition), (b) aggregate unused Term Commitments and (c) aggregate unused Revolving Credit Commitments; *provided* that the unused Term Commitment and unused Revolving Credit Commitment of, and the portion of the Total Outstandings held, or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; *provided, further, that, the Loans of any Affiliated Lender shall be excluded for purposes of making a determination of Required Lenders as set forth in Section 10.07(m).*

“Required Revolving Credit Lenders” means, as of any date of determination, Revolving Credit Lenders under the Initial Revolving Credit Commitments (including, for purposes of this definition of “Required Revolving Credit Lenders” (x) any Extended Revolving Credit Commitments in respect thereof and (y) any Refinancing Revolving Credit Commitments in respect thereof) having more than 50% of the sum of the (a) Outstanding Amount of all Revolving Credit Loans, Swing Line Loans and all L/C Obligations (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Lender for purposes of this definition) under the Initial Revolving Credit Commitments and (b) aggregate unused Initial Revolving Credit Commitments; *provided* that unused Revolving Credit Commitments of, and the portion of the Outstanding Amount of all Revolving Credit Loans, Swing Line Loans and all L/C Obligations held, or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Credit Lenders.

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, chief operating officer, chief administrative officer, secretary or assistant secretary, treasurer or assistant treasurer or other similar officer or Person performing similar functions of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Cash” means cash and Cash Equivalents which are listed as “Restricted” on the consolidated balance sheet of the Borrower and its Restricted Subsidiaries.

“Restricted Investment” means an Investment other than a Permitted Investment.

“Restricted Payment” means (i) any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the Borrower’s or a Restricted Subsidiary’s stockholders, partners or members (or the equivalent Persons thereof) and (ii) any Restricted Investment.

“Restricted Subsidiary” means any Subsidiary of the Borrower other than an Unrestricted Subsidiary.

“Retained Percentage” means, with respect to any Excess Cash Flow Period, (a) 100% minus (b) the Applicable ECF Percentage with respect to such Excess Cash Flow Period.

“Revolver Extension Request” has the meaning provided in Section 2.16(b).

“Revolver Extension Series” has the meaning provided in Section 2.16(b).

“Revolving Commitment Increase” has the meaning set forth in Section 2.14(a).

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period, made by each of the Revolving Credit Lenders pursuant to Section 2.01(b).

“Revolving Credit Commitment” means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrower, (b) purchase participations in L/C Obligations in respect of Letters of Credit and (c) purchase participations in Swing Line Loans, as such commitment may be (1) reduced from time to time pursuant to Section 2.06 and (2) reduced or increased from time to time pursuant to (i) assignments by or to such Revolving Credit Lender pursuant to an Assignment and Assumption, (ii) an Incremental Amendment, (iii) a Refinancing Amendment or (iv) an Extension. The amount of each Revolving Credit Lender’s Commitment is set forth in Schedule 1.01A under the caption “Revolving Credit Commitment” or in the Assignment and Assumption, in each case, as may be amended pursuant to any Incremental Amendment, Extension Amendment or Refinancing Amendment pursuant to which such Lender shall have assumed, increased or decreased its Revolving Credit Commitment, as the case may be.

“Revolving Credit Exposure” means, as to each Revolving Credit Lender, the sum of the amount of the Outstanding Amount of such Revolving Credit Lender’s Revolving Credit Loans and its Pro Rata Share or other applicable share provided for under this Agreement of the amount of the L/C Obligations and the Swing Line Obligations at such time.

“Revolving Credit Lender” means, at any time, any Lender that has a Revolving Credit Commitment at such time or, if Revolving Credit Commitments have terminated, Revolving Credit Exposure.

“Revolving Credit Loans” means any loan made pursuant to the Initial Revolving Credit Commitments, Incremental Revolving Loan, Refinancing Revolving Loan or any loan under any Extended Revolving Credit Commitments, as the context may require.

“Revolving Credit Note” means a promissory note of the Borrower payable to any Revolving Credit Lender or its registered assigns, in substantially the form of Exhibit C-2 hereto, evidencing the aggregate Indebtedness of the Borrower to such Revolving Credit Lender resulting from the Revolving Credit Loans made by such Revolving Credit Lender to the Borrower.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“Sale Leaseback” means any transaction or series of related transactions pursuant to which the Borrower or any of the Restricted Subsidiaries (a) sells, transfers or otherwise Disposes of any property, real or personal, whether now owned or hereafter acquired, and (b) as part of such transaction, thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or otherwise Disposed.

“**Sale Leaseback Properties**” means any fee owned Real Property set forth on Schedule 1.01G.

“**Sale Leaseback Transaction**” has the meaning provided in Section 7.05(t).

“**Same Day Funds**” means immediately available funds.

“**Sanctions**” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“**OFAC**”) or the U.S. Department of State, or (b) the European Union or Her Majesty’s Treasury of the United Kingdom.

“**Sanctioned Country**” means, at any time, a country or territory which is the subject or target of any Sanctions.

“**Sanctioned Person**” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the European Union or Her Majesty’s Treasury of the United Kingdom and (b) any other Person organized in a Sanctioned Country or controlled (as determined by applicable law) by any Person that is a Sanctioned Person.

“**SEC**” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“**Second Lien Administrative Agent**” means UBS AG, Stamford Branch, in its capacity as administrative agent and collateral agent under the Second Lien Loan Documents, or any successor administrative agent and collateral agent under the Second Lien Loan Documents.

“**Second Lien Credit Agreement**” means the Second Lien Credit Agreement dated as of the Closing Date by and among Holdings, the Borrower, the other Guarantors party thereto from time to time, the lenders party thereto in their capacities as lenders thereunder, the Second Lien Administrative Agent, as agent and the other agents party thereto, as the same may be amended, restated, amended and restated, modified, supplemented, extended, renewed, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, guarantors, institutional investors or agents), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof, in each case as and to the extent not prohibited by this Agreement and the Second Lien Intercreditor Agreement.

“**Second Lien Incremental Equivalent Debt**” has the meaning assigned to the term “Incremental Equivalent Debt” in the Second Lien Credit Agreement.

“**Second Lien Incremental Usage Amount**” means, at any time, the sum of (x) the aggregate principal amount of “Incremental Commitments” (as defined in the Second Lien Credit Agreement) established at or before such time pursuant to Section 2.14(d)(iii)(B) of the Second Lien Credit Agreement (as in effect as of the date hereof) and (y) the aggregate principal amount of “Incremental Equivalent Debt” (as defined in the Second Lien Credit Agreement) incurred at or before such time pursuant to Section 2.14(h)(i)(B) of the Second Lien Credit Agreement (as in effect as of the date hereof).

“**Second Lien Initial Term Loans**” has the meaning assigned to the term “Initial Loans” in the Second Lien Credit Agreement.

“**Second Lien Intercreditor Agreement**” means an intercreditor agreement substantially in the form of Exhibit I hereto, dated as of the Closing Date, among the Administrative Agent, the Second Lien Administrative Agent, as “Second Priority Representative” (as defined therein) for the “Second Lien Credit Agreement Secured Parties” (as defined therein) and each additional representative party thereto from time to time, as amended from time to time.

“**Second Lien Loan Documents**” means the Second Lien Credit Agreement, the Second Lien Intercreditor Agreement and the other “Loan Documents” (as defined in the Second Lien Credit Agreement).

“**Second Lien Refinancing Equivalent Debt**” has the meaning assigned to the term “Refinancing Equivalent Debt” in the Second Lien Credit Agreement.

“**Second Lien Term Loans**” has the meaning assigned to the term “Loans” in the Second Lien Credit Agreement.

“**Secured Hedge Agreement**” means any Swap Contract permitted under Article VII that is entered into by and between the Borrower or any Subsidiary and any Hedge Bank.

“**Secured Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Secured Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“**Secured Parties**” means, collectively, the Administrative Agent, the Lenders, the Hedge Banks and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Securitization Assets**” means (a) the accounts receivable, royalty or other revenue streams and other rights to payment subject to a Qualified Securitization Financing and the proceeds thereof and (b) contract rights, lockbox accounts and records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in a securitization financing.

“**Securitization Fees**” means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with any Qualified Securitization Financing.

“Securitization Financing” means any transaction or series of transactions that may be entered into by the Borrower or any of its Subsidiaries pursuant to which the Borrower or any of its Subsidiaries may sell, convey or otherwise transfer to (a) a Securitization Subsidiary (in the case of a transfer by the Borrower or any of its Subsidiaries) or (b) any other Person (in the case of a transfer by a Securitization Subsidiary), or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries, and any assets related thereto, including all collateral securing such Securitization Assets, all contracts and all guarantees or other obligations in respect of such Securitization Assets, proceeds of such Securitization Assets and other assets that are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving Securitization Assets.

“Securitization Subsidiary” means a wholly owned Subsidiary of the Borrower (or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Borrower or any Subsidiary of the Borrower makes an Investment and to which the Borrower or any Subsidiary of the Borrower transfers Securitization Assets and related assets) that engages in no activities other than in connection with the financing of Securitization Assets of the Borrower or its Subsidiaries, all proceeds thereof and all rights (contingent and other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Borrower or such other Person (as provided below) as a Securitization Subsidiary and (a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings or Limited Originator Recourse), (ii) is recourse to or obligates Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, in any way other than pursuant to Standard Securitization Undertakings or Limited Originator Recourse or (iii) subjects any property or asset of Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings or Limited Originator Recourse, (b) with which none of Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, has any material contract, agreement, arrangement or understanding other than on terms which the Borrower reasonably believes to be no less favorable to Holdings, the Borrower or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower and (c) to which none of Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, has any obligation to maintain or preserve such entity’s financial condition or cause such entity to achieve certain levels of operating results. Any such designation by the Board of Directors of the Borrower or such other Person shall be evidenced to the Administrative Agent by delivery to the Administrative Agent of a certified copy of the resolution of the Board of Directors of the Borrower or such other Person giving effect to such designation and a certificate executed by a Responsible Officer certifying that such designation complied with the foregoing conditions.

“Security Agreement” means a Security Agreement substantially in the form of Exhibit F.

“**Security Agreement Supplement**” has the meaning specified in the Security Agreement.

“**Senior Representative**” means, with respect to any series of Permitted Pari Passu Secured Refinancing Debt, Permitted Junior Secured Refinancing Debt, Incremental Equivalent Debt or subordinated Permitted Unsecured Refinancing Debt, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“**Solicited Discount Proration**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Solicited Discounted Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Solicited Discounted Prepayment Notice**” means a written notice of the Borrower of Solicited Discounted Prepayment Offers made pursuant to Section 2.05(a)(v)(D) substantially in the form of Exhibit E-6.

“**Solicited Discounted Prepayment Offer**” means the irrevocable written offer by each Lender, substantially in the form of Exhibit E-7, submitted following the Administrative Agent’s receipt of a Solicited Discounted Prepayment Notice.

“**Solicited Discounted Prepayment Response Date**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Solvent**” and “**Solvency**” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the assets of such Person exceeds, on a consolidated basis, its debts and liabilities, subordinated, contingent or otherwise, (b) the present fair saleable value of the property of such Person is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) such Person is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and (d) such Person is not engaged in, and is not about to engage in, business for which it has unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

“**SPC**” has the meaning specified in Section 10.07(h).

“**Specified Discount**” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“**Specified Discount Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“**Specified Discount Prepayment Notice**” means a written notice of the Borrower Offer of Specified Discount Prepayment made pursuant to Section 2.05(a)(v)(B) substantially in the form of Exhibit E-8.

“Specified Discount Prepayment Response” means the irrevocable written response by each Lender, substantially in the form of Exhibit E-9, to a Specified Discount Prepayment Notice.

“Specified Discount Prepayment Response Date” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“Specified Discount Proration” has the meaning set forth in Section 2.05(a)(v)(B)(3).

“Specified Junior Financing Obligations” means any obligations in respect of any Junior Financing in respect of which any Loan Party is an obligor in a principal amount in excess of the Threshold Amount.

“Specified Merger Agreement Representations” means such of the representations and warranties made by or on behalf of the Borrower and its Subsidiaries in the Merger Agreement as are material to the interests of the Lenders, but only to the extent that Merger Sub (or its applicable Affiliate) has the right to terminate its obligation to consummate the Merger under the Merger Agreement (or the right not to consummate the Merger pursuant to the Merger Agreement) as a result of a breach of such representations and warranties.

“Specified Representations” means those representations and warranties made by the Borrower in Sections 5.01(a) (only with respect to organizational existence of the Loan Parties), 5.01(b)(ii), 5.02(a), 5.02(b)(i), 5.02(b)(iii), 5.04, 5.12, 5.16, 5.18(a)(ii) (only with respect to the use of proceeds of the Loans made on the Closing Date) and 5.19 (subject to the proviso at the end of Section 4.01(a)).

“Specified Transaction” means (t) the Transactions, (u) any Investment that results in a Person becoming a Restricted Subsidiary, (v) any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary, (w) a Sale Leaseback, (x) any Permitted Acquisition, (y) any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower and any Disposition of a business unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise or (z) any incurrence or repayment of Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit), Restricted Payment, Incremental Revolving Credit Commitment, Incremental Revolving Loan or Incremental Term Loan, in each case, that by the terms of this Agreement requires a financial ratio or test to be calculated on a “Pro Forma Basis” or after giving “Pro Forma Effect.”

“Sponsor” means Berkshire Partners LLC and any of its Affiliates and funds or partnerships managed or advised by it or any of its Affiliates but not including, however, any portfolio company of any of the foregoing.

“Sponsor Management Agreement” means one or more management, consulting, expense reimbursement or similar agreements among the Sponsor or other holders of Equity Interests and their Affiliates and Holdings, the Borrower (and/or any of its indirect parent companies) (including the Management Agreement, dated as of August 1, 2014, by and among PHD Group Holdings LLC, a Delaware limited liability company, Holdings, the Company and the Sponsor, as the same may be amended, amended and restated, modified, supplemented,

replaced or otherwise modified from time to time in accordance with their terms, but only to the extent that such agreements and any such amendment, amendment and restatement, modification, supplement, replacement or other modification thereto does not, directly or indirectly, result in or increase the obligations of Holdings, the Borrower or any of its Restricted Subsidiaries to make any payments thereunder in excess of (x) with respect to any management, monitoring, oversight consulting or advisory fees, \$3,000,000 per fiscal year, (y) with respect to any transaction fees, 1% of the gross transaction value and (z) customary termination fees, indemnities and expenses of the Sponsor (plus, in each case, any unpaid and accrued fees, indemnities and expenses permitted pursuant to clauses (x), (y) and (z) plus interest thereon).

“**Standard Securitization Undertakings**” means representations, warranties, covenants and indemnities entered into by the Borrower or any Subsidiary of the Borrower that are customary in a Securitization Financing.

“**Submitted Amount**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Submitted Discount**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Subordination Agreement**” means a subordination agreement among the Administrative Agent and one or more Senior Representatives for the holders of Indebtedness subordinated to the Obligations, in form and substance reasonably acceptable to the Administrative Agent and the Borrower. Wherever in this Agreement a Senior Representative is required to become party to the Subordination Agreement, if the related Indebtedness is the initial Indebtedness incurred by the Borrower or any Restricted Subsidiary to be subordinated to the Obligations, then the Borrower, Holdings, the Subsidiary Guarantors, the Administrative Agent and the Senior Representative for such Indebtedness shall execute and deliver the Subordination Agreement and the Administrative Agent shall be authorized to execute and deliver the Subordination Agreement.

“**Subsequent Transaction**” has the meaning set forth in Section 1.09(e).

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (excluding, for the avoidance of doubt, any charitable organizations and any other Person that meets the requirements of Section 501(c)(3) of the Code) (i) of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned by such Person or (ii) the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, by such Person, to the extent such entity’s financial results are required to be included in such Person’s consolidated financial statements under GAAP. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantor**” means any Guarantor other than Holdings.

“**Successor Company**” has the meaning specified in Section 7.04(d).

“Superholdco Preferred Stock” means the \$100,000,000 in initial liquidation preference of preferred units issued by PHD Group Holdings, LLC, a Delaware limited liability company and a direct or indirect parent of Holdings.

“Swap” means any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a **“Master Agreement”**), including any such obligations or liabilities under any Master Agreement.

“Swap Obligation” means, with respect to any person, any obligation to pay or perform under any Swap.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Lender” means UBS AG, Stamford Branch, in its capacity as provider of Swing Line Loans or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B hereto.

“Swing Line Note” means a promissory note of the Borrower payable to the Swing Line Lender or its registered assigns, in substantially the form of Exhibit C-3 hereto, evidencing the aggregate Indebtedness of the Borrower to the Swing Line Lender resulting from the Swing Line Loans.

“**Swing Line Obligations**” means, as at any date of determination, the aggregate Outstanding Amount of all Swing Line Loans.

“**Swing Line Sublimit**” means an amount equal to the lesser of (a) \$7,500,000 (as may be adjusted pursuant to Section 2.14(e)(ii)) and (b) the aggregate amount of the Participating Revolving Credit Commitments. The Swing Line Sublimit is part of, and not in addition to, the Participating Revolving Credit Commitments.

“**Syndication Agent**” means Jefferies Finance LLC, in its capacity as a syndication agent under this Agreement.

“**Tax Distribution**” has the meaning specified in Section 7.06(h)(iii).

“**Taxes**” means all present or future taxes, duties, levies, imposts, assessments or withholdings imposed by any Governmental Authority including interest, penalties and additions to tax.

“**Term B Commitment**” means, as to each Term Lender, its obligation to make a Term B Loan to the Borrower pursuant to Section 2.01(a) in an aggregate amount not to exceed the amount set forth opposite such Lender’s name in Schedule 1.01A under the caption “Term B Commitment” or in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including Section 2.14). The initial aggregate amount of the Term B Commitments is \$335,000,000.

“**Term B Loans**” means the term loans made by the Lenders on the Closing Date to the Borrower pursuant to Section 2.01(a).

“**Term Borrowing**” means a borrowing consisting of Term Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01(a).

“**Term Commitment**” means, as to each Term Lender, its obligation to make Term Loans to the Borrower hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.06 and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Term Lender pursuant to an Assignment and Assumption, (ii) an Incremental Amendment, (iii) a Refinancing Amendment or (iv) an Extension. The amount of each Term Lender’s Commitment is set forth in Schedule 1.01A under the caption “Term B Commitment” or in the Assignment and Assumption, Incremental Amendment, Extension Amendment or Refinancing Amendment pursuant to which such Lender shall have assumed, increased or decreased its Term Commitment, as the case may be.

“**Term Lender**” means, at any time, any Lender that has a Term Commitment or a Term Loan at such time.

“**Term Loan**” means any Term B Loan, Incremental Term Loan, Refinancing Term Loan or Extended Term Loan, as the context may require.

“**Term Loan Extension Request**” has the meaning provided in Section 2.16(a).

“**Term Loan Extension Series**” has the meaning provided in Section 2.16(a).

“**Term Loan Increase**” has the meaning set forth in Section 2.14(a).

“**Term Note**” means a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit C-1 hereto, evidencing the aggregate Indebtedness of the Borrower to such Term Lender resulting from the Term Loans made by such Term Lender.

“**Test Period**” means, for any date of determination under this Agreement, the four consecutive fiscal quarters of the Borrower most recently ended as of such date of determination.

“**Threshold Amount**” means \$20,000,000.

“**Total Assets**” means the total assets of the Borrower and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP, as shown on the most recent balance sheet of the Borrower delivered pursuant to Section 6.01(a) or (b) (and, in the case of any determination relating to any incurrence of Indebtedness or any Investment or other acquisition, on a Pro Forma Basis including any property or assets being acquired in connection therewith) or for the period prior to the time any such statements are so delivered pursuant to Section 6.01(a) or (b), the Quality of Earnings Analysis dated June 25, 2014.

“**Total Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Total Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“**Transaction Expenses**” means any fees or expenses incurred or paid by the Sponsor, any direct or indirect parent of the Borrower, the Borrower or any of its (or their) Subsidiaries in connection with the Transactions (including expenses in connection with close-out fees in connection with the termination of hedging transactions, if any, and payments to officers, employees and directors as change of control payments, severance payments, special or retention bonuses and charges for repurchase or rollover of, or modifications to, stock options and/or restricted stock), this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

“**Transactions**” means, collectively, (a) the Acquisition and other related transactions contemplated by the Merger Agreement, (b) the Equity Contribution, (c) the funding of the Second Lien Initial Term Loans and the execution and delivery of the Second Lien Loan Documents to be entered into on the Closing Date, (d) the funding of the Term B Loans and the Initial Revolving Borrowing on the Closing Date and the execution and delivery of Loan Documents to be entered into on the Closing Date, (e) the issuance of the Superholdco Preferred Stock, (f) the Refinancing and (g) the payment of Transaction Expenses.

“**Transferred Guarantor**” has the meaning specified in Section 11.09.

“**Treasury Services Agreement**” means any agreement between the Borrower or any Subsidiary and any Hedge Bank relating to treasury, depository, credit card, debit card and cash management services or automated clearinghouse transfer of funds or any similar services.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

“**UBS**” means UBS AG, Stamford Branch, acting in its individual capacity, and its successors and assigns.

“**Unaudited Financial Statements**” has the meaning assigned to such term in the Merger Agreement (as in effect on the date hereof).

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“**United States**” and “**U.S.**” mean the United States of America.

“**United States Tax Compliance Certificate**” has the meaning set forth in Section 3.01(d)(ii)(C) and is in substantially the form of Exhibit H hereto.

“**Unreimbursed Amount**” has the meaning set forth in Section 2.03(c)(i).

“**Unrestricted Subsidiary**” means any Subsidiary of the Borrower designated by the Board of Directors of the Borrower as an Unrestricted Subsidiary pursuant to Section 6.14 subsequent to the Closing Date and each Securitization Subsidiary.

“**USA Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness; *provided* that the effects of any prepayments made on such Indebtedness shall be disregarded in making such calculation.

“**wholly owned**” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

Section 1.02 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (b) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.
- (c) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.
- (d) The term “including” (and its correlatives) means by way of example and not as a limitation.
- (e) The word “or” is not exclusive.
- (f) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.
- (g) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”
- (h) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.
- (i) For purposes of determining compliance with any Section of Article VII at any time, in the event that any Lien, Investment, Indebtedness (whether at the time of incurrence or upon application of all or a portion of the proceeds thereof), Disposition, Restricted Payment, Affiliate transaction, Contractual Obligation or prepayment of Indebtedness meets the criteria of one or more than one of the categories of transactions permitted pursuant to any clause of such Sections, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by the Borrower in its sole discretion at such time.

Section 1.03 Accounting Terms.

All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein.

Notwithstanding any changes in GAAP after the Closing Date, any lease of the Loan Parties and their Subsidiaries that would be characterized as an operating lease under GAAP in effect on the Closing Date (whether such lease is entered into before or after the Closing Date) shall not constitute Indebtedness, Attributable Indebtedness or a Capitalized Lease Obligation under this Agreement or any other Loan Document as a result of such changes in GAAP.

Section 1.04 Rounding.

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding up if there is no nearest number).

Section 1.05 References to Agreements, Laws, Etc.

Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by the Loan Documents; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day.

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.07 Timing of Payment of Performance.

When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

Section 1.08 Cumulative Credit Transactions.

If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount of the Cumulative Credit immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously.

Section 1.09 Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Total Net Leverage Ratio, the Secured Net Leverage Ratio, the Consolidated First Lien Net Leverage Ratio, the Consolidated Cash Interest Coverage Ratio and compliance with covenants determined by reference to Consolidated EBITDA or Total Assets, shall be calculated in the manner prescribed by this Section 1.09; *provided* that notwithstanding anything to the contrary in clauses (b), (c), (d) or (e) of this Section 1.09, (A) when calculating any such ratio or test for purposes of (i) the definition of “Applicable Rate,” (ii) the definition of “Applicable ECF Percentage” and (iii) Section 7.11, the events described in this Section 1.09 that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect and (B) when calculating any such ratio or test for purposes of the incurrence of any Indebtedness, cash and Cash Equivalents resulting from the incurrence of any such Indebtedness shall be excluded from the *pro forma* calculation of any applicable ratio or test. In addition, whenever a financial ratio or test is to be calculated on a *pro forma* basis, the reference to the “Test Period” for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower). For the avoidance of doubt, the provisions of the foregoing sentence shall not apply for purposes of calculating any financial ratio or test for purposes of (i) the definition of “Applicable Rate,” (ii) the definition of “Applicable ECF Percentage” and (iii) Section 7.11, each of which shall be based on the financial statements delivered pursuant to Section 6.01(a) or (b), as applicable, for the relevant Test Period.

(b) For purposes of calculating any financial ratio or test or compliance with any covenant determined by reference to Consolidated EBITDA or Total Assets, Specified Transactions (with any incurrence or repayment of any Indebtedness in connection therewith to be subject to clause (d) of this Section 1.09) that have been made (i) during the applicable Test Period or (ii) if applicable as described in clause (a) above, subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA, Total Assets and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period (or, in the case of Total Assets, on the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.09, then such financial ratio or test (or Total Assets) shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.09.

(c) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Borrower and may include, for the avoidance of doubt, the amount of “run-rate” cost savings, operating expense reductions and synergies resulting from or relating to any Specified Transaction (including the Transactions) which is being given *pro forma* effect that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period and “run-rate” means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a public target’s Public Company Costs) net of the amount of actual benefits realized during such period from such actions, and any such adjustments shall be included in the initial *pro forma* calculations of any financial ratios or tests (and in respect of any subsequent *pro forma* calculations in which such Specified Transaction is given *pro forma* effect) and during any applicable subsequent Test Period in which the effects thereof are expected to be realized) relating to such Specified Transaction; *provided* that (A) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Borrower, (B) such actions are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than twenty four (24) months after the date of such Specified Transaction, and (C) no amounts shall be added pursuant to this clause (c) to the extent duplicative of any amounts that are otherwise added back in computing Consolidated EBITDA (or any other components thereof), whether through a *pro forma* adjustment or otherwise, with respect to such period.

(d) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility unless such Indebtedness has been permanently repaid and not replaced), (i) during the applicable Test Period or (ii) subject to paragraph (a), subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period (except in the case of the Consolidated Cash Interest Coverage Ratio (or similar ratio), in which case such incurrence, assumption, guarantee, redemption, repayment, retirement or extinguishment of Indebtedness will be given effect as if the same had occurred on the first day of the applicable Test Period).

(e) In connection with any action being taken solely in connection with a Limited Condition Transaction, for purposes of:

(i) determining compliance with any provision of this Agreement (other than the Financial Covenant) which requires the calculation of any financial ratio or test, including the Consolidated First Lien Net Leverage Ratio, Secured Net Leverage Ratio, Total Net Leverage Ratio and Consolidated Cash Interest Coverage Ratio (and, for the avoidance of doubt, any financial ratio set forth in Section 2.14(d)(iii)); or

(ii) testing availability under baskets set forth in this Agreement (including baskets measured as a percentage of Total Assets);

in each case, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "**LCT Election**"), the date of determination of whether any such action is permitted hereunder shall be deemed to be the date the definitive agreements for such Limited Condition Transaction are entered into (the "**LCT Test Date**"), and if, after giving Pro Forma Effect to the Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) as if they had occurred at the beginning of the most recent Test Period ending prior to the LCT Test Date, the Borrower would have been permitted to take such action on the relevant LCT Test Date in compliance with such ratio, test or basket, such ratio, test or basket shall be deemed to have been complied with. For the avoidance of doubt, if the Borrower has made an LCT Election and any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date are exceeded as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in Consolidated EBITDA or Total Assets of the Borrower or the Person subject to such Limited Condition Transaction, at or prior to the consummation of the relevant transaction or action, such baskets, tests or ratios will not be deemed to have been exceeded as a result of such fluctuations. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any calculation of any ratio, test or basket availability with respect to the incurrence of Indebtedness or Liens, the making of Restricted Payments, the making of any Permitted Investment, mergers, the conveyance, lease or other transfer of all or substantially all of the assets of the Borrower, the prepayment, redemption, purchase, defeasance or other satisfaction of Indebtedness, or the designation of an Unrestricted Subsidiary (a "**Subsequent Transaction**") following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement or irrevocable notice for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, for purposes of determining whether such Subsequent Transaction is permitted under this Agreement, any such ratio, test or basket shall be required to be satisfied on a Pro Forma Basis (i) assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated and (ii) assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have not been consummated.

(f) If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Consolidated Cash Interest Coverage Ratio is made had been the applicable rate for the entire period (taking into account any interest hedging arrangements applicable to such Indebtedness); *provided*, in the case of repayment of any Indebtedness, to the extent actual interest related thereto was included during all or any portion of the applicable Test Period, the actual interest may be used for the applicable portion of such Test Period. Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or Restricted Subsidiary may designate.

Section 1.10 Currency Generally.

For purposes of determining compliance with Sections 7.01, 7.03 and 7.06 and the definition of Permitted Investments with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred, made or acquired, was permitted hereunder).

For purposes of determining the Secured Net Leverage Ratio, the Consolidated First Lien Net Leverage Ratio, the Total Net Leverage Ratio or any other leverage-based ratio or test under this Agreement, the amount of Indebtedness shall reflect the currency translation effects, determined in accordance with GAAP, of Swap Contracts permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

**ARTICLE II.
THE COMMITMENTS AND CREDIT EXTENSIONS**

Section 2.01 The Loans.

(a) *The Term Borrowings*. (i) Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make to the Borrower on the Closing Date one or more loans denominated in Dollars in an aggregate amount not to exceed the amount of such Term Lender's Term B Commitment; and (ii) subject to the terms and conditions set forth in any Incremental Amendment or Refinancing Amendment providing for, as applicable, the making, exchange, renewal, replacement or refinancing of Term Loans, each Term Lender party thereto severally agrees to, as applicable, make, exchange, renew, replace or refinance Term Loans on the date specified therein in an aggregate amount not to exceed the amount of such Term Lender's Term Commitment as set forth therein. Amounts borrowed, exchanged, renewed, replaced or refinanced under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

(b) *The Revolving Credit Borrowings*. Subject to the terms and conditions set forth herein, each Revolving Credit Lender with any Revolving Credit Commitment severally agrees to make Revolving Credit Loans denominated in Dollars pursuant to Section 2.02 from its applicable Lending Office to the Borrower from time to time, on any Business Day during the period from and including the Closing Date until the Maturity Date of such Revolving Credit Commitment, in an aggregate principal amount not to exceed at any time outstanding the amount of such Revolving Credit Commitment; *provided* that after giving effect to any Revolving Credit Borrowing, the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, plus such Lender's Pro Rata Share or other

applicable share provided for under this Agreement of the Outstanding Amount of all L/C Obligations, plus such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all Swing Line Loans, shall not exceed such Revolving Credit Commitment. Within the limits of each Revolving Credit Lender's Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(b), prepay under Section 2.05, and reborrow under this Section 2.01(b). Revolving Credit Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

Section 2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Term Borrowing, each Revolving Credit Borrowing, each conversion of Term Loans or Revolving Credit Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower's irrevocable notice, on behalf of the Borrower, to the Administrative Agent (*provided* that the notices in respect of the initial Credit Extensions may be conditioned on the closing of the Merger), which may be given by telephone. Each such notice must be received by the Administrative Agent not later than (1) 1:00 p.m. (New York, New York time) three (3) Business Days prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans or any conversion of Base Rate Loans to Eurocurrency Rate Loans, and (2) 12:00 noon on the requested date of any Borrowing of Base Rate Loans; *provided* that the notice referred to in subclause (1) above may be delivered no later than one (1) Business Day prior to the Closing Date in the case of initial Credit Extensions. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Except as provided in Section 2.14, each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a minimum principal amount of \$1,000,000, or a whole multiple of \$100,000 in excess thereof. Except as provided in Section 2.03(c), 2.04(b) or 2.14, each Borrowing of or conversion to Base Rate Loans shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the requesting Borrower is requesting a Term Borrowing, a Revolving Credit Borrowing, a conversion of Term Loans or Revolving Credit Loans from one Type to the other or a continuation of Eurocurrency Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Term Loans or Revolving Credit Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto and (vi) wire instructions of the account(s) to which funds are to be disbursed (it being understood, for the avoidance of doubt, that the amount to be disbursed to any particular account may be less than the minimum or multiple limitations set forth above so long as the aggregate amount to be disbursed to all such accounts pursuant to such Borrowing meets such minimums and multiples). If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or fails to give a timely notice requesting a conversion or continuation, then the applicable Term Loans or Revolving Credit Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation described in Section 2.02(a). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than the later of (i) in the case of Eurocurrency Rate Loans, 12:00 noon (New York, New York) on the Business Day specified in the applicable Committed Loan Notice and (ii) in the case of Base Rate Loans, one hour (or in the case of Borrowing of Base Rate Loans after the Closing Date where the Committed Loan Notice has been delivered on the date of the requested Borrowing, two hours) after written notice of such Borrowing is delivered by the Administrative Agent to such Lender; *provided, that*, on the Closing Date (or with respect to any Incremental Facilities, on the relevant Incremental Amendment Date), such funds may be made available at such earlier time as may be agreed among the relevant Lenders, the Borrower and the Administrative Agent for the purpose of consummating the Transactions (or, in the case of any Incremental Facilities, the relevant transactions). The Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account(s) of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided by the Borrower to (and reasonably acceptable to) the Administrative Agent; *provided* that if, on the date the Committed Loan Notice with respect to a Borrowing under any Class of Revolving Credit Commitments is given by the Borrower, there are Swing Line Loans or L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such L/C Borrowing, second, to the payment in full of any such Swing Line Loans, and third, to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. During the occurrence and continuation of an Event of Default, the Administrative Agent or the Required Lenders may require by notice to the Borrower that no Loans may be converted to or continued as Eurocurrency Rate Loans.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. The determination of the Eurocurrency Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Administrative Agent's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Term Borrowings, all Revolving Credit Borrowings, all conversions of Term Loans or Revolving Credit Loans from one Type to the other, and all continuations of Term Loans or Revolving Credit Loans as the same Type, there shall not be more than fifteen (15) Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent; *provided* that after the establishment of any new Class of Loans pursuant to an Incremental Amendment, Refinancing Amendment or Extension Amendment, the number of Interest Periods otherwise permitted by this Section 2.02(e) shall increase by three (3) Interest Periods for each applicable Class so established.

(f) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(g) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share or other applicable share provided for under this Agreement available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (b) above, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the Overnight Rate plus any administrative, processing, or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(g) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.03 Letters of Credit.

(a) *The Letter of Credit Commitment.* (i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer (except the Existing L/C Issuer) agrees, in reliance upon the agreements of the other Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from and including the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit at sight denominated in Dollars for the account of the Borrower (*provided* that any Letter of Credit may be for the benefit of any Subsidiary of the Borrower and may be issued for the joint and several account of the Borrower and a Restricted Subsidiary to the extent otherwise permitted by this Agreement) and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to

honor drafts under the Letters of Credit and (B) the Participating Revolving Credit Lenders severally agree to participate in Letters of Credit issued pursuant to this Section 2.03; *provided* that no L/C Issuer shall be obligated to make any L/C Credit Extension with respect to any Letter of Credit, and no Lender shall be obligated to participate in any Letter of Credit if as of the date of such L/C Credit Extension, (x) the Revolving Credit Exposure of any Participating Revolving Credit Lender would exceed such Lender's Participating Revolving Credit Commitment or (y) the Outstanding Amount of the L/C Obligations would exceed the Letter of Credit Sublimit. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to be issued hereunder and shall constitute Letters of Credit subject to the terms hereof. Notwithstanding the foregoing, the Existing L/C Issuer will be the L/C Issuer only with respect to the Existing Letters of Credit referred to in the prior sentence.

(ii) An L/C Issuer shall be under no obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or direct that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date (for which such L/C Issuer is not otherwise compensated hereunder);

(B) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last renewal, unless (1) each Appropriate Lender has approved of such expiration date or (2) the Outstanding Amount of L/C Obligations in respect of such requested Letter of Credit has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to such L/C Issuer;

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless (1) each Appropriate Lender has approved such expiry date or (2) the Outstanding Amount of L/C Obligations in respect of such requested Letter of Credit has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to such L/C Issuer and the Administrative Agent;

(D) the issuance of such Letter of Credit would violate any policies of the L/C Issuer applicable to letters of credit generally; and

(E) any Participating Revolving Credit Lender is at that time a Defaulting Lender, unless such L/C Issuer has entered into arrangements reasonably satisfactory to it and the Borrower to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.17(a)(iv)) with respect to the participation in Letters of Credit by such Defaulting Lender, including by cash collateralizing such Defaulting Lender's Pro Rata Share of the L/C Obligations.

(iii) An L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit. Notwithstanding anything herein to the contrary, the expiry date of any Letter of Credit denominated in a currency other than Dollars must be approved by the relevant L/C Issuer in its sole discretion even if it is less than twelve (12) months after the date of issuance or last renewal and any Auto-Extension Letter of Credit denominated in a currency other than Dollars shall be issued only at the relevant L/C Issuer's sole discretion.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to an L/C Issuer (except the Existing L/C Issuer) (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the relevant L/C Issuer and the Administrative Agent not later than 12:30 p.m. at least three (3) Business Days prior to the proposed issuance date or date of amendment, as the case may be; or, in each case, such later date and time as the relevant L/C Issuer may agree in a particular instance in its sole discretion. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer: (a) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (b) the amount thereof; (c) the expiry date thereof; (d) the name and address of the beneficiary thereof; (e) the documents to be presented by such beneficiary in case of any drawing thereunder; (f) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (g) such other matters as the relevant L/C Issuer may reasonably request. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the relevant L/C Issuer may reasonably request.

(ii) Promptly after receipt of any Letter of Credit Application, the relevant L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Upon receipt by the relevant L/C Issuer of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower (and, if applicable, its applicable Subsidiary) or enter into the applicable amendment, as the case may be. Immediately upon the issuance of each Letter of Credit, each Participating Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the relevant L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Pro Rata Share or other applicable share provided for under this Agreement times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the relevant L/C Issuer shall agree to issue a Letter of Credit that has automatic extension provisions (each, an “**Auto-Extension Letter of Credit**”); *provided* that any such Auto-Extension Letter of Credit must permit the relevant L/C Issuer to prevent any such extension at least once in each twelve (12) month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “**Non-extension Notice Date**”) in each such twelve (12) month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the relevant L/C Issuer, the Borrower shall not be required to make a specific request to the relevant L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the relevant L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date that is, unless the Outstanding Amount of L/C Obligations in respect of such requested Letter of Credit has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the relevant L/C Issuer, not later than the Letter of Credit Expiration Date; *provided* that the relevant L/C Issuer shall not permit any such extension if (A) the relevant L/C Issuer has determined that it would have no obligation at such time to issue such Letter of Credit in its extended form under the terms hereof (by reason of the provisions of Section 2.03(a)(ii) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-extension Notice Date from the Administrative Agent, any Participating Revolving Credit Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied.

(iv) Promptly after issuance of any Letter of Credit or any amendment to a Letter of Credit, the relevant L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) *Drawings and Reimbursements; Funding of Participations.* (i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the relevant L/C Issuer shall notify promptly the Borrower and the Administrative Agent thereof. Not later than 12:00 noon on the second Business Day following any payment by an L/C Issuer under a Letter of Credit with notice to the Borrower (each such date, an “**Honor Date**”), the Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing; *provided* that if such reimbursement is not made on the date of drawing, the Borrower shall pay interest to the relevant L/C Issuer on such amount at the rate applicable to Base Rate Loans under the applicable Participating Revolving Credit Commitments (without duplication of interest payable on L/C Borrowings). If the Borrower fails to so reimburse such L/C Issuer by such time, the Administrative Agent shall promptly notify each Appropriate Lender of the Honor Date, the amount of the unreimbursed drawing (the “**Unreimbursed Amount**”), and the amount of such Appropriate Lender’s Pro Rata Share or other applicable share provided for under this Agreement thereof. In such event, the Borrower

shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans under the Participating Revolving Credit Commitments to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans but subject to the amount of the unutilized portion of the Participating Revolving Credit Commitments of the Appropriate Lenders and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by an L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Appropriate Lender (including any Lender acting as an L/C Issuer) shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Administrative Agent for the account of the relevant L/C Issuer in Dollars at the Administrative Agent's Office for payments in an amount equal to its Pro Rata Share or other applicable share provided for under this Agreement of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Appropriate Lender that so makes funds available shall be deemed to have made a Base Rate Loan under the Participating Revolving Credit Commitments to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the relevant L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the relevant L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Appropriate Lender's payment to the Administrative Agent for the account of the relevant L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Appropriate Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the relevant L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such amount shall be solely for the account of the relevant L/C Issuer.

(v) Each Participating Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse an L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the relevant L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Article IV; (C) any adverse change in the condition (financial or otherwise) of the Loan

Parties; (D) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other L/C Issuer; or (E) any other circumstance, occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that each Participating Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the relevant L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Participating Revolving Credit Lender fails to make available to the Administrative Agent for the account of the relevant L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), such L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect. A certificate of the relevant L/C Issuer submitted to any Participating Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent manifest error.

(d) *Repayment of Participations.*

(i) If, at any time after an L/C Issuer has made a payment under any Letter of Credit and has received from any Participating Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Pro Rata Share or other applicable share provided for under this Agreement thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the amount received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of an L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Appropriate Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Pro Rata Share or other applicable share provided for under this Agreement thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect.

(e) *Obligations Absolute.* The obligation of the Borrower to reimburse the relevant L/C Issuer for each drawing under each Letter of Credit issued by it and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Loan Party may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the relevant L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the relevant L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the relevant L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any exchange, release or non-perfection of any Collateral, or any release or amendment or waiver of or consent to departure from the Guaranty or any other guarantee, for all or any of the Obligations of any Loan Party in respect of such Letter of Credit; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Loan Party;

provided that the foregoing shall not excuse any L/C Issuer from liability to Borrower to the extent of any direct damages (as opposed to consequential, punitive, special or exemplary damages, claims in respect of which are waived by the Borrower to the extent permitted by applicable Law) suffered by the Borrower that are caused by such L/C Issuer's gross negligence or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof.

(f) *Role of L/C Issuers.* Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the relevant L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, any Agent-Related Person nor any of the respective correspondents, participants or assignees of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in

connection herewith at the request or with the approval of the Lenders or the Lenders holding a majority of the Participating Revolving Credit Commitments, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided* that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of any L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (vi) of Section 2.03(e); *provided* that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against an L/C Issuer, and such L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential, punitive or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful or grossly negligent failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit, in each case as determined in a final and non-appealable judgment by a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, each L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and no L/C Issuer shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) *Cash Collateral.* (i) If, as of any Letter of Credit Expiration Date, any applicable Letter of Credit for any reason remains outstanding and partially or wholly undrawn, (ii) if any Event of Default occurs and is continuing and the Administrative Agent or the Lenders holding a majority of the Participating Revolving Credit Commitments, as applicable, require the Borrower to Cash Collateralize the L/C Obligations pursuant to Section 8.02 or (iii) if an Event of Default set forth under Section 8.01(f) occurs and is continuing, the Borrower shall Cash Collateralize the then Outstanding Amount of all of its (or, in the case of clause (i), the applicable) L/C Obligations (in an amount equal to such Outstanding Amount determined as of the date of such Event of Default or the applicable Letter of Credit Expiration Date, as the case may be), and shall do so not later than 2:00 p.m., New York City time, on (x) in the case of the immediately preceding clauses (i) or (ii), (1) the Business Day that the Borrower receives notice thereof, if such notice is received on such day prior to 12:00 noon, New York City time, or (2) if clause (1) above does not apply, the Business Day immediately following the day that the Borrower receives such notice and (y) in the case of the immediately preceding clause (iii), the Business Day on which an Event of Default set forth under Section 8.01(f) occurs or, if such day is not a Business Day, the Business Day immediately succeeding such day. At any time that there shall exist a Defaulting Lender, immediately upon the request of the Administrative Agent, the L/C Issuer or the Swing Line Lender, the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.17(a)(iv) and any Cash Collateral provided by the Defaulting Lender). For purposes

hereof, “**Cash Collateralize**” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the relevant L/C Issuer and the Appropriate Lenders, as collateral for the relevant L/C Obligations, cash or deposit account balances (“**Cash Collateral**”) pursuant to documentation in form, amount and substance reasonably satisfactory to the Administrative Agent and the relevant L/C Issuer (which documents are hereby consented to by the Appropriate Lenders). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the L/C Issuers and the Participating Revolving Credit Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked accounts at the Administrative Agent and may be invested in readily available Cash Equivalents. If at any time the Administrative Agent determines that any funds held as Cash Collateral are expressly subject to any right or claim of any Person other than the Administrative Agent (on behalf of the Secured Parties) or that the total amount of such funds is less than the aggregate Outstanding Amount of all relevant L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in the deposit accounts at the Administrative Agent as aforesaid, an amount equal to the excess of (a) such aggregate Outstanding Amount over (b) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent reasonably determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Law, to reimburse the relevant L/C Issuer. To the extent the amount of any Cash Collateral exceeds the then Outstanding Amount of such L/C Obligations and so long as no Event of Default has occurred and is continuing, the excess shall be refunded to the Borrower. To the extent any Event of Default giving rise to the requirement to Cash Collateralize any Letter of Credit pursuant to this Section 2.03(g) is cured or otherwise waived, then so long as no other Event of Default has occurred and is continuing, all Cash Collateral pledged to Cash Collateralize such Letter of Credit shall be refunded to the Borrower. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Borrower or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. In addition, the Administrative Agent may request at any time and from time to time after the initial deposit of Cash Collateral that additional Cash Collateral be provided by the Borrower in order to protect against the results of exchange rate fluctuations with respect to Letters of Credit denominated in currencies other than Dollars.

(h) *Letter of Credit Fees.* The Borrower shall pay to the Administrative Agent for the account of each Participating Revolving Credit Lender in accordance with its Pro Rata Share or other applicable share provided for under this Agreement a Letter of Credit fee for each Letter of Credit issued pursuant to this Agreement equal to the Applicable Rate times the daily maximum amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit); *provided, however,* any Letter of Credit fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the L/C Issuer pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by

applicable Law, to the other Lenders in accordance with the upward adjustments in their respective Pro Rata Shares allocable to such Letter of Credit pursuant to Section 2.17(a)(iv), with the balance of such fee, if any, payable to the L/C Issuer for its own account. Such Letter of Credit fees shall be computed on a quarterly basis in arrears. Such Letter of Credit fees shall be due and payable in Dollars on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the applicable Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(i) *Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers.* The Borrower shall pay directly to each L/C Issuer for its own account a fronting fee with respect to each Letter of Credit issued by it equal to 0.125% per annum of the maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit). Such fronting fees shall be computed on a quarterly basis in arrears. Such fronting fees shall be due and payable in Dollars on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. In addition, the Borrower shall pay directly to each L/C Issuer for its own account with respect to each Letter of Credit the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable within ten (10) Business Days of demand and are nonrefundable.

(j) *Conflict with Letter of Credit Application.* Notwithstanding anything else to the contrary in this Agreement or any Letter of Credit Application, in the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

(k) *Addition of an L/C Issuer.* A Revolving Credit Lender reasonably acceptable to the Borrower and the Administrative Agent may become an additional L/C Issuer hereunder pursuant to a written agreement among the Borrower, the Administrative Agent and such Revolving Credit Lender. The Administrative Agent shall notify the Participating Revolving Credit Lenders of any such additional L/C Issuer.

(l) *Existing Letters of Credit.* The parties hereto agree that the Existing Letters of Credit shall be deemed Letters of Credit for all purposes under this Agreement, without any further action by the Borrower.

(m) *Provisions Related to Extended Revolving Credit Commitments.* If the Maturity Date in respect of any Participating Revolving Credit Commitments occurs prior to the expiry date of any Letter of Credit, then (i) if one or more other Participating Revolving Credit Commitments are then in effect (or will automatically be in effect upon such maturity), such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Participating Revolving Credit Lenders to purchase participations therein

and to make Revolving Credit Loans and payments in respect thereof pursuant to Sections 2.03(c) and (d)) under (and ratably participated in by Participating Revolving Credit Lenders pursuant to) the non-terminating Participating Revolving Credit Commitments up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Participating Revolving Credit Commitments continuing at such time (it being understood that no partial face amount of any Letter of Credit may be so reallocated) and (ii) to the extent not reallocated pursuant to immediately preceding clause (i) and unless provisions reasonably satisfactory to the applicable L/C Issuer for the treatment of such Letter of Credit as a letter of credit under a successor credit facility have been agreed upon, the Borrower shall, on or prior to the applicable Maturity Date, cause all such Letters of Credit to be replaced and returned to the applicable L/C Issuer undrawn and marked "cancelled" or to the extent that the Borrower is unable to so replace and return any Letter(s) of Credit, such Letter(s) of Credit shall be secured by a "back to back" letter of credit reasonably satisfactory to the applicable L/C Issuer or the Borrower shall Cash Collateralize any such Letter of Credit in accordance with Section 2.03(g). Commencing with the Maturity Date of any Class of Revolving Credit Commitments, the Letter of Credit Sublimit shall be in an amount agreed solely with the L/C Issuer.

(n) *Letter of Credit Reports.* For so long as any Letter of Credit issued by an L/C Issuer is outstanding, such L/C Issuer shall deliver to the Administrative Agent on the last Business Day of each calendar month, and on each date that an L/C Credit Extension occurs with respect to any such Letter of Credit, a report in the form of Exhibit L, appropriately completed with the information for every outstanding Letter of Credit issued by such L/C Issuer.

(o) *Letters of Credit Issued for Subsidiaries.* Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse the applicable L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

Section 2.04 Swing Line Loans.

(a) *The Swing Line.* Subject to the terms and conditions set forth herein, the Swing Line Lender agrees to make loans in Dollars to the Borrower (each such loan, a "**Swing Line Loan**"), from time to time on any Business Day during the period beginning on the Business Day after the Closing Date until the date which is one (1) Business Day prior to the Maturity Date of the Participating Revolving Credit Commitments (taking into account the Maturity Date of any Participating Revolving Credit Commitment that will automatically come into effect on such Maturity Date) in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of Revolving Credit Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of the Swing Line Lender's Revolving Credit Commitment; *provided that*, after giving effect to any Swing Line Loan (i) the Revolving Credit Exposure under such Participating Revolving Credit Commitments shall not exceed the aggregate Participating Revolving Credit Commitments, and (ii) the aggregate Outstanding

Amount of the Revolving Credit Loans of any Lender (other than the Swing Line Lender), plus such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all L/C Obligations, plus such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Participating Revolving Credit Commitment then in effect; *provided, further*, that the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a Swing Line Loan, each Participating Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Pro Rata Share or other applicable share provided for under this Agreement times the amount of such Swing Line Loan.

(b) *Borrowing Procedures.* Each Swing Line Borrowing shall be made upon the Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000 (and any amount in excess of \$100,000 shall be an integral multiple of \$50,000) and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Promptly after receipt by the Swing Line Lender of any Swing Line Loan Notice (by telephone or in writing), the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 4:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower. Notwithstanding anything to the contrary contained in this Section 2.04 or elsewhere in this Agreement, the Swing Line Lender shall not be obligated to make any Swing Line Loan at a time when a Participating Revolving Credit Lender is a Defaulting Lender unless the Swing Line Lender has entered into arrangements reasonably satisfactory to it and the Borrower to eliminate the Swing Line Lender's Fronting Exposure (after giving effect to Section 2.17(a)(iv)) with respect to the Defaulting Lender's or Defaulting Lenders' participation in such Swing Line Loans, including by Cash Collateralizing, or obtaining a backstop letter of credit from an issuer reasonably satisfactory to the Swing Line Lender to support, such Defaulting Lender's or Defaulting Lenders' Pro Rata Share of the outstanding Swing Line Loans. The Borrower shall repay to the Swing Line Lender each Defaulting Lender's portion (after giving effect to Section 2.17(a)(iv)) of each Swing Line Loan promptly following demand by the Swing Line Lender.

(c) *Refinancing of Swing Line Loans.*

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Participating Revolving Credit Lender make a Base Rate Loan in an amount equal to such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the amount of Swing Line Loans of the Borrower then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the aggregate Participating Revolving Credit Commitments and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Participating Revolving Credit Lender shall make an amount equal to its Pro Rata Share or other applicable share provided for under this Agreement of the amount specified in such Committed Loan Notice available to the Administrative Agent in Same Day Funds for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Participating Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan, as applicable, to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender. Upon the remission by the Administrative Agent to the Swing Line Lender of the full amount specified in such Committed Loan Notice, the Borrower shall be deemed to have repaid the applicable Swing Line Loan.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Participating Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each Participating Revolving Credit Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Participating Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the applicable Overnight Rate from time to time in effect. If such Participating Revolving Credit Lender pays such amount, the amount so paid shall constitute such Lender's Revolving Credit Loan including in the relevant Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Participating Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or the failure to satisfy any condition in Article IV, (C) any adverse change in the condition (financial or otherwise) of the Loan Parties, (D) any breach of this Agreement, or (E) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that each Participating Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) (but not to purchase and fund risk participations in Swing Line Loans) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay the applicable Swing Line Loans, together with interest as provided herein.

(d) *Repayment of Participations.*

(i) At any time after any Participating Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Pro Rata Share or other applicable share provided for under this Agreement of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Participating Revolving Credit Lender shall pay to the Swing Line Lender its Pro Rata Share or other applicable share provided for under this Agreement thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Overnight Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender.

(e) *Interest for Account of Swing Line Lender.* The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans. Until each Participating Revolving Credit Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Pro Rata Share or other applicable share provided for under this Agreement of any Swing Line Loan, interest in respect of such Pro Rata Share or other applicable share provided for under this Agreement shall be solely for the account of the Swing Line Lender.

(f) *Payments Directly to Swing Line Lender.* The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

(g) *Provisions Related to Extended Revolving Credit Commitments.* If the Maturity Date shall have occurred in respect of any Participating Revolving Credit Commitments (the “**Expiring Credit Commitment**”) at a time when other Participating Revolving Credit Commitments are in effect (or will automatically be in effect upon such maturity) with a longer maturity date (each a “**non-Expiring Credit Commitment**” and collectively, the “**non-Expiring Credit Commitments**”), then each outstanding Swing Line Loan on the earliest occurring Maturity Date shall be deemed reallocated to the non-Expiring Credit Commitments on a pro rata basis; *provided that* (x) to the extent that the amount of such reallocation would cause the aggregate credit exposure to exceed the aggregate amount of such non-Expiring Credit Commitments, immediately prior to such reallocation (after giving effect to any repayments of Revolving Credit Loans and any reallocation of Letter of Credit participations as contemplated in Section 2.03(m)) the amount of Swing Line Loans to be reallocated equal to such excess shall be repaid or cash collateralized in a manner reasonably satisfactory to the Swing Line Lender and (y) notwithstanding the foregoing, if a Default or Event of Default has occurred and is continuing, the Borrower shall still be obligated to pay Swing Line Loans allocated to the Participating Revolving Credit Lenders holding the Expiring Credit Commitments at the Maturity Date of the Expiring Credit Commitment or if the Loans have been accelerated prior to the Maturity Date of the Expiring Credit Commitment.

Section 2.05 Prepayments.

(a) *Optional.* (i) The Borrower may, upon notice to the Administrative Agent by the Borrower, at any time or from time to time voluntarily prepay any Class or Classes of Term Loans and Revolving Credit Loans of any Class or Classes in whole or in part without premium or penalty, except as set forth in Section 2.05(a)(vi); *provided that* (1) such notice must be received by the Administrative Agent not later than 11:30 a.m. (New York City time) (A) two (2) Business Days prior to any date of prepayment of Eurocurrency Rate Loans (unless otherwise agreed by the Administrative Agent) and (B) on the date of prepayment of Base Rate Loans; (2) any prepayment of Eurocurrency Rate Loans shall be in a minimum principal amount of \$1,000,000, or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding; and (3) any prepayment of Base Rate Loans shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender’s Pro Rata Share or other applicable share provided for under this Agreement of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be, as set forth in Section 2.05(c), accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05. In the case of each prepayment of the Loans pursuant to this Section 2.05(a), the Borrower may in its sole discretion select the Borrowing or Borrowings (and the order of maturity of principal payments) to be repaid, and such payment shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares or other applicable share provided for under this Agreement.

(ii) The Borrower may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; *provided* that (1) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (2) any such prepayment shall be in a minimum principal amount of \$100,000 or a whole multiple of \$10,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(iii) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.05(a)(i) or 2.05(a)(ii) if such prepayment would have resulted from a refinancing of all or a portion of the applicable Facility, which refinancing shall not be consummated or shall otherwise be delayed.

(iv) Voluntary prepayments of any Class of Term Loans permitted pursuant to Section 2.05(a)(i) shall be applied to the remaining scheduled installments of principal thereof pursuant to Section 2.07(a) in a manner determined at the discretion of the Borrower and specified in the notice of prepayment (and absent such direction, in direct order of maturity).

(v) Notwithstanding anything in any Loan Document to the contrary, so long as (x) no Default or Event of Default has occurred and is continuing and (y) no proceeds of Revolving Credit Loans or Swing Line Loans are used for this purpose, any Company Party may prepay the outstanding Term Loans (which shall, for the avoidance of doubt, be automatically and permanently canceled immediately upon such prepayment) on the following basis:

(A) Any Company Party shall have the right to make a voluntary prepayment of Term Loans at a discount to par pursuant to a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of Discounted Prepayment Offers (any such prepayment, the “**Discounted Term Loan Prepayment**”), in each case made in accordance with this Section 2.05(a)(v).

(B) (1) Any Company Party may from time to time offer to make a Discounted Term Loan Prepayment by providing the Auction Agent with five (5) Business Days’ notice in the form of a Specified Discount Prepayment Notice; *provided* that (I) any such offer shall be made available, at the sole discretion of the Company Party, to (x) each Term Lender and/or (y) each Term Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such offer shall specify the aggregate principal amount offered to be prepaid (the “**Specified Discount Prepayment Amount**”) with respect to each applicable Class, the Class or Classes of Term Loans subject to such offer and the specific percentage discount to par (the “**Specified Discount**”) of such Term Loans to be prepaid (it being understood that different Specified Discounts and/or

Specified Discount Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(B)), (III) the Specified Discount Prepayment Amount shall be in an aggregate amount not less than \$10,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such offer shall remain outstanding through the Specified Discount Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Specified Discount Prepayment Notice and a form of the Specified Discount Prepayment Response to be completed and returned by each such Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., on the third Business Day after the date of delivery of such notice to such Lenders (which date may be extended for a period not exceeding three (3) Business Days upon notice by the Company Party to, and with the consent of, the Auction Agent) (the “**Specified Discount Prepayment Response Date**”).

(2) Each Term Lender receiving such offer shall notify the Auction Agent (or its delegate) by the Specified Discount Prepayment Response Date whether or not it agrees to accept a prepayment of any of its applicable then outstanding Term Loans at the Specified Discount and, if so (such accepting Lender, a “**Discount Prepayment Accepting Lender**”), the amount and the Classes of such Lender’s Term Loans to be prepaid at such offered discount. Each acceptance of a Discounted Term Loan Prepayment by a Discount Prepayment Accepting Lender shall be irrevocable. Any Term Lender whose Specified Discount Prepayment Response is not received by the Auction Agent by the Specified Discount Prepayment Response Date shall be deemed to have declined to accept the applicable Borrower Offer of Specified Discount Prepayment.

(3) If there is at least one (1) Discount Prepayment Accepting Lender, the relevant Company Party will make a prepayment of outstanding Term Loans pursuant to this paragraph (B) to each Discount Prepayment Accepting Lender on the Discounted Prepayment Effective Date in accordance with the respective outstanding amount and Classes of Term Loans specified in such Lender’s Specified Discount Prepayment Response given pursuant to subsection (2) above; *provided that*, if the aggregate principal amount of Term Loans accepted for prepayment by all Discount Prepayment Accepting Lenders exceeds the Specified Discount Prepayment Amount, such prepayment shall be made pro rata among the Discount Prepayment Accepting Lenders in accordance with the respective principal amounts accepted to be prepaid by each such Discount Prepayment Accepting Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its reasonable discretion) will calculate such proration (the “**Specified Discount Proration**”). The Auction Agent shall promptly, and in any case within three (3) Business Days following the Specified Discount Prepayment Response Date, notify (I) the relevant Company Party of the respective Term Lenders’ responses to such offer, the Discounted Prepayment Effective Date and the aggregate principal amount of the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, and

the aggregate principal amount and the Classes of Term Loans to be prepaid at the Specified Discount on such date and (III) each Discount Prepayment Accepting Lender of the Specified Discount Proration, if any, and confirmation of the principal amount, Class and Type of Term Loans of such Lender to be prepaid at the Specified Discount on such date. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the Company Party and such Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(C) (1) Any Company Party may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice in the form of a Discount Range Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Company Party, to (x) each Term Lender and/or (y) each Term Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate principal amount of the relevant Term Loans (the "**Discount Range Prepayment Amount**"), the Class or Classes of Term Loans subject to such offer and the maximum and minimum percentage discounts to par (the "**Discount Range**") of the principal amount of such Term Loans with respect to each relevant Class of Term Loans willing to be prepaid by such Company Party (it being understood that different Discount Ranges and/or Discount Range Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(C)), (III) the Discount Range Prepayment Amount shall be in an aggregate amount not less than \$10,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such solicitation by a Company Party shall remain outstanding through the Discount Range Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Discount Range Prepayment Notice and a form of the Discount Range Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., on the third Business Day after the date of delivery of such notice to such Lenders (which date may be extended for a period not exceeding three (3) Business Days upon notice by the Company Party to, and with the consent of, the Auction Agent) (the "**Discount Range Prepayment Response Date**"). Each Term Lender's Discount Range Prepayment Offer shall be irrevocable and shall specify a discount to par within the Discount Range (the "**Submitted Discount**") at which such Lender is willing to allow prepayment of any or all of its then outstanding Term Loans of the applicable Class or Classes and the maximum aggregate principal amount and Classes of such Lender's Term Loans (the "**Submitted Amount**") such Term Lender is willing to have prepaid at the Submitted Discount. Any Term Lender whose Discount Range Prepayment Offer is not received by the Auction Agent by the Discount Range Prepayment Response Date shall be deemed to have declined to accept a Discounted Term Loan Prepayment of any of its Term Loans at any discount to their par value within the Discount Range.

(2) The Auction Agent shall review all Discount Range Prepayment Offers received on or before the applicable Discount Range Prepayment Response Date and shall determine (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the Applicable Discount and Term Loans to be prepaid at such Applicable Discount in accordance with this subsection (C). The relevant Company Party agrees to accept on the Discount Range Prepayment Response Date all Discount Range Prepayment Offers received by the Auction Agent within the Discount Range by the Discount Range Prepayment Response Date, in the order from the Submitted Discount that is the largest discount to par to the Submitted Discount that is the smallest discount to par, up to and including the Submitted Discount that is the smallest discount to par within the Discount Range (such Submitted Discount that is the smallest discount to par within the Discount Range being referred to as the “**Applicable Discount**”) which yields a Discounted Term Loan Prepayment in an aggregate principal amount equal to the lower of (I) the Discount Range Prepayment Amount and (II) the sum of all Submitted Amounts. Each Term Lender that has submitted a Discount Range Prepayment Offer to accept prepayment at a discount to par that is larger than or equal to the Applicable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Submitted Amount (subject to any required proration pursuant to the following subsection (3)) at the Applicable Discount (each such Term Lender, a “**Participating Lender**”).

(3) If there is at least one (1) Participating Lender, the relevant Company Party will prepay the respective outstanding Term Loans of each Participating Lender on the Discounted Prepayment Effective Date in the aggregate principal amount and of the Classes specified in such Lender’s Discount Range Prepayment Offer at the Applicable Discount; *provided* that if the Submitted Amount by all Participating Lenders offered at a discount to par greater than the Applicable Discount exceeds the Discount Range Prepayment Amount, prepayment of the principal amount of the relevant Term Loans for those Participating Lenders whose Submitted Discount is a discount to par greater than or equal to the Applicable Discount (the “**Identified Participating Lenders**”) shall be made pro rata among the Identified Participating Lenders in accordance with the Submitted Amount of each such Identified Participating Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “**Discount Range Proration**”). The Auction Agent shall promptly, and in any case within five

(5) Business Days following the Discount Range Prepayment Response Date, notify (I) the relevant Company Party of the respective Term Lenders’ responses to such solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount of the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount and Classes of Term Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and Classes of

such Term Lender to be prepaid at the Applicable Discount on such date, and (IV) if applicable, each Identified Participating Lender of the Discount Range Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the relevant Company Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(D) (1) Any Company Party may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice in the form of a Solicited Discounted Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Company Party, to (x) each Term Lender and/or (y) each Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate amount of the Term Loans (the "**Solicited Discounted Prepayment Amount**") and the Class or Classes of Term Loans the applicable Company Party is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(D)), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate amount not less than \$10,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such solicitation by a Company Party shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Solicited Discounted Prepayment Notice and a form of the Solicited Discounted Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., on the third Business Day after the date of delivery of such notice to such Term Lenders (which date may be extended for a period not exceeding three (3) Business Days upon notice by the Company Party to the Auction Agent) (the "**Solicited Discounted Prepayment Response Date**"). Each Term Lender's Solicited Discounted Prepayment Offer shall (x) be irrevocable, (y) remain outstanding until the Acceptance Date, and (z) specify both a discount to par (the "**Offered Discount**") at which such Term Lender is willing to allow prepayment of its then outstanding Term Loan and the maximum aggregate principal amount and Classes of such Term Loans (the "**Offered Amount**") such Term Lender is willing to have prepaid at the Offered Discount. Any Term Lender whose Solicited Discounted Prepayment Offer is not received by the Auction Agent by the Solicited Discounted Prepayment Response Date shall be deemed to have declined prepayment of any of its Term Loans at any discount.

(2) The Auction Agent shall promptly provide the relevant Company Party with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. Such Company Party shall review all such Solicited Discounted Prepayment Offers and select the smallest of the Offered Discounts specified by the relevant responding Term Lenders in the Solicited Discounted Prepayment Offers that is acceptable to the Company Party in its sole discretion (the "**Acceptable Discount**"), if any. If the

Company Party elects, in its sole discretion, to accept any Offered Discount as the Acceptable Discount, then as soon as practicable after the determination of the Acceptable Discount, but in no event later than by the third Business Day after the date of receipt by such Company Party from the Auction Agent of a copy of all Solicited Discounted Prepayment Offers pursuant to the first sentence of this subsection (2) (the “**Acceptance Date**”), the Company Party shall submit an Acceptance and Prepayment Notice to the Auction Agent setting forth the Acceptable Discount. If the Auction Agent shall fail to receive an Acceptance and Prepayment Notice from the Company Party by the Acceptance Date, such Company Party shall be deemed to have rejected all Solicited Discounted Prepayment Offers.

(3) Based upon the Acceptable Discount and the Solicited Discounted Prepayment Offers received by Auction Agent by the Solicited Discounted Prepayment Response Date, within three (3) Business Days after receipt of an Acceptance and Prepayment Notice (the “**Discounted Prepayment Determination Date**”), the Auction Agent will determine (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate principal amount and the Classes of Term Loans (the “**Acceptable Prepayment Amount**”) to be prepaid by the relevant Company Party at the Acceptable Discount in accordance with this Section 2.05(a)(v)(D). If the Company Party elects to accept any Acceptable Discount, then the Company Party agrees to accept all Solicited Discounted Prepayment Offers received by Auction Agent by the Solicited Discounted Prepayment Response Date, in the order from largest Offered Discount to smallest Offered Discount, up to and including the Acceptable Discount. Each Term Lender that has submitted a Solicited Discounted Prepayment Offer with an Offered Discount that is greater than or equal to the Acceptable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Offered Amount (subject to any required pro-rata reduction pursuant to the following sentence) at the Acceptable Discount (each such Lender, a “**Qualifying Lender**”). The Company Party will prepay outstanding Term Loans pursuant to this subsection (D) to each Qualifying Lender in the aggregate principal amount and of the Classes specified in such Lender’s Solicited Discounted Prepayment Offer at the Acceptable Discount; *provided* that if the aggregate Offered Amount by all Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount exceeds the Solicited Discounted Prepayment Amount, prepayment of the principal amount of the Term Loans for those Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount (the “**Identified Qualifying Lenders**”) shall be made pro rata among the Identified Qualifying Lenders in accordance with the Offered Amount of each such Identified Qualifying Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “**Solicited Discount Proration**”). On or prior to the Discounted Prepayment Determination Date, the Auction Agent shall promptly notify (1) the relevant Company Party of the Discounted Prepayment Effective Date and Acceptable

Prepayment Amount comprising the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Term Loans and the Classes to be prepaid at the Applicable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the Classes of such Term Lender to be prepaid at the Acceptable Discount on such date, and (IV) if applicable, each Identified Qualifying Lender of the Solicited Discount Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to such Company Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to such Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(E) In connection with any Discounted Term Loan Prepayment, the Company Parties and the Term Lenders acknowledge and agree that the Auction Agent may require as a condition to any Discounted Term Loan Prepayment, the payment of customary and documented fees and out-of-pocket expenses from a Company Party in connection therewith.

(F) If any Term Loan is prepaid in accordance with paragraphs (B) through (D) above, a Company Party shall prepay such Term Loans on the Discounted Prepayment Effective Date without premium or penalty, except as set forth in Section 2.05(a)(vi). The relevant Company Party shall make such prepayment to the Administrative Agent, for the account of the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, at the Administrative Agent's Office in immediately available funds not later than 1:00 p.m. on the Discounted Prepayment Effective Date and all such prepayments shall be applied to the remaining scheduled installments of principal of the relevant Class of Term Loans pursuant to Section 2.07(a) on a pro-rata basis across such installments. The Term Loans so prepaid shall be, as set forth in Section 2.05(c), accompanied by all accrued and unpaid interest on the par principal amount so prepaid up to, but not including, the Discounted Prepayment Effective Date. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(a)(v) shall be paid to the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, and shall be applied to the relevant Term Loans of such Lenders in accordance with their respective Pro Rata Share or other applicable share hereunder. The aggregate principal amount of the Classes and installments of the relevant Term Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the Classes of Term Loans prepaid on the Discounted Prepayment Effective Date in any Discounted Term Loan Prepayment. In connection with each prepayment pursuant to this Section 2.05(a)(v), the relevant Company Party shall waive any right to bring any action against the Administrative Agent, in its capacity as such, in connection with any such Discounted Term Loan Prepayment. In connection with each prepayment pursuant to this Section 2.05(a)(v), the relevant Company Party shall (a) make a representation to the Term Lenders and the Administrative Agent that it does not possess material non-public information with respect to Holdings and its Subsidiaries or the securities of any of them that has not been disclosed to the Term Lenders generally (other than Term Lenders who elect not to receive such information) or shall make a statement that such representation cannot be made and (b) waive any right to bring any action against the Administrative Agent, in its capacity as such, in connection with any such Discounted Term Loan Prepayment.

(G) To the extent not expressly provided for herein, each Discounted Term Loan Prepayment shall be consummated pursuant to procedures consistent with the provisions in this Section 2.05(a)(v), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by the applicable Company Party.

(H) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.05(a)(v), each notice or other communication required to be delivered or otherwise provided to the Auction Agent (or its delegate) shall be deemed to have been given upon the Auction Agent's (or its delegate's) actual receipt during normal business hours of such notice or communication; *provided* that any notice or communication actually received outside of normal business hours shall be deemed to have been given as of the opening of business on the next Business Day.

(I) Each of the Company Parties and the Term Lenders acknowledge and agree that the Auction Agent may perform any and all of its duties under this Section 2.05(a)(v) by itself or through any Affiliate of the Auction Agent and expressly consents to any such delegation of duties by the Auction Agent to such Affiliate and the performance of such delegated duties by such Affiliate. The exculpatory provisions pursuant to this Agreement shall apply to each Affiliate of the Auction Agent and its respective activities in connection with any Discounted Term Loan Prepayment provided for in this Section 2.05(a)(v) as well as activities of the Auction Agent.

(J) Each Company Party shall have the right, by written notice to the Auction Agent, to revoke or modify its offer to make a Discounted Term Loan Prepayment and rescind the applicable Specified Discount Prepayment Notice, Discount Range Prepayment Notice or Solicited Discounted Prepayment Notice therefor at its discretion at any time on or prior to the applicable Specified Discount Prepayment Response Date (and if such offer is revoked pursuant to the preceding clauses, any failure by such Company Party to make any prepayment to a Lender, as applicable, pursuant to this Section 2.05(a)(v) shall not constitute a Default or Event of Default under Section 8.01 or otherwise).

(vi) Notwithstanding the foregoing, in the event that, on or prior to the date that is six (6) months after the Closing Date, the Borrower (x) prepays, refinances, substitutes or replaces any Term B Loans pursuant to a Repricing Transaction (including, for avoidance of doubt, any prepayment made pursuant to Section 2.05(b)(iii) that constitutes a Repricing Transaction), or (y) effects any amendment of this Agreement resulting in a Repricing Transaction, the Borrower shall pay to the Administrative Agent, for the ratable account of each of the applicable Term Lenders, (I) in the case of clause (x), a prepayment premium of 1.00% of the aggregate principal amount of the Term B Loans so prepaid, refinanced, substituted or replaced and (II) in the case of clause (y), a fee equal to 1.00% of the aggregate principal amount of the applicable Term B Loans subject to such amendment. Such amounts shall be due and payable on the date of effectiveness of such Repricing Transaction.

(b) *Mandatory.* (i) Within five (5) Business Days after financial statements have been delivered pursuant to Section 6.01(a) (commencing with the fiscal year ended December 31, 2015) and the related Compliance Certificate has been delivered pursuant to Section 6.02(a), the Borrower shall, subject to clause (b)(vii) of this Section 2.05, cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to (A) the Applicable ECF Percentage of Excess Cash Flow, if any, for the Excess Cash Flow Period then ended minus (B) the sum of (1) all voluntary prepayments of (x) Term B Loans and (y) Term Loans that are not Term B Loans, Incremental Equivalent Debt and Refinancing Equivalent Debt (in each case secured by the Collateral on a first lien basis) during such Excess Cash Flow Period or after the end of such Excess Cash Flow Period and prior to when such Excess Cash Flow prepayment is due (limited in the case of any voluntary prepayments made pursuant to Section 2.05(a)(v) to the discounted amount actually paid in respect of the principal amount of such Term Loans (as opposed to the face amount so prepaid)), (2) all voluntary prepayments of Revolving Credit Loans during such Excess Cash Flow Period or after the end of such Excess Cash Flow Period and prior to when such Excess Cash Flow prepayment is due, to the extent the Revolving Credit Commitments are permanently reduced by the amount of such payments and (3) all voluntary prepayments of Second Lien Term Loans, Second Lien Incremental Equivalent Debt and Second Lien Refinancing Equivalent Debt during such Excess Cash Flow Period or after the end of such Excess Cash Flow Period and prior to when such Excess Cash Flow prepayment is due and, in the case of each of the immediately preceding clauses (1), (2) and (3) to the extent such prepayments are funded with Internally Generated Cash.

(ii) If (1) the Borrower or any Restricted Subsidiary of the Borrower Disposes of any property or assets (other than any Disposition of any property or assets permitted by Section 7.05(a), (b), (c), (d), (e), (g), (h), (i), (k), (l), (m), (n), (o), (p), (q), (s) or (t) *provided*, that, in the case of Section 7.05(t), immediately after giving effect to such Sale Leaseback and the application of the proceeds (if any) therefrom, (A) no Event of Default shall have occurred and be continuing and (B) the Total Net Leverage Ratio on a Pro Forma Basis is not greater than 6.50:1.00) or (2) any Casualty Event occurs, which results in the realization or receipt by the Borrower or Restricted Subsidiary of Net Proceeds, the Borrower shall cause to be prepaid on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or any Restricted Subsidiary of such Net Proceeds, subject to clause (b)(vii) of this Section 2.05, an aggregate principal amount of Term Loans in an amount equal to 100% of all such Net Proceeds received; *provided* that if at the time that any such prepayment would be required, the Borrower (or any Restricted Subsidiary) is required to offer to repurchase Permitted Pari Passu Secured Refinancing Debt (or any Permitted Refinancing thereof that is secured on a pari passu basis with the Obligations under Term Loans and Revolving Credit Loans required to be secured on a first lien basis) pursuant to the terms of the documentation governing such Indebtedness with the net proceeds of such Disposition or Casualty Event (such Permitted Pari Passu Secured Refinancing Debt (or Permitted Refinancing thereof) required to be offered to be so repurchased, “**Other Applicable Indebtedness**”), then the Borrower may apply such Net Proceeds on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness at such time; *provided* that the portion of such net proceeds allocated to the Other Applicable Indebtedness shall not exceed the

amount of such net proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such net proceeds shall be allocated to the Term Loans in accordance with the terms hereof) to the prepayment of the Term Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.05(b)(ii) shall be reduced accordingly; *provided, further*, that to the extent the holders of Other Applicable Indebtedness decline to have such indebtedness repurchased or prepaid, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof.

(iii) If the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness after the Closing Date not permitted to be incurred or issued pursuant to Section 7.03, the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds.

(iv) If the Borrower incurs or issues any Refinancing Loans (or Refinancing Equivalent Debt) resulting in Net Proceeds (as opposed to such Refinancing Loans or Refinancing Equivalent Debt arising out of an exchange of existing Term Loans for such Refinancing Loans or Refinancing Equivalent Debt), the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower of such Net Proceeds.

(v) If for any reason the aggregate Outstanding Amount of Revolving Credit Loans, Swing Line Loans and L/C Obligations at any time exceeds the aggregate Revolving Credit Commitments then in effect, the Borrower shall promptly prepay Revolving Credit Loans and Swing Line Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; *provided* that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b)(v) unless after the prepayment in full of the Revolving Credit Loans and Swing Line Loans such aggregate Outstanding Amount exceeds the aggregate Revolving Credit Commitments then in effect.

(vi) Each prepayment of Term Loans pursuant to Section 2.05(b) (A) shall be applied either (x) ratably to each Class of Term Loans then outstanding or (y) as requested by the Borrower in the notice delivered pursuant to clause (vii) below, to any Class or Classes of Term Loans with a Maturity Date preceding the Maturity Date of the remaining Classes of Term Loans then outstanding. (B) shall be applied, with respect to each such Class for which prepayments will be made, in a manner determined at the discretion of the Borrower in the applicable notice and, if not specified, in direct order of maturity to repayments thereof required pursuant to Section 2.07(a) and (C) shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Share (or other applicable share provided by this Agreement) of each such Class of Term Loans, subject to clause (vii) of this Section 2.05(b). Notwithstanding clause (A) above, (1) in the case of prepayments pursuant to Section 2.05(b)(iv), such prepayment shall be applied in accordance with this clause (vi) solely to those applicable Classes of Term Loans selected by the Borrower and specified in the applicable Refinancing Amendment or notice (i.e., the applicable Refinanced Debt or Refinanced Term Loans) and (2) any Incremental Amendment, Refinancing Amendment or Extension Amendment may provide (including on an optional basis as elected by the Borrower) for a less than ratable application of prepayments to any Class of Term Loans established thereunder.

(vii) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made by the Borrower pursuant to clauses (i) through (iv) of this Section 2.05(b) at least two (2) Business Days prior to the date of such prepayment (unless otherwise agreed by the Administrative Agent). Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower's prepayment notice and of such Appropriate Lender's Pro Rata Share of the prepayment. Each Term Lender may reject all or a portion of its Pro Rata Share of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of Term Loans required to be made pursuant to clauses (i), (ii) and (iii) of this Section 2.05(b) by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 5:00 p.m. one (1) Business Day after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Term Loans to be rejected by such Lender. If a Term Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans. Any Declined Proceeds shall be offered to the Term Lenders not so declining such prepayment on a pro rata basis in accordance with the amounts of the Term Loans of such Lender (with such non-declining Term Lenders having the right to decline any prepayment with Declined Proceeds at the time and in the manner specified by the Administrative Agent). To the extent such non-declining Term Lenders elect to decline their Pro Rata Share of such Declined Proceeds, any Declined Proceeds remaining thereafter shall, after application towards any mandatory prepayment of Second Lien Term Loans, be retained by the Borrower (such remaining Declined Proceeds, the "**Borrower Retained Prepayment Amounts**").

(viii) Notwithstanding any other provisions of this Section 2.05, (i) to the extent that any of or all the Net Proceeds of any Disposition by a Foreign Subsidiary ("**Foreign Disposition**"), the Net Proceeds of any Casualty Event from a Foreign Subsidiary (a "**Foreign Casualty Event**") or Excess Cash Flow attributable to Foreign Subsidiaries are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05(b) but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to use commercially reasonable efforts to cause the applicable Foreign Subsidiary to promptly take all actions reasonably required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Proceeds or Excess Cash Flow is permitted under the applicable local law, such repatriation will be promptly effected and an amount equal to such repatriated Net Proceeds or Excess Cash Flow will be promptly (and in any event not later than five (5) Business Days after

such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to this Section 2.05(b) to the extent provided herein and (ii) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Foreign Disposition or any Foreign Casualty Event or Excess Cash Flow attributable to Foreign Subsidiaries would have material adverse tax consequences (as determined in good faith by the Borrower) with respect to such Net Proceeds or Excess Cash Flow, such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05(b) but may be retained by the applicable Foreign Subsidiary.

(c) *Interest Funding Losses, Etc.* (i) Except to the extent otherwise agreed by each Lender so being prepaid, all prepayments of Loans (other than any Revolving Credit Loan that is a Base Rate Loan and any Swing Line Loan) shall be accompanied by all accrued and unpaid interest thereon through but not including the date of such prepayment (which, in the case of prepayments pursuant to Section 2.05(a)(v)(F) shall be the accrued and unpaid interest on the principal amount so prepaid up to, but not including, the applicable Discounted Prepayment Effective Date), together with, in the case of any such prepayment of a Eurocurrency Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurocurrency Rate Loan pursuant to Section 3.05.

(ii) So long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurocurrency Rate Loans is required to be made under this Section 2.05 (but excluding prepayments required under Section 2.05(b)(iv)), prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 2.05 in respect of any such Eurocurrency Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in its sole discretion, deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the relevant provisions of this Section 2.05. Such deposit shall be deemed to be a prepayment of such Loans by the Borrower for all purposes under this Agreement.

Section 2.06 Termination or Reduction of Commitments.

(a) *Optional.* The Borrower may, upon written notice to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class, in each case without premium or penalty; *provided* that (i) any such notice shall be received by the Administrative Agent at least three (3) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$500,000, or any whole multiple of \$100,000 in excess thereof or, if less, the entire amount thereof and (iii) if, after giving effect to any reduction of the Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Participating

Revolving Credit Commitments, such sublimit shall be automatically reduced by the amount of such excess. Except as provided in the immediately preceding sentence, the amount of any such Revolving Credit Commitment reduction shall not be applied to the Letter of Credit Sublimit or the Swing Line Sublimit unless otherwise specified by the Borrower. Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of termination of any Commitments if such termination would have resulted from a refinancing of all of the applicable Facility, which refinancing shall not be consummated or otherwise shall be delayed.

(b) *Mandatory.* The Term B Commitment of each Term Lender shall be automatically and permanently reduced to \$0 upon the funding of Term B Loans to be made by it on the Closing Date. The Term Commitment of each Term Lender with respect to Incremental Term Loans, any Refinancing Term Facility or any Term Loan Extension Series shall be automatically and permanently reduced to \$0 upon the funding of Term Loans to be made by it on the date set forth in the corresponding Incremental Amendment, Refinancing Amendment or Extension Amendment. The Revolving Credit Commitment of each Revolving Credit Lender shall automatically and permanently terminate on the Maturity Date for the applicable Class of Revolving Credit Commitments; provided that (x) the foregoing shall not release any Revolving Credit Lender from any liability it may have for its failure to fund Revolving Credit Loans, L/C Advances or participations in Swing Line Loans that were required to be funded by it on or prior to such Maturity Date and (y) the foregoing will not release any Revolving Credit Lender from any obligation to fund its portion of L/C Advances or participations in Swing Line Loans with respect to Letters of Credit issued or Swing Line Loans made prior to such Maturity Date.

(c) *Application of Commitment Reductions; Payment of Fees.* The Administrative Agent will promptly notify the Appropriate Lenders of any termination or reduction of unused portions of the Letter of Credit Sublimit or the Swing Line Sublimit or the unused Commitments of any Class under this Section 2.06. Upon any reduction of unused Commitments of any Class, the Commitment of each Lender of such Class shall be reduced by such Lender's Pro Rata Share of the amount by which such Commitments are reduced (other than the termination of the Commitment of any Lender as provided in Section 3.07). All commitment fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

Section 2.07 Repayment of Loans.

(a) *Term Loans.* (i) The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders (A) on the last Business Day of each March, June, September and December, commencing with December 31, 2014, an aggregate principal amount equal to 0.25% of the aggregate principal amount of all outstanding Term B Loans as of the Closing Date (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05 and 10.07(p)) and (B) on the Maturity Date for any Class of Term Loans, the aggregate principal amount of all Term Loans of such Class outstanding on such date.

(ii) The amount of any such payment set forth in clause (i) above shall be adjusted to account for the addition of any Incremental Term Loans, Extended Term Loans or Refinancing Term Loans to contemplate (A) the reduction in the aggregate principal amount of any Term Loans that were paid down in connection with the incurrence of such Incremental Term Loans, Extended Term Loans or Refinancing Term Loans, and (B) any increase to payments to the extent and as required pursuant to the terms of any applicable Incremental Amendment, Extension Amendment or Refinancing Amendment.

(b) *Revolving Credit Loans.* The Borrower shall, jointly and severally, repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the Maturity Date for any Class of Revolving Credit Commitments the aggregate outstanding principal amount of all Revolving Credit Loans made in respect of such Revolving Credit Commitments.

(c) *Swing Line Loans.* The Borrower shall repay the aggregate principal amount of each Swing Line Loan on the earlier to occur of (i) the date five (5) Business Days after such Loan is made and (ii) the Latest Maturity Date for the Participating Revolving Credit Commitments.

Section 2.08 Interest.

(a) Subject to the provisions of Section 2.08(b), (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for Revolving Credit Loans made under the Initial Revolving Credit Commitments.

(b) During the continuance of a Default under Section 8.01(a), the Borrower shall pay interest on past due amounts owing by it hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; *provided* that no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on such amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.09 Fees. In addition to certain fees described in Sections 2.03(h) and (i):

(a) *Commitment Fee.* The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Credit Lender under each Class of Revolving Credit Commitments in accordance with its Pro Rata Share or other applicable share provided for under this Agreement, a commitment fee equal to the Applicable Rate with respect to Revolving Credit Commitments commitment fees for such Class times the actual daily amount by which the aggregate Revolving Credit Commitment for the applicable Class of Revolving Credit

Commitments exceeds the sum of (A) the Outstanding Amount of Revolving Credit Loans for such Class of Revolving Credit Commitments and (B) the Outstanding Amount of L/C Obligations for such Class of Revolving Credit Commitments; provided that any commitment fee accrued with respect to any of the Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender except to the extent that such commitment fee shall otherwise have been due and payable by the Borrower prior to such time; and provided, further, that no commitment fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender. The commitment fee on each Class of Revolving Credit Commitments shall accrue at all times from the Closing Date until the Maturity Date for such Class of Revolving Credit Commitments, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each of March, June, September and December, commencing with the first such date during the first full fiscal quarter to occur after the Closing Date, and on the Maturity Date for such Class of Revolving Credit Commitments. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) *Other Fees.* The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing (including without limitation pursuant to the Fee Letter) in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

(c) *Closing Fees.* The Borrower agrees to pay on the Closing Date to each Lender party to this Agreement on the Closing Date, as fee compensation for the funding of such Lender's Term Loan and making of such Lender's Revolving Credit Commitment, a closing fee (the "**Closing Fee**") in an amount equal to (x) 0.50% of the stated principal amount of such Lender's Revolving Credit Commitment in effect on the Closing Date (provided that, in the case of this clause (x), a Revolving Credit Lender may agree with the Borrower to accept a lower fee in respect of all or a portion of its Revolving Credit Commitments) and (y) 0.25% of the stated principal amount of such Lender's Term Loan made on the Closing Date. Such Closing Fee will be in all respects fully earned, due and payable on the Closing Date and non-refundable and non-creditable thereafter and, in the case of the Term Loans, such Closing Fee shall be netted against Term Loans made by such Lender on the Closing Date.

Section 2.10 Computation of Interest and Fees.

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurocurrency Rate or the prime rate) shall be made on the basis of a year of three hundred and sixty-five (365) days, or three hundred and sixty-six (366) days, as applicable, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a three hundred and sixty (360) day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is

repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one (1) day. In computing interest on any Loan, the day such Loan is made or converted to a Loan of a different Type shall be included and the date such Loan is repaid or converted to a Loan of a different type, as the case may be, shall be excluded. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11 Evidence of Indebtedness.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records and, in the case of the Administrative Agent, entries in the Register, evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(c) Entries made in good faith by the Administrative Agent in the Register pursuant to Sections 2.11(a) and (b), and by each Lender in its account or accounts pursuant to Sections 2.11(a) and (b), shall be *prima facie* evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.12 Payments Generally.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share provided for under this Agreement) of such payment in like funds as received by wire transfer to such Lender's applicable Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be; *provided* that, if such extension would cause payment of interest on or principal of Eurocurrency Rate Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(c) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(i) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Overnight Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at a rate per annum equal to the applicable Overnight Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower

shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(c) shall be conclusive, absent manifest error.

(d) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans and to fund participations in Letters of Credit and Swing Line Loans are several and not joint. The failure of any Lender to make any Loan or to fund any such participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may (to the fullest extent permitted by mandatory provisions of applicable Law), but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the sum of (a) the Outstanding Amount of all Loans outstanding at such time and (b) the Outstanding Amount of all L/C Obligations outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

Section 2.13 Sharing of Payments. If, other than as expressly provided elsewhere herein or required by court order, any Lender shall obtain payment in respect of any principal or interest on account of the Loans made by it, or the participations in L/C Obligations and Swing Line Loans held by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated

hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in L/C Obligations or Swing Line Loans held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of any principal or interest on such Loans or such participations, as the case may be, pro rata with each of them; provided that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. For the avoidance of doubt, the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time (including the application of funds arising from the existence of a Defaulting Lender) or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased. For purposes of subclause (v)(a) of the definition of Indemnified Taxes, a Lender that acquires a participation pursuant to this Section 2.13 shall be treated as having acquired such participation on the earlier date(s) on which such Lender acquired the applicable interest(s) in the Commitment(s) and/or Loan(s) to which such participation relates.

Section 2.14 Incremental Credit Extensions.

(a) *Incremental Commitments.* The Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent (an "**Incremental Loan Request**"), request (A) one or more new commitments which may be of the same Class as any outstanding Term Loans (a "**Term Loan Increase**") or a new Class of term loans (collectively with any Term Loan Increase, the "**Incremental Term Commitments**") and/or (B) one or more increases in the amount of the Revolving Credit Commitments (a "**Revolving Commitment Increase**") or the establishment of one or more new revolving credit commitments (any such new commitments, collectively with any Revolving Commitment Increases, the "**Incremental Revolving Credit Commitments**") and the Incremental Revolving Credit Commitments, collectively with any Incremental Term Commitments, the "**Incremental Commitments**"), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders.

(b) *Incremental Loans.* On the applicable date (each, an “**Incremental Facility Closing Date**”) specified in any Incremental Amendment (including through any Term Loan Increase or Revolving Increase, as applicable), subject to the satisfaction of the terms and conditions in this Section 2.14, (i) (A) each Incremental Term Lender of such Class shall make a Loan to the Borrower (an “**Incremental Term Loan**”) in an amount equal to its Incremental Term Commitment of such Class and (B) each Incremental Term Lender of such Class shall become a Lender hereunder with respect to the Incremental Term Commitment of such Class and the Incremental Term Loans of such Class made pursuant thereto and (ii) (A) each Incremental Revolving Credit Lender of such Class shall make its Commitment available to the Borrower (when borrowed, an “**Incremental Revolving Loan**”) and collectively with any Incremental Term Loan, an “**Incremental Loan**”) in an amount equal to its Incremental Revolving Credit Commitment of such Class and (B) each Incremental Revolving Credit Lender of such Class shall become a Lender hereunder with respect to the Incremental Revolving Credit Commitment of such Class and the Incremental Revolving Loans of such Class made pursuant thereto.

(c) *Incremental Loan Request.* Each Incremental Loan Request from the Borrower pursuant to this Section 2.14 shall set forth the requested amount and proposed terms of the relevant Incremental Term Loans or Incremental Revolving Credit Commitments. Incremental Term Loans may be made, and Incremental Revolving Credit Commitments may be provided, by any existing Lender (but no existing Lender will have an obligation to make any Incremental Commitment, nor will the Borrower have any obligation to approach any existing Lender to provide any Incremental Commitment) or by any Additional Lender (each such existing Lender or Additional Lender providing such Commitment or Loan, an “**Incremental Revolving Credit Lender**” or “**Incremental Term Lender**,” as applicable, and, collectively, the “**Incremental Lenders**”); *provided* that (i) the Administrative Agent, the Swing Line Lender and each L/C Issuer shall have consented (not to be unreasonably withheld or delayed) to such Additional Lender’s making such Incremental Term Loans or providing such Incremental Revolving Credit Commitments to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Term Loans or Revolving Credit Commitments, as applicable, to such Lender or Additional Lender, (ii) with respect to Incremental Term Commitments, any Affiliated Lender providing an Incremental Term Commitment shall be subject to the same restrictions set forth in Section 10.07(k) as they would otherwise be subject to with respect to any purchase by or assignment to such Affiliated Lender of Term Loans and (iii) Affiliated Lenders may not provide Incremental Revolving Credit Commitments.

(d) *Effectiveness of Incremental Amendment.* The effectiveness of any Incremental Amendment, and the Incremental Commitments thereunder, shall be subject to the satisfaction on the applicable date (which shall be no earlier than the date of such Incremental Amendment) specified therein (the “**Incremental Amendment Date**”) of each of the following conditions, together with any other conditions set forth in the Incremental Amendment:

(i) after giving effect to such Incremental Commitments, the conditions of Section 4.02 shall be satisfied (it being understood that all references to “the date of such Credit Extension” or similar language in such Section 4.02 shall be deemed to refer to the Incremental Amendment Date); *provided, that*, such Incremental Amendment may include a waiver by the Incremental Lenders party thereto of the condition set forth in Section 4.02(iii) and, in connection with any Incremental Commitment the primary purpose of which is to finance a Permitted Acquisition, a waiver in full or in part of the conditions set forth in clauses (i) and (ii) (other than with respect to any Event of Default under Section 8.01(a) or (f)) of Section 4.02;

(ii) each Incremental Term Commitment shall be in an aggregate principal amount that is not less than \$10,000,000 and shall be in an increment of \$1,000,000 (*provided* that such amount may be less than \$10,000,000 if such amount represents all remaining availability under the limit set forth in Section 2.14(d)(iii)) and each Incremental Revolving Credit Commitment shall be in an aggregate principal amount that is not less than \$10,000,000 and shall be in an increment of \$1,000,000 (*provided* that such amount may be less than \$10,000,000 if such amount represents all remaining availability under the limit set forth in Section 2.14(d)(iii));

(iii) (A) after giving Pro Forma Effect to both (x) the making of Incremental Term Loans or establishment of Incremental Revolving Commitments (assuming a borrowing of the maximum amount of Loans available thereunder) under such Incremental Amendment and (y) any Specified Transactions consummated in connection therewith, (1) if such Incremental Term Loans or Incremental Revolving Commitments rank *pari passu* in right of security with the Obligations under Term Loans and Revolving Credit Loans secured on a first lien basis, the Consolidated First Lien Net Leverage Ratio does not exceed 5.00:1.00, (2) if such Incremental Term Loans or Incremental Revolving Commitments rank junior in right of security with the Obligations under Term Loans and Revolving Credit Loans secured on a first lien basis, the Secured Net Leverage Ratio does not exceed 6.25:1.00 or (3) if such Incremental Term Loans or Incremental Revolving Commitments is unsecured, the Total Net Leverage Ratio does not exceed 6.25:1.00; or (B) together with the Incremental Term Loans made and Incremental Revolving Commitments established under such Incremental Amendment, the aggregate principal amount of Incremental Term Loans made and Incremental Revolving Credit Commitments established under this clause (B) (*plus* the Second Lien Incremental Usage Amount and Incremental Equivalent Debt incurred in reliance on clause (i)(B) of Section 2.14(h)) does not exceed (i) \$85,000,000 plus (ii) the principal amount of any voluntary prepayments of Term Loans (to the extent not made with the proceeds of Indebtedness (other than the incurrence of Revolving Credit Loans or extensions of credit under any other revolving credit or similar facility) plus (iii) in the case of any Incremental Commitment that effectively extends the Maturity Date or any other maturity date with respect to any Class of Loans or Commitments hereunder, an amount equal to the portion of the relevant Class of Loans or Commitments that will be replaced by such Incremental Commitments plus (iv) in the case of any Incremental Commitment that effectively replaces any Revolving Credit Commitment terminated in accordance with Section 3.07, an amount equal to the relevant terminated Revolving Credit Commitment; *provided, that*, it is understood that Incremental Term Loans and Incremental Revolving Credit Commitments may be incurred under either clause (A) or clause (B) as selected by the Borrower in its sole discretion, including by designating any portion of Incremental Commitments in excess of an amount permitted to be incurred under clause (A) at the time of such incurrence as incurred under clause (B)); and

(iv) to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (A) customary legal opinions, board resolutions and officers' certificates consistent with those delivered on the Closing Date (conformed as appropriate) other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent and (B) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Incremental Lenders are provided with the benefit of the applicable Loan Documents.

(e) *Required Terms*. The terms, provisions and documentation of the Incremental Term Loans and Incremental Term Commitments or the Incremental Revolving Loans and Incremental Revolving Credit Commitments, as the case may be, of any Class shall be as agreed between the Borrower and the applicable Incremental Lenders providing such Incremental Commitments, and except as otherwise set forth herein, to the extent not identical to any Class of Term Loans or Revolving Credit Commitments, as applicable, each existing on the Incremental Facility Closing Date, shall be consistent with clauses (i) through (iii) below, as applicable, and otherwise reasonably satisfactory to the Administrative Agent; *provided* that in the case of a Term Loan Increase or a Revolving Commitment Increase, the terms, provisions and documentation of such Term Loan Increase or Revolving Commitment Increase shall be identical (other than with respect to upfront fees, OID or similar fees) to the applicable Class of Term Loans or Revolving Credit Commitments being increased, in each case, as existing on the Incremental Facility Closing Date. In any event:

(i) the Incremental Term Loans:

(A) (I) shall rank *pari passu* or junior in right of payment with the Obligations under Term Loans and Revolving Credit Loans that are senior in right of payment and (II) shall be secured by the Collateral and shall rank *pari passu* or junior in right of security with the Obligations under Term Loans and Revolving Credit Loans that are secured on a first lien basis (and subject to a Subordination Agreement (if subject to payment subordination) and/or the Second Lien Intercreditor Agreement (if subject to lien subordination) (or, alternatively, terms in the Incremental Amendment substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent) or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent) or be unsecured,

(B) as of the Incremental Amendment Date, shall not have a final scheduled maturity date earlier than the Maturity Date of the Term B Loans or any Extended Term Loans as to which the Term B Loans were the Existing Term Loan Tranche,

(C) as of the Incremental Amendment Date, shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Term B Loans,

(D) shall have an Applicable Rate, and subject to clauses (e)(i)(B) and (e)(i)(C) above, amortization determined by the Borrower and the applicable Incremental Term Lenders; *provided* the Applicable Rate and amortization for a Term Loan Increase shall be the Applicable Rate and amortization for the Class being increased,

(E) shall have fees determined by the Borrower and the applicable Incremental Term Loan arranger(s), and

(F) may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis (except for prepayments pursuant to Section 2.05(b)(iv) and Section 2.05(b)(vi)(A)(y) or any voluntary prepayments of any Class of Term Loans with an earlier Maturity Date than any other Classes of Term Loans)) in any voluntary or mandatory prepayments of Term Loans hereunder.

(ii) the Incremental Revolving Credit Commitments and Incremental Revolving Loans:

(A) (I) shall rank *pari passu* or junior in right of payment with the Obligations under the Term Loans and Revolving Credit Loans that are senior in right of payment and (II) shall rank *pari passu* in right of security with the Obligations under the Term Loans and Revolving Credit Loans that are secured on a first lien basis,

(B) shall not have a final scheduled maturity date or commitment reduction date earlier than the Maturity Date with respect to the Initial Revolving Credit Commitments,

(C) shall provide that the borrowing and repayment (except for (1) payments of interest and fees at different rates on Incremental Revolving Credit Commitments (and related outstandings), (2) repayments required upon the Maturity Date of the Incremental Revolving Credit Commitments and (3) repayment made in connection with a permanent repayment and termination of commitments (in accordance with clause (E) below)) of Loans with respect to Incremental Revolving Credit Commitments after the associated Incremental Facility Closing Date shall be made on a pro rata basis or less than a pro rata basis (but not more than a pro rata basis) with all other Revolving Credit Commitments then existing on the Incremental Facility Closing Date,

(D) may be elected to be included as additional Participating Revolving Credit Commitments under the Incremental Amendment (or in the case of any Revolving Commitment Increase to an existing Class of Participating Revolving Credit Commitment, shall be included), subject to (other than in the case of a Revolving Commitment Increase) the consent of the Swing Line Lender and each L/C Issuer, and on the Incremental Facility Closing Date all Swing Line Loans and Letters of Credit shall be participated on a pro rata basis by all Participating Revolving Credit Lenders in accordance with their percentage of the Participating Revolving Credit Commitments existing after giving effect to such Incremental Amendment, *provided*, such election may be made conditional upon the maturity of one or more other Participating Revolving Credit Commitments, *provided, further*, that in connection with such election the Swing Line Lender or the L/C Issuers may, in their sole discretion and with the consent of the Administrative Agent (not to be unreasonably withheld or delayed), agree in the applicable Incremental Amendment to increase the Swing Line Sublimit or the Letter of Credit Sublimit so long as such increase does not exceed the amount of the additional Participating Revolving Credit Commitments,

(E) may provide that the permanent repayment of Revolving Credit Loans with respect to, and termination or reduction of, Incremental Revolving Credit Commitments after the associated Incremental Facility Closing Date be made on a pro rata basis or less than pro rata basis with all other Revolving Credit Commitments,

(F) shall provide that assignments and participations of Incremental Revolving Credit Commitments and Incremental Revolving Loans shall be governed by the same assignment and participation provisions applicable to Revolving Credit Commitments and Revolving Credit Loans then existing on the Incremental Facility Closing Date,

(G) shall have an Applicable Rate determined by the Borrower and the applicable Incremental Revolving Credit Lenders; *provided* the Applicable Rate for a Revolving Commitment Increase shall be the Applicable Rate for the Class being increased, and

(H) shall have fees determined by the Borrower and the applicable Incremental Revolving Credit Commitment arranger(s).

(iii) the All-In Yield applicable to the Incremental Term Loans or Incremental Revolving Loans of each Class shall be determined by the Borrower and the applicable Incremental Lenders and shall be set forth in each applicable Incremental Amendment; *provided, however*, that with respect to any Loans made under Incremental Term Commitments (to the extent *pari passu* in right of payment and security with the Term B Loans), the All-In Yield applicable to such Incremental Term Loans shall not be greater than the applicable All-In Yield payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to Term B Loans plus 50 basis points per annum unless the Applicable Rate (together with, as provided in the proviso below, the Eurocurrency Rate or Base Rate floor) with respect to the Term B Loans is increased so as to cause the then applicable All-In Yield under this Agreement on the Term B Loans to equal the All-In Yield then applicable to the Incremental Term Loans minus 50 basis points; *provided, further*, that any increase in All-In Yield to any Term B Loan due to the application or imposition of a Eurocurrency Rate or Base Rate floor on any Incremental Term Loan shall be effected solely through an increase in (or implementation of, as applicable) any Eurocurrency or Base Rate floor applicable to such Term B Loan.

(f) *Incremental Amendment.* Commitments in respect of Incremental Term Loans and Incremental Revolving Credit Commitments shall become additional Commitments pursuant to an amendment (an “**Incremental Amendment**”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Incremental Lender providing such Commitments, the Administrative Agent and, for purposes of any election and/or increase to the Swing Line Sublimit or Letter of Credit Sublimit pursuant to Section 2.14(e)(ii)(D), the Swing Line Lender and each L/C Issuer. The Incremental Amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the

Administrative Agent and the Borrower, to effect the provisions of this Section 2.14, including amendments as deemed necessary by the Administrative Agent in its reasonable judgment to effect any lien or payment subordination and associated rights of the applicable Lenders to the extent any Incremental Loans are to rank junior in right of security or payment or to address technical issues relating to funding and payments. The Borrower will use the proceeds of the Incremental Term Loans and Incremental Revolving Credit Commitments for any purpose not prohibited by this Agreement.

(g) *Reallocation of Revolving Credit Exposure.* Upon any Incremental Facility Closing Date on which Incremental Revolving Credit Commitments are effected through a Revolving Commitment Increase pursuant to this Section 2.14, (a) each of the Revolving Credit Lenders shall assign to each of the Incremental Revolving Credit Lenders, and each of the Incremental Revolving Credit Lenders shall purchase from each of the Revolving Credit Lenders, at the principal amount thereof, such interests in the Incremental Revolving Loans outstanding on such Incremental Facility Closing Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Credit Loans will be held by existing Revolving Credit Lenders and Incremental Revolving Credit Lenders ratably in accordance with their Revolving Credit Commitments after giving effect to the addition of such Incremental Revolving Credit Commitments to the Revolving Credit Commitments, (b) each Incremental Revolving Credit Commitment shall be deemed for all purposes a Revolving Credit Commitment and each Loan made thereunder shall be deemed, for all purposes, a Revolving Credit Loan and (c) each Incremental Revolving Credit Lender shall become a Lender with respect to the Incremental Revolving Credit Commitments and all matters relating thereto. The Administrative Agent and the Lenders hereby agree that the minimum borrowing and prepayment requirements in Section 2.02 and 2.05(a) of this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence.

(h) *Incremental Equivalent Debt.* The Borrower may, upon notice to the Administrative Agent, at any time or from time to time after the Closing Date, issue, incur or otherwise obtain Indebtedness of the Borrower (and any Permitted Refinancing thereof) in respect of one or more series of senior or subordinated notes or loans (which may be unsecured or secured on a junior lien basis or, in the case of notes only, a *pari passu* basis with the Obligations under Term Loans and Revolving Credit Loans required to be secured on a first lien basis), in each case issued in a public offering, Rule 144A or other private placement or bridge in lieu of the foregoing, or senior or subordinated mezzanine Indebtedness (which may be in the form of loans or notes and limited to being unsecured or secured solely on a junior lien basis), in each case, that are issued or made in lieu of Incremental Revolving Credit Commitments and/or Incremental Term Commitments (the “**Incremental Equivalent Debt**”); *provided* that (i) (A) after giving Pro Forma Effect to both (x) the issuance or incurrence of such Incremental Equivalent Debt (assuming a borrowing of the maximum credit thereunder) and (y) any Specified Transactions consummated in connection therewith, (1) if such Incremental Equivalent Debt ranks *pari passu* in right of security with the Obligations under Term Loans and Revolving Credit Loans that are secured on a first lien basis, the Consolidated First Lien Net Leverage Ratio does not exceed 5.00:1.00, (2) if such Incremental Equivalent Debt ranks junior in right of security with the Obligations under the Term Loans and Revolving Credit Loans that are secured on a first lien basis, the Secured Net Leverage Ratio does not exceed

6.25:1.00 and (3) if such Incremental Equivalent Debt is unsecured, the Total Net Leverage Ratio does not exceed 6.25:1.00 or (B) together with such Incremental Equivalent Debt, the aggregate principal amount of Incremental Equivalent Debt incurred or issued under this clause (B) and Incremental Term Loans made and Incremental Revolving Credit Commitments established under Section 2.14(d)(iii)(B) (plus the Second Lien Incremental Usage Amount) does not exceed \$85,000,000 plus the principal amount of any voluntary prepayments of Term Loans (to the extent not made with the proceeds of Indebtedness (other than the incurrence of Revolving Credit Loans or extensions of credit under any other revolving credit or similar facility)) plus in the case of any Incremental Equivalent Debt that effectively extends the Maturity Date or any other maturity date with respect to any Class of Loans or Commitments hereunder, an amount equal to the portion of the relevant Class of Loans or Commitments that will be replaced by such Incremental Commitments plus (iv) in the case of any Incremental Equivalent Debt that effectively replaces any Revolving Credit Commitment terminated in accordance with Section 3.07, an amount equal to the relevant terminated Revolving Credit Commitment, (ii) such Incremental Equivalent Debt shall not be subject to any Guarantee by any Person other than a Loan Party, (iii) if such Incremental Equivalent Debt is secured, the obligations in respect thereof shall not be secured by any Lien on any asset of Holdings, the Borrower or any Restricted Subsidiary other than any asset constituting Collateral, (iv) no Default or Event of Default shall have occurred and be continuing or would exist immediately after giving effect to such incurrence, (v) if such Incremental Equivalent Debt is secured, the security agreements and other collateral documents relating to such Incremental Equivalent Debt shall be substantially similar to the Collateral Documents (with such differences as are reasonably satisfactory to the Administrative Agent), (vi) if such Incremental Equivalent Debt is (a) secured on a *pari passu* basis with the Obligations under Term Loans and Revolving Credit Loans that are secured on a first lien basis, then such Incremental Equivalent Debt shall be subject to a First Lien Intercreditor Agreement, (b) secured on a junior basis with the Obligations under Term Loans and Revolving Credit Loans that are secured on a first lien basis, then such Incremental Equivalent Debt shall be subject to the Second Lien Intercreditor Agreement or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent or (c) unsecured and subordinated to the Obligations, then such Incremental Equivalent Debt shall be subject to a Subordination Agreement (or, alternatively, terms in the definitive documentation for such Incremental Equivalent Debt substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent), (vii) such Incremental Equivalent Debt shall have a final maturity date which is no earlier than the then Maturity Date and a Weighted Average Life to Maturity which is equal to or greater than the Weighted Average Life to Maturity of the Term B Loans, (viii) such Incremental Equivalent Debt shall not be subject to any mandatory redemption or prepayment provisions or rights (except to the extent any such mandatory redemption or prepayment is required to be applied pro rata to the Term Loans required to be secured on a first lien basis and except with respect to customary "AHYDO catch-up payments", offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) and (ix) except as otherwise set forth in this clause (h), such Incremental Equivalent Debt shall have terms and conditions (other than with respect to pricing, fees, rate floors and optional prepayment or redemption terms) substantially similar to, or (taken as a whole) no more favorable (as reasonably determined by the Borrower) to the lenders or holders providing such Incremental Equivalent Debt, than those applicable to the Term B Loans (except for covenants or other provisions (a) conformed (or added) in the Loan Documents, for the benefit of the Lenders

holding Term B Loans, pursuant to an amendment thereto subject solely to the reasonable satisfaction of the Administrative Agent or (b) applicable only to periods after the Latest Maturity Date at the time of the issuance or incurrence of such Incremental Equivalent Debt) or such terms and conditions shall be current market terms for such type of Incremental Equivalent Debt (as reasonably determined in good faith by the Borrower). It is understood that Incremental Equivalent Debt may be incurred under either clause (i)(A) or clause (i)(B) of the immediately preceding sentence as selected by the Borrower in its sole discretion, including by designating any portion of Incremental Equivalent Debt in excess of an amount permitted to be incurred under such clause (i)(A) at the time of such incurrence as incurred under such clause (i)(B).

(i) This Section 2.14 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.15 Refinancing Amendments.

(a) *Refinancing Commitments*. The Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent (a "**Refinancing Loan Request**"), request (A) a new Class of term loans (any such new Class, "**Refinancing Term Commitments**") or (B) the establishment of a new Class of revolving credit commitments (any such new Class, "**Refinancing Revolving Credit Commitments**") and collectively with any Refinancing Term Commitments, "**Refinancing Commitments**"), in each case, established in exchange for, or to extend, renew, replace, repurchase, retire or refinance, in whole or in part, existing Loans or Commitments (with respect to a particular Refinancing Commitment or Refinancing Loan, such existing Loans or Commitments, "**Refinanced Debt**"), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders.

(b) *Refinancing Loans*. On any Refinancing Facility Closing Date on which any Refinancing Term Commitments of any Class are effected, subject to the satisfaction of the terms and conditions in this Section 2.15, (i) each Refinancing Term Lender of such Class shall make a Loan to the Borrower (a "**Refinancing Term Loan**") in an amount equal to its Refinancing Term Commitment of such Class and (ii) each Refinancing Term Lender of such Class shall become a Lender hereunder with respect to the Refinancing Term Commitment of such Class and the Refinancing Term Loans of such Class made pursuant thereto. On any Refinancing Facility Closing Date on which any Refinancing Revolving Credit Commitments of any Class are effected, subject to the satisfaction of the terms and conditions in this Section 2.15, (i) each Refinancing Revolving Credit Lender of such Class shall make its Commitment available to the Borrower (when borrowed, a "**Refinancing Revolving Loan**") and collectively with any Refinancing Term Loan, a "**Refinancing Loan**") in an amount equal to its Refinancing Revolving Credit Commitment of such Class and (ii) each Refinancing Revolving Credit Lender of such Class shall become a Lender hereunder with respect to the Refinancing Revolving Credit Commitment of such Class and the Refinancing Revolving Loans of such Class made pursuant thereto.

(c) *Refinancing Loan Request*. Each Refinancing Loan Request from the Borrower pursuant to this Section 2.15 shall set forth the requested amount and proposed terms of the relevant Refinancing Term Loans or Refinancing Revolving Credit Commitments. Refinancing Term Loans may be made, and Refinancing Revolving Credit Commitments may be provided,

by any existing Lender (but no existing Lender will have an obligation to make any Refinancing Commitment, nor will the Borrower have any obligation to approach any existing Lender to provide any Refinancing Commitment) or by any Additional Lender (each such existing Lender or Additional Lender providing such Commitment or Loan, a “**Refinancing Revolving Credit Lender**” or “**Refinancing Term Lender**,” as applicable, and, collectively, “**Refinancing Lenders**”); *provided* that (i) the Administrative Agent, the Swing Line Lender and each L/C Issuer shall have consented (not to be unreasonably withheld or delayed) to such Additional Lender’s making such Refinancing Term Loans or providing such Refinancing Revolving Credit Commitments to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Term Loans or Revolving Credit Commitments, as applicable, to such Lender or Additional Lender, (ii) with respect to Refinancing Term Commitments, any Affiliated Lender providing a Refinancing Term Commitment shall be subject to the same restrictions set forth in Section 10.07(k) as they would otherwise be subject to with respect to any purchase by or assignment to such Affiliated Lender of Term Loans and (iii) Affiliated Lenders may not provide Refinancing Revolving Credit Commitments.

(d) *Effectiveness of Refinancing Amendment.* The effectiveness of any Refinancing Amendment, and the Refinancing Commitments thereunder, shall be subject to the satisfaction on the date thereof (a “**Refinancing Facility Closing Date**”) of each of the following conditions, together with any other conditions set forth in the Refinancing Amendment:

(i) after giving effect to such Refinancing Commitments, the conditions of Sections 4.02(i) and (ii) shall be satisfied (it being understood that all references to “the date of such Credit Extension” or similar language in such Section 4.02 shall be deemed to refer to the effective date of such Refinancing Amendment);

(ii) each Refinancing Commitment shall be in an aggregate principal amount that is not less than \$25,000,000 and shall be in an increment of \$1,000,000 (*provided* that such amount may be less than \$25,000,000 and not in an increment of \$1,000,000 if such amount is equal to (x) the entire outstanding principal amount of Refinanced Debt that is in the form of Term Loans or (y) the entire principal amount of Refinanced Debt that is in the form of Revolving Credit Commitments); and

(iii) to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) customary legal opinions, board resolutions and officers’ certificates consistent with those delivered on the Closing Date (conformed as appropriate) other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel’s form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Refinancing Lenders are provided with the benefit of the applicable Loan Documents.

(e) *Required Terms.* The terms, provisions and documentation of the Refinancing Term Loans and Refinancing Term Commitments or the Refinancing Revolving Loans and Refinancing Revolving Credit Commitments, as the case may be, of any Class shall be as agreed between the Borrower and the applicable Refinancing Lenders providing such Refinancing Commitments, and except as otherwise set forth herein, to the extent not identical to any Class of Term Loans or Revolving Credit Commitments, as applicable, each existing on the Refinancing Facility Closing Date, shall be consistent with clauses (i) and (ii) below, as applicable, and otherwise reasonably satisfactory to the Administrative Agent. In any event:

(i) the Refinancing Term Loans:

(A) as of the Refinancing Facility Closing Date, shall not have a final scheduled maturity date earlier than the Maturity Date of the Refinanced Debt,

(B) as of the Refinancing Facility Closing Date, shall not have a Weighted Average Life to Maturity shorter than the remaining Weighted Average Life to Maturity of the Refinanced Debt,

(C) shall have an Applicable Rate and Eurocurrency Rate or Base Rate floor (if any), and subject to clauses (e)(i)(A) and (e)(i)(B) above, amortization determined by the Borrower and the applicable Refinancing Term Lenders,

(D) shall have fees determined by the Borrower and the applicable Refinancing Term Loan arranger(s),

(E) may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis (except for prepayments pursuant to Section 2.05(b)(iv) and Section 2.05(b)(vi)(A)(y) or any voluntary prepayments of any Class of Term Loans with an earlier Maturity Date than any other Classes of Term Loans)) in any voluntary or mandatory prepayments of Term Loans hereunder, or if junior in right of security, shall be on a junior basis with respect thereto,

(F) shall not have a greater principal amount than the principal amount of the Refinanced Debt plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees, expenses, OID and upfront fees associated with the refinancing, and

(G) (I) shall rank *pari passu* or junior in right of payment with the Obligations under Term Loans and Revolving Credit Loans that are senior in right of payment and (II) shall be secured by the Collateral and shall rank *pari passu* or junior in right of security with the Obligations under Term Loans and Revolving Credit Loans that are secured on a first lien basis (and, if applicable, subject to a Subordination Agreement and/or the Second Lien Intercreditor Agreement (or, alternatively, terms in the Refinancing Amendment substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent) or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent); and

(ii) the Refinancing Revolving Credit Commitments and Refinancing Revolving Loans:

(A) (I) shall rank *pari passu* or junior in right of payment with the Obligations under the Term Loans and Revolving Credit Loans that are senior in right of payment and (II) shall rank *pari passu* in right of security with the Obligations under the Term Loans and Revolving Credit Loans that are secured on a first lien basis,

(B) shall not have a final scheduled maturity date or commitment reduction date earlier than the Maturity Date or commitment reduction date, respectively, with respect to the Refinanced Debt,

(C) shall provide that the borrowing and repayment (except for (1) payments of interest and fees at different rates on Refinancing Revolving Credit Commitments (and related outstandings), (2) repayments required upon the Maturity Date of the Refinancing Revolving Credit Commitments and (3) repayment made in connection with a permanent repayment and termination of commitments (in accordance with clause (E) below)) of Loans with respect to Refinancing Revolving Credit Commitments after the associated Refinancing Facility Closing Date shall be made on a *pro rata* basis or less than a *pro rata* basis (but not more than a *pro rata* basis) with all other Revolving Credit Commitments then existing on the Refinancing Facility Closing Date,

(D) may be elected to be included as additional Participating Revolving Credit Commitments under the Refinancing Amendment, subject to the consent of the Swing Line Lender and each L/C Issuer, and on the Refinancing Facility Closing Date all Swing Line Loans and Letters of Credit shall be participated on a *pro rata* basis by all Participating Revolving Credit Lenders in accordance with their percentage of the Participating Revolving Credit Commitments existing after giving effect to such Refinancing Amendment, *provided*, such election may be made conditional upon the termination of one or more other Participating Revolving Credit Commitments,

(E) may provide that the permanent repayment of Revolving Credit Loans with respect to, and termination or reduction of, Refinancing Revolving Credit Commitments after the associated Refinancing Facility Closing Date be made on a *pro rata* basis, less than *pro rata* basis or greater than *pro rata* basis with all other Revolving Credit Commitments,

(F) shall provide that assignments and participations of Refinancing Revolving Credit Commitments and Refinancing Revolving Loans shall be governed by the same assignment and participation provisions applicable to Revolving Credit Commitments and Revolving Credit Loans then existing on the Refinancing Facility Closing Date,

(G) shall have an Applicable Rate and Eurocurrency Rate or Base Rate floor (if any) determined by the Borrower and the applicable Refinancing Revolving Credit Lenders,

(H) shall have fees determined by the Borrower and the applicable Refinancing Revolving Credit Commitment arranger(s), and

(I) shall not have a greater principal amount of Commitments than the principal amount of the Commitments of the Refinanced Debt and accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees, expenses, OID and upfront fees associated with the refinancing.

(f) *Refinancing Amendment.* Commitments in respect of Refinancing Term Loans and Refinancing Revolving Credit Commitments shall become additional Commitments pursuant to an amendment (a “**Refinancing Amendment**”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Refinancing Lender providing such Commitments, the Administrative Agent and, for purposes of any election pursuant to Section 2.15(e)(ii)(C), the Swing Line Lender and each L/C Issuer. The Refinancing Amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15, including amendments as deemed necessary by the Administrative Agent in its reasonable judgment to effect any lien or payment subordination and associated rights of the applicable Lenders to the extent any Refinancing Loans are to rank junior in right of security or payment or to address technical issues relating to funding and payments. The Borrower will use the proceeds of the Refinancing Term Loans and Refinancing Revolving Credit Commitments to extend, renew, replace, repurchase, retire or refinance, substantially concurrently, the applicable Refinanced Debt.

(g) *[Reserved.]*

(h) *Refinancing Equivalent Debt.*

(i) In lieu of incurring any Refinancing Term Loans, the Borrower may, upon notice to the Administrative Agent, at any time or from time to time after the Closing Date issue, incur or otherwise obtain (A) secured Indebtedness (including any Registered Equivalent Notes) in the form of one or more series of first lien senior secured notes (such notes, “**Permitted Pari Passu Secured Refinancing Debt**”), (B) secured Indebtedness (including any Registered Equivalent Notes) in the form of one or more series of second lien (or other junior lien) secured notes or second lien (or other junior lien) secured term loans (such notes or term loans, “**Permitted Junior Secured Refinancing Debt**”) and (C) unsecured or subordinated Indebtedness (including any Registered Equivalent Notes) in the form of one or more series of unsecured or subordinated notes or term loans (such notes or term loans, “**Permitted Unsecured Refinancing Debt**” and together with Permitted Pari Passu Secured Refinancing Debt and Permitted Junior Secured Refinancing Debt, and, in each case, any Permitted Refinancing thereof, “**Refinancing Equivalent Debt**”), in each case, in exchange for, or to extend, renew, replace, repurchase, retire or refinance, in whole or in part, any existing Class of Term Loans (such Term Loans, “**Refinanced Term Loans**”).

(ii) Any Refinancing Equivalent Debt:

(A) (1) shall not have a Maturity Date prior to the date that is on or after the Maturity Date of the Refinanced Term Loans, (2) if in the form of term loans, shall not have a Weighted Average Life to Maturity shorter than the remaining Weighted Average Life to Maturity of the Refinanced Term Loans, (3) if in the form of notes, shall not have scheduled amortization or payments of principal and not be subject to mandatory

redemption, repurchase, prepayment or sinking fund obligations (other than customary "AHYDO catch-up payments", offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default), in each case prior to the Maturity Date of the Refinanced Term Loans, (4) shall not be guaranteed by Persons other than Guarantors, (5) if in the form of subordinated Permitted Unsecured Refinancing Debt, shall be subject to a Subordination Agreement to which a Senior Representative acting on behalf of the holders of such Permitted Unsecured Refinancing Debt shall have become a party or otherwise subject (or, alternatively, terms in the definitive documentation for such Refinancing Equivalent Debt substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent); *provided* that if such Permitted Unsecured Refinancing Debt is the initial subordinated Permitted Unsecured Refinancing Debt incurred by the Borrower, then Holdings, the Borrower, the Subsidiary Guarantors, the Administrative Agent and the Senior Representative for such Permitted Unsecured Refinancing Debt shall have executed and delivered a Subordination Agreement, (6) shall not have a greater principal amount than the principal amount of the Refinanced Term Loans plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees, expenses, OID and upfront fees associated with the refinancing and (7) except as otherwise set forth in this clause (h) (ii), shall have terms and conditions (other than with respect to pricing, fees, rate floors and optional prepayment or redemption terms) substantially similar to, or (taken as a whole) no more favorable (as reasonably determined by the Borrower) to the lenders or holders providing such Refinancing Equivalent Debt, than those applicable to the Refinanced Term Loans (except for covenants or other provisions (a) conformed (or added) in the Loan Documents, for the benefit of the Lenders holding Term B Loans, pursuant to an amendment thereto subject solely to the reasonable satisfaction of the Administrative Agent or (b) applicable only to periods after the Latest Maturity Date at the time of the issuance or incurrence of such Refinancing Equivalent Debt) or such terms and conditions shall be current market terms for such type of Refinancing Equivalent Debt (as reasonably determined in good faith by the Borrower),

(B) (1) if either Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt, shall be subject to security agreements relating to such Refinancing Equivalent Debt that are substantially the same as or more favorable to the Loan Parties than the Collateral Documents (with such differences as are reasonably satisfactory to the Administrative Agent), (2) if Permitted Pari Passu Secured Refinancing Debt, (x) shall be secured by the Collateral on a *pari passu* basis with the Obligations under Term Loans and Revolving Credit Loans required to be secured on a first lien basis and shall not be secured by any property or assets of Holdings, the Borrower or any Restricted Subsidiary other than the Collateral, and (y) shall be subject to a First Lien Intercreditor Agreement to which a Senior Representative acting on behalf of the holders of such Permitted Pari Passu Secured Refinancing Debt shall have become a party or otherwise subject; *provided* that if such Permitted Pari Passu Secured Refinancing Debt is the initial Permitted Pari Passu Secured Refinancing Debt incurred by the Borrower, then Holdings, the Borrower, the Subsidiary Guarantors, the Administrative Agent and the Senior Representative for such Permitted Pari Passu Secured Refinancing Debt shall have executed and delivered a First Lien Intercreditor

Agreement and (3) if Permitted Junior Secured Refinancing Debt, (x) shall be secured by the Collateral on a second priority (or other junior priority) basis to the Liens securing the Obligations under Term Loans and Revolving Credit Loans required to be secured on a first lien basis and shall not be secured by any property or assets of Holdings, the Borrower or any Restricted Subsidiary other than the Collateral, and (y) shall be subject to the Second Lien Intercreditor Agreement to which a Senior Representative acting on behalf of the holders of such Permitted Junior Secured Refinancing Debt shall have become a party or otherwise subject or other lien subordination or intercreditor arrangement satisfactory to the Borrower and the Administrative Agent, and

(C) shall be incurred solely to repay, repurchase, retire or refinance substantially concurrently the Refinanced Term Loans.

(iii) This Section 2.15 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.16 Extension of Term Loans; Extension of Revolving Credit Loans.

(a) *Extension of Term Loans.* The Borrower may at any time and from time to time request that all or a portion of the Term Loans of a given Class (an “**Existing Term Loan Tranche**”) be amended to extend the scheduled Maturity Date(s) with respect to the Term Loans of such Existing Term Loan Tranche (any such Term Loans which have been so amended, “**Extended Term Loans**”) and to provide for other terms consistent with this Section 2.16. In order to establish any Extended Term Loans, the Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Term Loan Tranche) (each, a “**Term Loan Extension Request**”) setting forth the proposed terms of the Extended Term Loans to be established, which shall (x) be identical as offered to each Lender under such Existing Term Loan Tranche (including as to the proposed interest rates and fees payable, but excluding any arrangement, structuring or other similar fees payable in connection therewith that are not generally shared with all relevant Lenders) and offered pro rata to each Lender under such Existing Term Loan Tranche and (y) be identical to the Term Loans under the Existing Term Loan Tranche from which such Extended Term Loans are intended to be amended, except that: (i) all or any of the scheduled amortization payments of principal of the Extended Term Loans may be delayed to later dates than the scheduled amortization payments of principal of the Term Loans of such Existing Term Loan Tranche, to the extent provided in the applicable Extension Amendment; *provided, however*, that at no time shall there be Classes of Extended Term Loans and Refinancing Term Loans hereunder which have more than five (5) different Maturity Dates; (ii) the All-In Yield with respect to the Extended Term Loans (whether in the form of interest rate margin, upfront fees, original issue discount or otherwise) may be different than the All-In Yield for the Term Loans of such Existing Term Loan Tranche, in each case, to the extent provided in the applicable Extension Amendment; (iii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Term Loans); and (iv) Extended Term Loans may have call protection as may be agreed by the Borrower and the Lenders thereof; *provided*, that no Extended Term Loans may be optionally prepaid prior to the Maturity Date of the Term B Loans, unless such optional

prepayment is accompanied by a pro rata optional prepayment of the Term B Loans; *provided, however*, that (A) no Event of Default shall have occurred and be continuing at the time a Term Loan Extension Request is delivered to Lenders, (B) in no event shall the Maturity Date of any Extended Term Loans of a given Term Loan Extension Series at the time of establishment thereof be earlier than the Maturity Date of the Existing Term Loan Tranche, (C) the Weighted Average Life to Maturity of any Extended Term Loans of a given Term Loan Extension Series at the time of establishment thereof shall be no shorter than the remaining Weighted Average Life to Maturity of the Existing Term Loan Tranche, (D) all documentation in respect of such Extension Amendment shall be consistent with the foregoing and (E) any Extended Term Loans may participate on a pro rata basis or less than or greater than a pro rata basis in any voluntary repayments or prepayments of principal of Term Loans hereunder and on a pro rata basis or less than a pro rata basis (but not greater than a pro rata basis except in the case of a prepayment under Section 2.05(b)(iv) and Section 2.05(b)(vi)(A)(y)), in any mandatory repayments or prepayments of Term Loans hereunder, in each case as specified in the respective Term Loan Extension Request. Any Extended Term Loans amended pursuant to any Term Loan Extension Request shall be designated a series (each, a “**Term Loan Extension Series**”) of Extended Term Loans for all purposes of this Agreement; *provided* that any Extended Term Loans amended from an Existing Term Loan Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Term Loan Extension Series with respect to such Existing Term Loan Tranche (in which case scheduled amortization with respect thereto shall be proportionately increased). Each request for a Term Loan Extension Series of Extended Term Loans proposed to be incurred under this Section 2.16 shall be in an aggregate principal amount that is not less than \$25,000,000 (it being understood that the actual principal amount thereof provided by the applicable Lenders may be lower than such minimum amount) and the Borrower may impose an Extension Minimum Condition with respect to any Term Loan Extension Request, which may be waived by the Borrower in its sole discretion.

(b) *Extension of Revolving Credit Commitments.* The Borrower may at any time and from time to time request that all or a portion of the Revolving Credit Commitments of a given Class (each, an “**Existing Revolver Tranche**”) be amended to extend the Maturity Date with respect to all or a portion of any principal amount of such Revolving Credit Commitments (any such Revolving Credit Commitments which have been so amended, “**Extended Revolving Credit Commitments**”) and to provide for other terms consistent with this Section 2.16. In order to establish any Extended Revolving Credit Commitments, the Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Revolver Tranche) (each, a “**Revolver Extension Request**”) setting forth the proposed terms of the Extended Revolving Credit Commitments to be established, which shall (x) be identical as offered to each Lender under such Existing Revolver Tranche (including as to the proposed interest rates and fees payable, but excluding any arrangement, structuring or other fees payable in connection therewith that are not generally shared with all relevant Lenders) and offered pro rata to each Lender under such Existing Revolver Tranche and (y) be identical to the Revolving Credit Commitments under the Existing Revolver Tranche from which such Extended Revolving Credit Commitments are to be amended, except that: (i) the Maturity Date of the Extended Revolving Credit Commitments may be delayed to a later date than the Maturity Date of the Revolving Credit Commitments of such Existing Revolver Tranche, to the extent provided in the applicable Extension Amendment; *provided, however*, that at no time shall there be Classes of Extended Revolving Credit

Commitments and Refinancing Revolving Credit Commitments hereunder which have more than five (5) different Maturity Dates; (ii) the All-In Yield with respect to extensions of credit under the Extended Revolving Credit Commitments (whether in the form of interest rate margin, upfront fees, original issue discount or otherwise) may be different than the All-In Yield for extensions of credit under the Revolving Credit Commitments of such Existing Revolver Tranche, in each case, to the extent provided in the applicable Extension Amendment; (iii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Revolving Credit Commitments); and (iv) all borrowings under the applicable Revolving Credit Commitments (*i.e.*, the Existing Revolver Tranche and the Extended Revolving Credit Commitments of the applicable Revolver Extension Series) and repayments thereunder shall be made on a pro rata basis (except for (I) payments of interest and fees at different rates on Extended Revolving Credit Commitments (and related outstandings) and (II) repayments required upon the Maturity Date of the non-extending Revolving Credit Commitments); *provided, further*, that (A) no Event of Default shall have occurred and be continuing at the time a Revolver Extension Request is delivered to Lenders, (B) in no event shall the Maturity Date of any Extended Revolving Credit Commitments of a given Revolver Extension Series at the time of establishment thereof be earlier than the then Latest Maturity Date of any other Revolving Credit Commitments hereunder and (C) all documentation in respect of such Extension Amendment shall be consistent with the foregoing. Any Extended Revolving Credit Commitments amended pursuant to any Revolver Extension Request shall be designated a series (each, a “**Revolver Extension Series**”) of Extended Revolving Credit Commitments for all purposes of this Agreement; *provided* that any Extended Revolving Credit Commitments amended from an Existing Revolver Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Revolver Extension Series with respect to such Existing Revolver Tranche. Each request for a Revolver Extension Series of Extended Revolving Credit Commitments proposed to be incurred under this Section 2.16 shall be in an aggregate principal amount that is not less than \$10,000,000 (it being understood that the actual principal amount thereof provided by the applicable Lenders may be lower than such minimum amount).

(c) *Extension Request.* The Borrower shall provide the applicable Extension Request at least five (5) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to the date on which Lenders under the Existing Term Loan Tranche or Existing Revolver Tranche, as applicable, are requested to respond, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.16. No Lender shall have any obligation to agree to have any of its Term Loans of any Existing Term Loan Tranche amended into Extended Term Loans or any of its Revolving Credit Commitments amended into Extended Revolving Credit Commitments, as applicable, pursuant to any Extension Request. Any Lender holding a Loan under an Existing Term Loan Tranche (each, an “**Extending Term Lender**”) wishing to have all or a portion of its Term Loans under the Existing Term Loan Tranche subject to such Extension Request amended into Extended Term Loans and any Revolving Credit Lender (each, an “**Extending Revolving Credit Lender**”) wishing to have all or a portion of its Revolving Credit Commitments under the Existing Revolver Tranche subject to such Extension Request amended into Extended Revolving Credit Commitments, as applicable, shall notify the Administrative Agent (each, an “**Extension Election**”) on or prior to the date specified in such

Extension Request of the amount of its Term Loans under the Existing Term Loan Tranche or Revolving Credit Commitments under the Existing Revolver Tranche, as applicable, which it has elected to request be amended into Extended Term Loans or Extended Revolving Credit Commitments, as applicable (subject to any minimum denomination requirements imposed by the Administrative Agent). In the event that the aggregate principal amount of Term Loans under the Existing Term Loan Tranche or Revolving Credit Commitments under the Existing Revolver Tranche, as applicable, in respect of which applicable Term Lenders or Revolving Credit Lenders, as the case may be, shall have accepted the relevant Extension Request exceeds the amount of Extended Term Loans or Extended Revolving Credit Commitments, as applicable, requested to be extended pursuant to the Extension Request, Term Loans or Revolving Credit Commitments, as applicable, subject to Extension Elections shall be amended to Extended Term Loans or Revolving Credit Commitments, as applicable, on a pro rata basis (subject to rounding by the Administrative Agent, which shall be conclusive) based on the aggregate principal amount of Term Loans or Revolving Credit Commitments, as applicable, included in each such Extension Election.

(d) *Extension Amendment.* Extended Term Loans and Extended Revolving Credit Commitments shall be established pursuant to an amendment (each, a “**Extension Amendment**”) to this Agreement among the Borrower, the Administrative Agent and each Extending Term Lender or Extending Revolving Credit Lender, as applicable, providing an Extended Term Loan or Extended Revolving Credit Commitment, as applicable, thereunder, which shall be consistent with the provisions set forth in Sections 2.16(a) or (b) above, respectively (but which shall not require the consent of any other Lender). The effectiveness of any Extension Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in Section 4.02 and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) legal opinions, board resolutions and officers’ certificates consistent with those delivered on the Closing Date (conformed as appropriate) other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel’s form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that the Extended Term Loans or Extended Revolving Credit Commitments, as applicable, are provided with the benefit of the applicable Loan Documents. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment. Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Extended Term Loans or Extended Revolving Credit Commitments, as applicable, incurred pursuant thereto, (ii) modify the scheduled repayments set forth in Section 2.07 with respect to any Existing Term Loan Tranche subject to an Extension Election to reflect a reduction in the principal amount of the Term Loans required to be paid thereunder in an amount equal to the aggregate principal amount of the Extended Term Loans amended pursuant to the applicable Extension (with such amount to be applied ratably to reduce scheduled repayments of such Term Loans required pursuant to Section 2.07), (iii) modify the prepayments set forth in Section 2.05 to reflect the existence of the Extended Term Loans and the application of prepayments with respect thereto, (iv) address technical issues relating to funding and payments and (v) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.16, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment.

(e) No conversion of Loans pursuant to any Extension in accordance with this Section 2.16 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

Section 2.17 Defaulting Lenders.

(a) *Adjustments*. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; *third*, if so determined by the Administrative Agent or requested by the L/C Issuer or Swing Line Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Swing Line Loan or Letter of Credit; *fourth*, as the Borrower may request (so long as no Default or Event of Default has occurred and is continuing), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or Swing Line Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.17(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender (x) shall not be entitled to receive any commitment fee pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall be limited in its right to receive Letter of Credit fees as provided in Section 2.03(h).

(iv) Reallocation of Pro Rata Share to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Swing Line Loans pursuant to Sections 2.03 and 2.04, the "**Pro Rata Share**" of each Non-Defaulting Lender's Revolving Credit Loans and L/C Obligations shall be computed without giving effect to the Participating Revolving Credit Commitment of that Defaulting Lender; *provided* that (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default or Event of Default has occurred and is continuing; and (ii) the aggregate obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swing Line Loans shall not exceed the positive difference, if any, of (1) the Participating Revolving Credit Commitment of that Non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Loans of that Non-Defaulting Lender under such Participating Revolving Credit Commitments.

(b) *Defaulting Lender Cure*. If the Borrower, the Administrative Agent, Swing Line Lender and each L/C Issuer agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Credit Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Pro Rata Share (without giving effect to Section 2.17(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

**ARTICLE III.
TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY**

Section 3.01 Taxes.

(a) Except as provided in this Section 3.01, any and all payments made by or on account of the Borrower (the term Borrower under Article III being deemed to include any Subsidiary for whose account a Letter of Credit is issued) or Guarantor under any Loan Document shall be made free and clear of and without deduction for any Taxes, except as required by any Law. If the Borrower, any Guarantor or other applicable withholding agent shall be required by any Laws to deduct any Taxes from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (i) if the Tax in question is an Indemnified Tax or Other Tax, the sum payable by the Borrower or any Guarantor shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.01), each Lender (or, in the case of a payment made to an Agent for its own account, such Agent) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions, (iii) the applicable withholding agent shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), if the Borrower or any Guarantor is the applicable withholding agent, it shall furnish to such Agent or Lender (as the case may be) the original or a copy of a receipt evidencing payment thereof or other evidence acceptable to such Agent or Lender.

(b) In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary Taxes and any other excise, property, intangible or mortgage recording Taxes, imposed by any Governmental Authority, which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document excluding, in each case, any such Tax imposed as a result of a Lender's Assignment and Assumption, grant of a participation, transfer or assignment to or designation of a new applicable Lending Office or other office for receiving payments under any Loan Document (collectively, "**Assignment Taxes**"), except for Assignment Taxes resulting from assignment or participation that is requested or required in writing by the Borrower (all such non-excluded Taxes described in this Section 3.01(b) being hereinafter referred to as "**Other Taxes**").

(c) Borrower and each Guarantor agrees to indemnify each Agent and each Lender for (i) the full amount of Indemnified Taxes and Other Taxes payable by such Agent or such Lender (including Indemnified Taxes and Other Taxes imposed on or attributable to amounts payable under this Section 3.01) and (ii) any expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the Governmental Authority. A certificate as to the amount of such payment or liability prepared in good faith and delivered by such Agent or Lender (or by an Agent on behalf of such Lender), accompanied by a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts shall be conclusive absent manifest error.

(d) Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Law or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, any applicable withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation obsolete or inaccurate in any material respect, deliver promptly and on or before the date such documentation expires, becomes obsolete or inaccurate to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding Tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the applicable withholding agent shall withhold amounts required to be withheld by applicable Law from such payments at the applicable statutory rate. Notwithstanding any other provision of this clause (d), a Lender shall not be required to deliver any form pursuant to this clause (d) that such Lender is not legally eligible to deliver. Without limiting the foregoing:

(i) Each Lender that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed original copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding.

(ii) Each Lender that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(A) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party,

(B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Sections 871(h) or 881(c) of the Code, (A) a certificate substantially in the form of Exhibit H hereto (any such certificate a “**United States Tax Compliance Certificate**”) and (B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms),

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a Participant holding a participation granted by a participating Lender), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, W-8BEN-E United States Tax Compliance Certificate, Form W-9, Form W-8IMY or any other required information from each beneficial owner, as applicable (*provided* that, if the Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such partner(s)), or

(E) two properly completed and duly signed original copies of any other form prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, U.S. federal withholding tax on any payments to such Lender under the Loan Documents.

(iii) Each Agent that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent two properly completed and duly signed original copies of Internal Revenue Service Form W-9 with respect to fees received for its own account, certifying that such Agent is exempt from U.S. federal backup withholding. Each Agent that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent two properly completed and duly signed original copies of (A) Internal Revenue Service Form W-8ECI with respect to fees received for its own account and (B) Internal Revenue Service Form W-8IMY (together with all required accompanying documentation) with respect to payments received by it on behalf of the Lenders. Notwithstanding anything to the contrary in this Section 3.01(d)(iii), no Agent shall be required to deliver any documentation that such Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

(e) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Laws and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Laws and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has or has not complied with such Lender's obligations under FATCA and, if necessary, to determine the amount to deduct and withhold from such payment. For purposes of this clause (e), the term "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Any Lender or Agent claiming any additional amounts payable pursuant to this Section 3.01 shall use its reasonable efforts to mitigate or reduce the additional amounts payable, which reasonable efforts may include a change in the jurisdiction of its Lending Office (or any other measures reasonably requested by the Borrower) if such a change or other measures would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, result in any unreimbursed cost or expense or be otherwise disadvantageous to such Lender.

(g) If any Lender or Agent determines, in its sole discretion, that it has received a refund in respect of any Indemnified Taxes or Other Taxes as to which indemnification or additional amounts have been paid to it by a Loan Party pursuant to this Section 3.01, it shall promptly remit such refund to such Loan Party (but only to the extent of indemnification or additional amounts paid by the Loan Party under this Section 3.01(g) with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) of the Lender or Agent, as the case may be, and without interest (other than any interest paid by the relevant taxing authority with respect to such refund net of any Taxes payable by any Agent or Lender on such interest); *provided* that the Loan Parties, upon the request of the Lender or Agent, as the case may be, agree promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant taxing authority) to such party in the event such party is required to repay such refund to the relevant taxing authority. This Section 3.01(g) shall not be construed to require any Agent or any Lender to make available its tax returns (or any other information relating to Taxes that it deems confidential) to the Borrower or any other Person.

(h) For the avoidance of doubt, the term "Lender" shall, for purposes of this Section 3.01 and the definition of "Indemnified Taxes", include any L/C Issuer and any Swing Line Lender.

Section 3.02 Illegality.

If any Lender reasonably determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans, or to determine or charge interest rates based upon the Eurocurrency Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Loans to Eurocurrency Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all applicable Eurocurrency Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or

charge interest rates based upon the Eurocurrency Rate. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment and conversion.

Section 3.03 Inability to Determine Rates.

If the Required Lenders reasonably determine that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that (a) deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount, currency and Interest Period of such Eurocurrency Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan or in connection with an existing or proposed Base Rate Loan, or (c) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Section 3.04 Increased Cost and Reduced Return; Capital Adequacy; Eurocurrency Rate Loan Reserves.

(a) If any Lender reasonably determines that as a result of a Change in Law, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining Eurocurrency Rate Loans or (as the case may be) issuing or participating in Letters of Credit, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (including any Taxes (other than (i) Indemnified Taxes or Other Taxes or (ii) Taxes excluded from the definition of Indemnified Taxes (other than Taxes excluded solely under clause (ii) thereof)), including by imposing, modifying or holding applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, and excluding for purposes of this Section 3.04(a) any such increased costs or reduction in amount resulting from reserve requirements contemplated by Section 3.04(b) or the definition of Eurocurrency Rate), then from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by it, or participations in or issuance of Letters of Credit by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity and such Lender's desired return on capital), then from time to time upon demand of such Lender (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender, as the case may be, within fifteen (15) days after demand by such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, additional interest on the unpaid principal amount of each applicable Eurocurrency Rate Loan of the Borrower equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financing regulatory authority imposed in respect of the maintenance of the Commitments or the funding of any Eurocurrency Rate Loans of the Borrower, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrower shall have received at least fifteen (15) days' prior notice (with a copy to the Administrative Agent) of such additional interest or cost from such Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such notice.

Section 3.05 Funding Losses.

Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense actually incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Eurocurrency Rate Loan of the Borrower on a day other than the last day of the Interest Period for such Loan; or

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurocurrency Rate Loan of the Borrower on the date or in the amount notified by the Borrower; including any loss or expense (excluding loss of anticipated profits or margin) arising from the liquidation or reemployment of funds obtained by it to maintain such Eurocurrency Rate Loan or from fees payable to terminate the deposits from which such funds were obtained.

Section 3.06 Matters Applicable to All Requests for Compensation.

(a) If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or issuing Letters of Credit hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect; *provided* nothing in this Section 3.06(a) shall affect or postpone any Obligations of the Borrower or the rights of the Lenders under this Article III.

(b) If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue Eurocurrency Rate Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into Eurocurrency Rate Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(d) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of Section 3.01, 3.02, 3.03 or 3.04 shall not constitute a waiver of such Lender's right to demand such compensation, *provided* that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of Section 3.01, 3.02, 3.03 or 3.04 for any increased costs incurred or reductions suffered more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event giving rise to such claim and of such Lender's intention to claim compensation therefor (except that, if the circumstance giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

(d) If the obligation of any Lender to make or continue any Eurocurrency Rate Loan or to convert Base Rate Loans into Eurocurrency Rate Loans shall be suspended pursuant to Section 3.06(b) hereof, such Lender's applicable Eurocurrency Rate Loans shall be automatically converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for such Eurocurrency Rate Loans (or, in the case of any immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurocurrency Rate Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's applicable Eurocurrency Rate Loans shall be applied instead to its Base Rate Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurocurrency Rate Loans shall be made or continued instead as Base Rate Loans (if possible), and all Base Rate Loans of such Lender that would otherwise be converted into Eurocurrency Rate Loans shall remain as Base Rate Loans.

(e) If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of any of such Lender's Eurocurrency Rate Loans pursuant to this Section 3.06 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurocurrency Rate Loans made by other Lenders under the applicable Facility are outstanding, if applicable, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurocurrency Rate Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurocurrency Rate Loans under such Facility and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments for the applicable Facility.

(f) Any Agent or Lender claiming compensation under this Article III shall deliver a certificate to the Borrower setting forth in reasonable detail the additional amount or amounts to be paid to it hereunder, which shall be conclusive on the absence of manifest error. In determining such amounts, such Agent or Lender may use any reasonable averaging and attribution methods. Any Agent or Lender claiming compensation under Section 3.04 shall do so only to the extent such Agent or Lender requires similarly situated borrowers under comparable credit facilities to pay such amounts.

Section 3.07 Replacement of Lenders under Certain Circumstances. If (i) any Lender ceases to make Eurocurrency Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, (iii) any Lender is a Non-Consenting Lender, (iv) any Lender becomes a Defaulting Lender, or (v) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement (or, with respect to clause (iii) above, all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver and amendment) and the related Loan Documents to one or more Eligible Assignees (provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person) that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided* that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.07(b)(ii)(B);

(b) such Lender shall have received payment of an amount equal to the applicable outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower;

(c) such Lender being replaced pursuant to this Section 3.07 shall (1) execute and deliver an Assignment and Assumption with respect to all, or a portion as applicable, of such Lender's Commitment and outstanding Loans and participations in L/C Obligations and Swing Line Loans, and (2) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); *provided* that the failure of any such Lender to execute an Assignment and Assumption or deliver such Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment may be recorded in the Register and the Notes shall be deemed to be canceled upon such failure;

(d) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender;

(e) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(f) such assignment shall not conflict with applicable Laws;

(g) any Lender that acts as an L/C Issuer may not be replaced hereunder at any time when it has any Letter of Credit outstanding hereunder unless arrangements reasonably satisfactory to such L/C Issuer (including the furnishing of a back-up standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such L/C Issuer or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to such L/C Issuer) have been made with respect to each such outstanding Letter of Credit; and

(h) the Lender that acts as the Administrative Agent cannot be replaced in its capacity as Administrative Agent other than in accordance with Section 9.06,

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each affected Lender or all the Lenders with respect to a certain Class or Classes of the Loans and/or Commitments and (iii) the Required Lenders (or, in the case of a consent, waiver or amendment involving all affected Lenders of a certain Class, the Required Class Lenders) have agreed (but solely to the extent required by Section 10.01) to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "**Non-Consenting Lender.**"

In connection with any such replacement, (i) if the Lender to be replaced is a Non-Consenting Lender, the Borrower shall pay to each Non-Consenting Lender, concurrently with the effectiveness of the respective assignment, the fee set forth in Section 2.05(a)(vi) to the extent applicable and (ii) if any such Non-Consenting Lender or Defaulting Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Assumption reflecting such replacement within five (5) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Assumption Agreement to such Non-Consenting Lender or Defaulting Lender, then such Non-Consenting Lender or Defaulting Lender shall be deemed to have executed and delivered such Assignment and Assumption without any action on the part of the Non-Consenting Lender or Defaulting Lender.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 3.08 Survival.

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, resignation of the Administrative Agent and any assignment of rights by, or replacement of, any Lender.

**ARTICLE IV.
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

Section 4.01 Conditions to Initial Credit Extension.

The obligation of each Lender to make a Credit Extension hereunder on the Closing Date is subject to satisfaction of the following conditions precedent, except as otherwise agreed between the Borrower and the Administrative Agent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or pdf copies or other facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party:

(i) a Committed Loan Notice in accordance with the requirements hereof;

(ii) executed counterparts of this Agreement;

(iii) a Note executed by the Borrower in favor of each Lender that has requested a Note at least two (2) Business Days in advance of the Closing Date;

(iv) the Security Agreement, Perfection Certificate, Intellectual Property Security Agreement and each other Collateral Document required to be executed on the Closing Date, duly executed by each Loan Party thereto, together with:

(A) certificates, if any, representing the Pledged Equity referred to therein accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank; and

(B) evidence that all other actions, recordings and filings required by the Collateral Documents (other than the filing or recording of any Mortgages) that the Administrative Agent may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been taken, completed or otherwise provided for;

(v) such certificates of good standing (to the extent such concept exists) from the applicable secretary of state of the state of organization of each Loan Party, certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Closing Date;

(vi) an opinion from Weil, Gotshal & Manges LLP, counsel to the Loan Parties, in customary form;

(vii) a solvency certificate from the chief financial officer, chief accounting officer or other officer with duties of the Borrower (after giving effect to the Transactions) substantially in the form attached hereto as Exhibit D-2;

(viii) evidence that the Administrative Agent has been named as loss payee and/or additional insured, as applicable, under each insurance policy with respect to all insurance as to which the Administrative Agent shall have reasonably requested to be so named; and

(ix) a copy of the Second Lien Intercreditor Agreement, duly executed and delivered by each party thereto;

provided, however, that, each of the requirements set forth in clauses (iv) and (ix) above, including the delivery of documents and instruments necessary to satisfy the Collateral and Guarantee Requirement (except for the execution and delivery of the Security Agreement and to the extent that a Lien on the Collateral may be perfected (x) by the filing of a financing statement under the Uniform Commercial Code or (y) by the delivery of stock certificates of the Borrower and the Subsidiary Guarantors with respect to which a Lien may be perfected upon closing by the delivery of a stock certificate), shall not constitute conditions precedent to any Credit Extension on the Closing Date after the Borrower's use of commercially reasonable efforts to satisfy such requirement on or prior to the Closing Date without undue burden or expense (1) if the Borrower agrees to deliver, or cause to be delivered, such evidence of insurance, documents and instruments, or take or cause to be taken such other actions as may be required to confirm such insurance or perfect such security interests within ninety (90) days after the Closing Date (subject to extensions approved by the Administrative Agent in its reasonable discretion) or (2) other than with respect to the Borrower and Holdings, if the delivery of such documents and instruments cannot be provided as a condition precedent solely because the Board of Directors of the applicable entities (each such entity, a "**Deferred Loan Party**") have not authorized such documents or instruments (such documents and instruments, the "**Duly Authorized Documents**") and the elections of new directors or managers, as the case may be, of the applicable Deferred Loan Party's Board of Directors, to authorize such documents or instruments has not taken place.

(b) Payment of all fees and expenses due to the Administrative Agent and the Arrangers, to the extent invoiced at least three (3) Business Days prior to the Closing Date (except as otherwise reasonably agreed by the Borrower), required to be paid on the Closing Date.

(c) Prior to or substantially concurrently with the initial Borrowing on the Closing Date, (i) the Equity Contribution shall have been consummated; (ii) the initial borrowing under the Second Lien Credit Agreement shall have been consummated; (iii) the Merger shall have been consummated in accordance with the terms of the Merger Agreement, and the Merger Agreement shall not have been amended or waived, and no consents shall have been given with respect thereto, in any material respect by the Borrower or any of its Subsidiaries in a manner materially adverse to the Lenders or the Arrangers (in each case in their capacity as such) without the consent of the Arrangers (such consent not to be unreasonably withheld, conditioned or delayed); *provided* that (a) any amendment, waiver or consent that results in a change in the amount of consideration required to consummate the Merger shall be deemed not to be materially adverse to the Lenders or the Arrangers so long as (i) any reduction shall be applied as follows: (1) 70% to reduce the commitments in respect of Term B Loans and the Second Lien Initial Term Loans on a pro rata basis and (2) 30% to reduce the Equity Contribution, and (ii) any increase is funded by amounts permitted to be drawn under the Initial Revolving Credit Commitments or the Equity Contribution (as the Equity Contribution may be increased), (b) the granting of any consent under the Merger Agreement that is not materially adverse to the interests of the Lenders or the Arrangers shall not otherwise constitute an amendment or waiver and (c) any change to the definition of "Material Adverse Change" in the Merger Agreement shall be deemed materially adverse to the Lenders and the Arrangers; and (v) the Refinancing shall have been consummated.

(d) There shall not have occurred a Material Adverse Change (as defined in, and interpreted pursuant to, the Merger Agreement) since the date of the Merger Agreement.

(e) The Specified Representations shall be true and correct in all material respects and a Responsible Officer of the Borrower shall have certified as to the same.

(f) The Arrangers shall have received the Audited Financial Statements.

(g) The Administrative Agent shall have received, at least two (2) days prior to the Closing Date, all documentation and other information about the Borrower and the Guarantors required under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act, that has been requested by the Administrative Agent in writing at least ten (10) days prior to the Closing Date.

(h) The Specified Merger Agreement Representations shall be true and correct in all material respects, but only to the extent the failure of the Specified Merger Agreement Representations to be true and correct in all material respects gives the Merger Sub (or its applicable Affiliate) the right to terminate its obligation to consummate (or gives the Merger Sub (or its applicable Affiliate) the right not to consummate) the Acquisition under the Merger Agreement.

Without limiting the generality of the provisions of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.02 Conditions to All Credit Extensions after the Closing Date.

The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) after the Closing Date is subject to the following conditions precedent:

(i) The representations and warranties of each Loan Party set forth in Article V and in each other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(ii) No Default shall exist or would result from such proposed Credit Extension or from the application of the proceeds therefrom.

(iii) The Administrative Agent and, if applicable, the relevant L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by the Borrower after the Closing Date shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(i) and (ii) have been satisfied on and as of the date of the applicable Credit Extension.

**ARTICLE V.
REPRESENTATIONS AND WARRANTIES**

The Borrower and each of the Subsidiary Guarantors party hereto represent and warrant to the Agents and the Lenders at the time of each Credit Extension (to the extent required to be true and correct for such Credit Extension pursuant to Article IV) that:

Section 5.01 Existence, Qualification and Power; Compliance with Laws.

Each Loan Party and each Restricted Subsidiary that is a Material Subsidiary (a) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concept exists in such jurisdiction), (b) has all requisite power and authority to (i) own or lease its assets and carry on its business as currently conducted and (ii) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and in good standing (to the extent such concept exists in such jurisdiction) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all applicable Laws, orders, writs and injunctions and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case referred to in clause (a) (other than with respect to Holdings and the Borrower), (b)(i) (other than with respect to Holdings and the Borrower), (c), (d) or (e), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.02 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transactions, (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01), or require any payment to be made under (x) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject or (iii) violate any Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) (A) referred to in clauses (ii) and (iii), to the extent that such violation, conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect and (B) solely for purposes of Section 4.01, (x) clause (iii) shall be limited to any violation of applicable Law that would result in a Company Material Adverse Effect and (y) clause (i) shall be limited to a contravention arising out of the execution, delivery and performance of the Loan Documents.

Section 5.03 Governmental Authorization; Other Consents.

No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor

of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement) and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect.

Section 5.04 Binding Effect.

This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is a party thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by (i) Debtor Relief Laws and by general principles of equity principles of good faith and fair dealing, and (ii) the need for filings and registrations necessary to create or perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties and (iii) the effect of foreign Laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

Section 5.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements fairly present in all material respects the financial condition of the Portillo Restaurant Group as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(b) The Unaudited Financial Statements fairly present in all material respects the financial condition of the Persons referred to therein as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except (i) as otherwise expressly noted therein and (ii) to normal year-end audit adjustments, the absence of footnotes and other presentation items.

(c) The forecasts of consolidated balance sheets, income statements and cash flow statements of the Borrower and its Subsidiaries for each of the fiscal years ending July 31, 2015 through July 31, 2021, copies of which have been furnished to the Administrative Agent prior to the Closing Date, and all Projections delivered pursuant to Section 6.01 have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made, it being understood that projections as to future events are not to be viewed as facts and actual results may vary materially from such forecasts.

(d) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

Section 5.06 Litigation.

Except as set forth in Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Restricted Subsidiaries or against any of their properties or revenues (other than actions, suits, proceedings and claims in connection with the Transactions) that either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.07 Ownership of Property; Liens.

The Borrower and each of its Restricted Subsidiaries has good record title to, or valid leasehold interests in, or easements or other limited property interests in, all Real Property necessary in the ordinary conduct of its business, free and clear of all Liens except as set forth in Schedule 5.07 and except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted by Section 7.01 and except where the failure to have such title or other interest could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.08 Environmental Matters.

Except as specifically disclosed in Schedule 5.08 or except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) each Loan Party and its respective properties and operations are in compliance with all Environmental Laws, which includes obtaining and maintaining all applicable Environmental Permits required under such Environmental Laws to carry on the business of the Loan Parties;

(b) the Loan Parties have not received any written notice that alleges any of them is in violation of or potentially liable under any Environmental Laws and none of the Loan Parties nor any of the Real Property is the subject of any claims, investigations, liens, demands, or judicial, administrative or arbitral proceedings pending or, to the knowledge of the Borrower, threatened in writing, under any Environmental Law the effect of which would be to impose liability on any Loan Party under such Environmental Law or to revoke or modify any Environmental Permit held by any of the Loan Parties; and

(c) there has been no Release of Hazardous Materials on, at, under or from any Real Property or facilities owned, operated or leased by any of the Loan Parties, or, to the knowledge of the Borrower, Real Property formerly owned, operated or leased by any Loan Party that, in any case, could reasonably be expected to require the Borrower to perform any investigation, remedial activity or corrective action or cleanup under Environmental Laws or could otherwise reasonably be expected to result in the Borrower incurring liability under Environmental Laws.

Section 5.09 Taxes.

Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Borrower and its Restricted Subsidiaries have timely filed all tax returns required to be filed by them, and have paid all Taxes levied or imposed upon them or their properties, income, profits or assets, that are due and payable (including in their capacity as a withholding agent), except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax deficiency or assessment known to any Loan Parties against the Loan Parties that, if made would, individually or in the aggregate, have a Material Adverse Effect.

Section 5.10 ERISA Compliance.

(a) Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other applicable Federal or state Laws.

(b) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); and (iii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan, except, with respect to each of the foregoing clauses of this Section 5.10(b), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.11 Subsidiaries; Equity Interests.

As of the Closing Date (after giving effect to the Transactions), no Loan Party has any Material Subsidiaries other than those specifically disclosed in Schedule 5.11, and all of the outstanding Equity Interests owned by the Loan Parties (or a Subsidiary of any Loan Party) in such Material Subsidiaries have been validly issued and are fully paid and all Equity Interests owned by a Loan Party (or a Subsidiary of any Loan Party) in such Material Subsidiaries are owned free and clear of all Liens except (i) those created under the Collateral Documents and (ii) any Lien that is permitted under Section 7.01. As of the Closing Date, Schedules 1(a) and 5(a) to the Perfection Certificate (a) set forth the name and jurisdiction of each Domestic Subsidiary that is a Loan Party, (b) set forth the ownership interest of the Borrower and any other Subsidiary thereof in each Subsidiary, including the percentage of such ownership and (c) identifies each Subsidiary that is a Subsidiary the Equity Interests of which are required to be pledged on the Closing Date pursuant to the Collateral and Guarantee Requirement.

Section 5.12 Margin Regulations; Investment Company Act.

(a) The Borrower is not engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings or drawings under any Letter of Credit will be used for any purpose that violates Regulation U of the Board of Governors of the United States Federal Reserve System.

(b) Neither the Borrower nor any of its Restricted Subsidiaries is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 5.13 Disclosure.

No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, *pro forma* financial information and information of a general economic or industry nature) to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not materially misleading. With respect to projected financial information and *pro forma* financial information, the Borrower represents that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

Section 5.14 Labor Matters.

Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against the Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened and (b) hours worked by and payments made to employees of the Borrower or any of its Restricted Subsidiaries have been in compliance with the Fair Labor Standards Act or any other applicable Laws dealing with such matters.

Section 5.15 Intellectual Property; Licenses, Etc.

The Borrower and its Restricted Subsidiaries own, license or possess the right to use all of the trademarks, service marks, trade names, domain names, copyrights, patents, patent rights, licenses, technology, software, know-how database rights, design rights and other intellectual property rights (collectively, "**IP Rights**") that are reasonably necessary for the operation of their respective businesses as currently conducted, and such IP Rights do not conflict with the rights of any Person, except to the extent the absence of such IP Rights and such conflicts, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower and its Restricted Subsidiaries as currently conducted does not infringe upon any rights held by any Person except for such infringements, individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the IP Rights is pending or, to the knowledge of the Borrower, threatened in writing against any Loan Party or any of the Restricted Subsidiaries, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.16 Solvency.

On the Closing Date, after giving effect to the Transactions, the Borrower and its Restricted Subsidiaries, on a consolidated basis, are Solvent.

Section 5.17 Subordination of Junior Financing.

The Obligations under any Facility are (a) “Senior Debt,” “Senior Indebtedness,” “Guarantor Senior Debt” or “Senior Secured Financing” (or any comparable term) under, and as defined in, any Junior Financing Documentation in respect of any Junior Financing that is subordinated in right of payment to the Obligations under such Facility and (b) “First Lien Credit Agreement Obligations” or any comparable term under, and as defined in, the Second Lien Intercreditor Agreement (except to the extent pari passu or junior in priority to the “Second Priority Debt Obligations” (as defined in the Second Lien Intercreditor Agreement)).

Section 5.18 USA Patriot Act, Anti-Corruption Laws and Sanctions.

(a) To the extent applicable, each of Holdings and its Subsidiaries is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the USA Patriot Act.

(b) (i) No part of the proceeds of the Loans (or any Letters of Credit) will be used directly or, to the knowledge of Holdings and its Subsidiaries, indirectly, (A) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”) or (B) except as would not reasonably be expected to have a Material Adverse Effect, in violation of any other Anti-Corruption Laws and (ii) Holdings, its Subsidiaries and, to the knowledge of Holdings or such Subsidiary, their respective directors, officers and employees, are currently in compliance with (A) the FCPA in all material respects and (B) except as would not reasonably be expected to have a Material Adverse Effect, any other Anti-Corruption Laws.

(c) (i) None of Holdings or its Subsidiaries will directly or, to the knowledge of Holdings or such Subsidiary, indirectly, use the proceeds of the Loans in violation of applicable Sanctions or otherwise knowingly make available such proceeds to any Person for the purpose of financing the activities of any Sanctioned Person, except to the extent licensed, exempted or otherwise approved by a competent governmental body responsible for enforcing such Sanctions, (ii) none of Holdings, any Subsidiary or to the knowledge of Holdings or such Subsidiary, their respective directors, officers or employees or, to the knowledge of the Borrower, any controlled Affiliate of Holdings, the Borrower or its Subsidiaries that will act in any capacity in connection with or benefit from any Facility, is a Sanctioned Person and (iii) none of Holdings, its Subsidiaries or, to the knowledge of Holdings or such Subsidiary, their respective directors, officers and employees, are in violation of applicable Sanctions in any material respect.

Section 5.19 Security Documents.

Except as otherwise contemplated hereby or under any other Loan Documents, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents (including the delivery to the Administrative Agent of any Pledged Debt and any Pledged Equity required to be delivered pursuant to the applicable Collateral Documents), are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties, except as otherwise provided hereunder, including subject to Liens permitted by Section 7.01, a legal, valid, enforceable and perfected first priority Lien on all right, title and interest of the respective Loan Parties in the Collateral described therein.

Notwithstanding anything herein (including this Section 5.19) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty as to (A) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (C) on the Closing Date and until required pursuant to Section 6.11 or 4.01(a)(iv), the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Closing Date pursuant to Section 4.01(a)(iv).

**ARTICLE VI.
AFFIRMATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements as to which arrangements reasonably satisfactory to the applicable Hedge Bank have been made) hereunder which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or such Letter of Credit has been deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer), then from and after the Closing Date, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.15) cause each of its Restricted Subsidiaries to:

Section 6.01 Financial Statements.

Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) commencing with the fiscal year ending December 31, 2014, within one hundred fifty (150) days after the end of each of the fiscal years of the Borrower ending December 31, 2014 and December 31, 2015, and one hundred twenty (120) days after the end of each fiscal year of the Borrower thereafter, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of comprehensive income, shareholders' equity and cash flows for such fiscal year, setting forth in each case commencing with the fiscal year ending December 31, 2015, in comparative form the figures for

the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an accounting firm, which accounting firm shall, commencing with the fiscal year ending December 31, 2015, be an independent registered public accounting firm of nationally recognized standing, which report and opinion (i) shall be prepared in accordance with generally accepted auditing standards and (ii) shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit (except as may be required as a result of (x) a prospective Event of Default with respect to the Financial Covenant, (y) an actual Event of Default with respect to the Financial Covenant or (z) the impending maturity of any Facility, any Incremental Equivalent Debt, any Refinancing Equivalent Debt, the Second Lien Term Loans, any Second Lien Incremental Equivalent Debt or any Second Lien Refinancing Equivalent Debt);

(b) commencing with the fiscal quarter ending September 30, 2014, within seventy-five (75) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter and the related (i) consolidated statements of comprehensive income for such fiscal quarter and for the portion of the fiscal year then ended and (ii) consolidated statements of cash flows for the portion of the fiscal year then ended, setting forth in each case commencing with the fiscal quarter ending September 30, 2015 in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) no later than one hundred fifty (150) days after the end of the fiscal year ending December 31, 2015 and within one-hundred twenty (120) days after the end of each subsequent fiscal year, a reasonably detailed consolidated budget for the then-current fiscal year on a quarterly basis (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal year and the related consolidated statements of projected cash flow and projected income for such fiscal year and a summary of the material underlying assumptions applicable thereto) (collectively, the “**Projections**”), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such Projections, it being understood that actual results may vary from such Projections and that such variations may be material; and

(d) simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 6.01(a) and 6.01(b) above, the related unaudited consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from such consolidated financial statements.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 6.01 may be satisfied with respect to financial information of the Borrower and the Restricted Subsidiaries by furnishing (A) the applicable financial statements of Holdings (or any direct or indirect parent of Holdings) or (B) the Borrower's or Holdings' (or any direct or indirect parent thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that, with respect to clauses (A) and (B), (i) to the extent such information relates to Holdings (or a parent thereof), such information is accompanied by unaudited consolidating information that explains in reasonable detail the differences between the information relating to Holdings (or such direct or indirect parent thereof), on the one hand, and the information relating to the Borrower and its consolidated Restricted Subsidiaries on a standalone basis, on the other hand and (ii) to the extent such information is in lieu of information required to be provided under Section 6.01(a), such materials are, to the extent applicable, accompanied by a report and opinion of any accounting firm, which accounting firm shall, commencing with the fiscal year ending December 31, 2015, be an independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (except as may be required as a result of (x) a prospective Event of Default with respect to the Financial Covenant, (y) an actual Event of Default with respect to the Financial Covenant or (z) the impending maturity of any Facility, any Incremental Equivalent Debt, any Refinancing Equivalent Debt, the Second Lien Term Loans, any Second Lien Incremental Equivalent Debt or any Second Lien Refinancing Equivalent Debt).

Any financial statement required to be delivered pursuant to Section 6.01(a) or (b) shall not be required to include acquisition accounting adjustments relating to the Transactions or any Permitted Acquisition to the extent it is not practicable to include any such adjustments in such financial statement.

Documents required to be delivered pursuant to Section 6.01 and Section 6.02(b) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower (or any direct or indirect parent of the Borrower) posts such documents, or provides a link thereto on the website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on IntraLinks or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that (i) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents (which may be electronic copies delivered via electronic mail) to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(a) to the Administrative Agent (which may be electronic copies delivered via electronic mail). Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks, DebtDomain, SyndTrak or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Subsidiaries, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (*provided, however*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.08); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Administrative Agent and the Arranger shall treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark the Borrower Materials "PUBLIC."

Section 6.02 Certificates; Other Information.

Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) no later than five (5) days after the delivery of the financial statements referred to in Section 6.01(a) and (b) a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower;

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(c) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), (i), in the case of annual Compliance Certificates only, a report setting forth the information required by those sections of the Perfection Certificate describing the legal name and the jurisdiction of formation of each Loan Party and the location of the chief executive office of each Loan Party or confirming that there has been no change in such information since the Closing Date or, if later, the date of the last such report and (ii) a list of each Subsidiary of the

Borrower that identifies each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such Compliance Certificate (to the extent that there have been any changes in the identity or status as a Restricted Subsidiary or Unrestricted Subsidiary of any such Subsidiaries since the later of the Closing Date or the most recent list provided); and

(d) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Loan Parties or any of their respective Restricted Subsidiaries, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request.

Section 6.03 Notices.

Promptly after a Responsible Officer of the Borrower has obtained actual knowledge thereof, notify the Administrative Agent:

(a) of the occurrence of any Default;

(b) of the occurrence of an ERISA Event which could reasonably be expected to result in a Material Adverse Effect; and

(c) of the filing or commencement of, or any written threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority against the Borrower or any of its Restricted Subsidiaries, that could in each case reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to Section 6.03(a), (b) or (c) (as applicable) and (y) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04 Payment of Taxes.

Pay, discharge or otherwise satisfy, as the same shall become due and payable in the normal conduct of its business, all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (a) any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP or (b) the failure to pay or discharge the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization, and

(b) take all reasonable action to maintain all rights, privileges (including its good standing where applicable in the relevant jurisdiction), permits, licenses and franchises material to the ordinary conduct of its business,

except, in the case of clause (a) (other than with respect to the Borrower) or (b), to the extent (i) that failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (ii) pursuant to any merger, consolidation, liquidation, dissolution or Disposition permitted by Article VII.

Section 6.06 Maintenance of Properties.

Except if the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and fire, casualty or condemnation excepted.

Section 6.07 Maintenance of Insurance.

Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons. Each such policy of insurance shall as appropriate (i) name the Administrative Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interest may appear or (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement that names the Administrative Agent, on behalf of the Secured Parties, as loss payee thereunder. If the improvements on any Mortgaged Property are at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then, to the extent required by applicable Flood Insurance Laws, the Borrower shall, or shall cause each Loan Party to, (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount reasonably satisfactory to the Administrative Agent and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent.

Section 6.08 Compliance with Laws.

Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.09 Books and Records.

Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP and which reflect all material financial transactions and matters involving the assets and business of the Borrower or a Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

Section 6.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* that only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year and only one (1) such time shall be at the Borrower's expense; *provided, further*, that during the continuance of an Event of Default, the Administrative Agent (or any of its respective representatives or independent contractors), on behalf of the Lenders, may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 6.10, none of the Borrower or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (c) is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 6.11 Additional Collateral; Additional Guarantors.

At the Borrower's expense, subject to the limitations and exceptions of this Agreement, including, without limitation, the provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(a) Upon the formation or acquisition of any new direct or indirect wholly owned Material Domestic Subsidiary (in each case, other than an Excluded Subsidiary) by any Loan Party or the designation in accordance with Section 6.14 of any existing direct or indirect wholly owned Material Domestic Subsidiary as a Restricted Subsidiary (in each case, other than an Excluded Subsidiary) or any Subsidiary becoming a wholly owned Material Domestic Subsidiary (in each case, other than an Excluded Subsidiary):

(i) within sixty (60) days after such formation, acquisition or designation or such a Subsidiary so becoming a Material Domestic Subsidiary, or such longer period as the Administrative Agent may agree in its discretion:

(A) cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Administrative Agent, other than with respect to any Excluded Assets, joinders to this Agreement as Guarantors, Security Agreement Supplements, Intellectual Property Security Agreements, a counterpart of the Intercompany Note, joinders to the Intercreditor Agreements then in effect and other security agreements and documents as reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent (consistent with the Security Agreement, Intellectual Property Security Agreements and other security agreements in effect on the Closing Date), in each case granting Liens required by the Collateral and Guarantee Requirement;

(B) cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement (and the parent of each such Material Domestic Subsidiary that is a Guarantor) to deliver any and all certificates representing Equity Interests (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement or the Security Agreement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(C) take and cause such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement and the parent of such Material Domestic Subsidiary to take whatever action (including the recording of Mortgages, the filing of UCC financing statements and delivery of stock and membership interest certificates to the extent certificated) as may be required pursuant to the terms of the Collateral Documents or as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and perfected first priority Liens (subject to Liens permitted by Section 7.01) to the extent required by the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement;

(ii) if reasonably requested by the Administrative Agent, within sixty (60) days after such request (or such longer period as the Administrative Agent may agree in its discretion), deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties to the Administrative Agent as to such matters set forth in this Section 6.11(a) as the Administrative Agent may reasonably request;

(iii) as promptly as practicable after the request therefor by the Administrative Agent, deliver to the Administrative Agent with respect to each Material Real Property, any existing title reports, abstracts or environmental assessment reports, to the extent available and in the possession or control of the Borrower; *provided, however*, that there shall be no obligation to deliver to the Administrative Agent any existing environmental assessment report whose disclosure to the Administrative Agent would require the consent of a Person other than the Borrower or one of its Subsidiaries, where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained; and

(iv) if reasonably requested by the Administrative Agent, within sixty (60) days after such request (or such longer period as the Administrative Agent may agree in its discretion), deliver to the Administrative Agent any other items necessary from time to time to satisfy the Collateral and Guarantee Requirement with respect to perfection and existence of security interests with respect to property of any Guarantor acquired after the Closing Date and subject to the Collateral and Guarantee Requirement, but not specifically covered by the preceding clauses (i), (ii) or (iii) or clause (b) below.

(b) Not later than one hundred twenty (120) days after the acquisition by any Loan Party of Material Real Property as determined by the Borrower (acting reasonably and in good faith) (or such longer period as the Administrative Agent may agree in its discretion) that is required to be provided as Collateral pursuant to the Collateral and Guarantee Requirement, which property would not be automatically subject to another Lien pursuant to pre-existing Collateral Documents, cause such property to be subject to a Lien and Mortgage in favor of the Administrative Agent for the benefit of the Secured Parties and take, or cause the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect or record such Lien, in each case to the extent required by, and subject to the limitations and exceptions of this Agreement, including, without limitation, the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement.

Section 6.12 Compliance with Environmental Laws.

Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and, in each case to the extent the Loan Parties are required by applicable Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with applicable Environmental Laws.

Section 6.13 Further Assurances.

Promptly upon reasonable request by the Administrative Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all

such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents, to the extent required pursuant to the Collateral and Guarantee Requirement. If the Administrative Agent reasonably determines that it is required by applicable Law to have appraisals prepared in respect of the Real Property of any Loan Party subject to a mortgage constituting Collateral, the Borrower shall provide to the Administrative Agent appraisals that satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of FIRREA.

Section 6.14 Designation of Subsidiaries. The Borrower may at any time after the Closing Date designate any Restricted Subsidiary of the Borrower as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that (i) immediately before and after such designation, no Default shall have occurred and be continuing, (ii) in the case of the designation of an Unrestricted Subsidiary as a Restricted Subsidiary, immediately after giving effect to such designation, the Borrower could incur \$1.00 of Permitted Ratio Debt, or the Consolidated Cash Interest Coverage Ratio would be no less than the Consolidated Cash Interest Coverage Ratio immediately prior to giving effect thereto, (iii) no Subsidiary may be designated as an Unrestricted Subsidiary if, after such designation, it would be a "Restricted Subsidiary" for the purpose of any Junior Financing, any Incremental Equivalent Debt, any Permitted Ratio Debt or any Permitted Refinancing thereof and (iv) no Restricted Subsidiary may be designated an Unrestricted Subsidiary if it was previously designated an Unrestricted Subsidiary. The designation of any Subsidiary as an Unrestricted Subsidiary after the Closing Date shall constitute an Investment by the Borrower therein at the date of designation as set forth in the definition of Investment. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the Borrower in Unrestricted Subsidiaries pursuant to the definition of Investment.

Section 6.15 Maintenance of Ratings. Use commercially reasonable efforts to maintain (i) a public corporate credit rating (but not any specific rating) from S&P and a public corporate family rating (but not any specific rating) from Moody's, in each case in respect of the Borrower, and (ii) a public rating (but not any specific rating) in respect of the Term B Loans and the Initial Revolving Credit Commitments from each of S&P and Moody's.

Section 6.16 Use of Proceeds.

Use the proceeds of any Borrowing on the Closing Date, whether directly or indirectly, in a manner consistent with the uses set forth in the preliminary statements to this Agreement, and after the Closing Date, use the proceeds of any Borrowing or Letter of Credit for any purpose not otherwise prohibited under this Agreement, including for general corporate purposes, working capital needs, the repayment of Indebtedness, the making of Restricted Payments and the making of Investments.

Section 6.17 Annual Lender Calls.

Participate in a conference call with the Administrative Agent and the Lenders to discuss the financial condition and results of operations of the Borrower and its Subsidiaries for the most recently-ended period for which financial statements have been delivered pursuant to Section 6.01(a), which call shall occur within a reasonable period of time after the delivery of such audited financial statements and after the Lenders have first been provided reasonable notice of such call; provided, however, if the Borrower is holding a conference call open to the public to discuss the financial condition and results of operations of the Borrower and its Subsidiaries for the most recently-ended period for which audited financial statements have been delivered, the Borrower will not be required to hold a second, separate call for the Lenders as long as Lenders are provided access to such conference call.

Section 6.18 Post-Closing Actions.

Complete each of the actions described on Schedule 6.18 as soon as commercially reasonable and by no later than the date set forth in Schedule 6.18 with respect to such action or such later date as the Administrative Agent may reasonably agree.

**ARTICLE VII.
NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements as to which arrangements reasonably satisfactory to the applicable Hedge Bank have been made) hereunder which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or such Letter of Credit has been deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer), then from and after the Closing Date, the Borrower (and, with respect to Section 7.14 only, Holdings) shall not and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

Section 7.01 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) (i) Liens created pursuant to any Loan Document and (ii) subject to the Second Lien Intercreditor Agreement in the capacity of "Second Priority Debt Obligations" and the limitations in Section 7.03(q), Liens on the Collateral created pursuant to any Second Lien Loan Document;

(b) Liens existing on the Closing Date and listed in Schedule 7.01(b) and any modifications, replacements, renewals, refinancings or extensions thereof; *provided* that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 7.03, and (B) proceeds and products thereof, and (ii) the replacement, renewal, extension or refinancing of the obligations secured or benefited by such Liens, to the extent constituting Indebtedness, is permitted by Section 7.03;

(c) Liens for taxes, assessments or governmental charges (i) that are not overdue for a period of more than thirty (30) days or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or the equivalent accounting principles in the relevant local jurisdiction or (ii) that are not required to be paid pursuant to Section 6.04.

(d) statutory or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, so long as, in each case, such Liens secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Liens or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or the equivalent accounting principles in the relevant local jurisdiction;

(e) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, health, disability or employee benefits, unemployment insurance and other social security laws or similar legislation or regulation or other insurance-related obligations (including, but not limited to, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Holdings, the Borrower or any of its Restricted Subsidiaries;

(f) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business or consistent with past practice or industry practice;

(g) easements, rights-of-way, covenants, conditions, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and minor title defects affecting Real Property that do not in the aggregate materially interfere with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries, taken as a whole, or the use of the property for its intended purpose, and any other exceptions to title on the final Mortgage Policies issued to the Administrative Agent in connection with the Mortgaged Properties;

(h) Liens securing judgments or orders for the payment of money not constituting an Event of Default under Section 8.01(h);

(i) leases, licenses, cross-licenses, subleases or sublicenses granted to others in the ordinary course of business which (i) do not interfere in any material respect with the business of the Borrower and its Restricted Subsidiaries, taken as a whole, (ii) do not secure any Indebtedness or (iii) are permitted by Section 7.05;

(j) Liens in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(k) Liens (i) of a collection bank arising under Section 4-208 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking or other financial institution arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry or arising pursuant to such banking institution's general terms and conditions;

(l) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 7.06 to be applied against the purchase price for such Investment or other acquisition, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or other acquisition or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(m) Liens (i) in favor of the Borrower or a Restricted Subsidiary on assets of a Non-Loan Party or (ii) in favor of the Borrower or any Subsidiary Guarantor on assets of a Restricted Subsidiary;

(n) any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases, subleases, licenses, cross-licenses or sublicenses entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(o) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(p) Liens deemed to exist in connection with Investments in repurchase agreements under Section 7.06 or the definition of "Permitted Investments";

(q) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts maintained in the ordinary course of business and not for speculative purposes;

(r) Liens that are contractual rights of set-off or rights of pledge (i) relating to the establishment of depository relations with banks or other deposit-taking financial institutions and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any of its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(s) Liens solely on any cash earnest money deposits made by the Borrower or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(t) ground leases in respect of Real Property on which facilities owned or leased by the Borrower or any of its Restricted Subsidiaries are located;

(u) Liens to secure Indebtedness permitted under Section 7.03(e); *provided* that (i) such Liens are created within two hundred seventy (270) days of the acquisition, construction, repair, lease or improvement of the property subject to such Liens, (ii) such Liens do not at any time encumber property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits and (iii) with respect to Capitalized Leases, such Liens do not at any time extend to or cover any assets (except for replacements, additions and accessions to such assets) other than the assets subject to such Capitalized Leases and the proceeds and products thereof and customary security deposits; *provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(v) Liens on property of any Non-Loan Party, which Liens secure Indebtedness of any Non-Loan Party permitted under Section 7.03 or other obligations of any Non-Loan Party not constituting Indebtedness;

(w) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (other than by designation as a Restricted Subsidiary pursuant to Section 6.14), in each case after the Closing Date; *provided* that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition) and (iii) the Indebtedness secured thereby is permitted under Section 7.03(g), (m), (s) or (x);

(x) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Real Property that does not materially interfere with the ordinary conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(y) Liens arising from precautionary Uniform Commercial Code financing statement or similar filings;

(z) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(aa) the modification, replacement, renewal or extension of any Lien permitted by clauses (b), (u), (w) and (cc) of this Section 7.01; *provided* that (i) the Lien does not extend to any additional property, other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien and (B) proceeds and products thereof, and (ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by Section 7.03 (to the extent constituting Indebtedness);

(bb) Liens with respect to property or assets of the Borrower or any of its Restricted Subsidiaries securing obligations in an aggregate principal amount outstanding at any time not to exceed the greater of \$25,000,000 and 2.20% of Total Assets, in each case determined as of the date of incurrence;

(cc) Liens securing obligations in respect of Indebtedness; *provided*, that (1) after giving Pro Forma Effect to the incurrence of such Indebtedness (and any Specified Transactions consummated in connection therewith), (x) if such Liens are not expressly junior in right of security with the Obligations under Term Loans and Revolving Credit Loans that are secured on a first lien basis, the Borrower's Consolidated First Lien Net Leverage Ratio shall be no greater than 5.00:1.00 or (y) if such Liens rank junior in right of security with the Liens securing the Obligations under Term Loans and Revolving Credit Loans that are secured on a first lien basis, the Borrower's Secured Net Leverage Ratio shall be no greater than 6.25:1.00;

(dd) Liens on the Collateral securing obligations in respect of: (i) Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt and any Permitted Refinancing of any of the foregoing; *provided* that (x) any such Liens securing any Permitted Refinancing in respect of Permitted Pari Passu Secured Refinancing Debt are subject to the First Lien Intercreditor Agreement and (y) any such Liens securing any Permitted Refinancing in respect of Permitted Junior Secured Refinancing Debt are subject to the Second Lien Intercreditor Agreement or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent and (ii) Second Lien Incremental Equivalent Debt and Second Lien Refinancing Equivalent Debt; *provided* such Liens are subject to the Second Lien Intercreditor Agreement or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent;

(ee) Liens on specific items of inventory or other goods and the proceeds thereof of any Person securing such Person's obligations in respect of letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods in the ordinary course of business;

(ff) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(gg) Liens securing obligations in respect of Indebtedness permitted under Section 7.03(w);

(hh) Liens on the Securitization Assets arising in connection with a Qualified Securitization Financing; and

(ii) Liens in respect of Sale Leasebacks (including any Sale Leaseback Transaction), in each case on the assets or property sold and leased back in such Sale Leaseback.

The expansion of Liens by virtue of accrual of interest, the accretion of accreted value, the payment of interest or dividends in the form of additional Indebtedness, amortization of original issue discount and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 7.01.

Section 7.02 [Reserved].

Section 7.03 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) (i) Indebtedness outstanding on the Closing Date and listed in Schedule 7.03(b) and any Permitted Refinancing thereof and (ii) intercompany Indebtedness among the Borrower and any Restricted Subsidiary outstanding on the Closing Date and any Permitted Refinancing thereof; *provided* that all such Indebtedness of any Loan Party owed to any Non-Loan Party shall be unsecured and subordinated to the Obligations pursuant to an Intercompany Note;

(c) Guarantees by the Borrower and any Restricted Subsidiary in respect of Indebtedness of the Borrower or any Restricted Subsidiary of the Borrower otherwise permitted hereunder; *provided* that (A) no Guarantee by any Restricted Subsidiary of any Indebtedness constituting a Specified Junior Financing Obligation, Incremental Equivalent Debt or Refinancing Equivalent Debt shall be permitted unless such guaranteeing party shall have also provided a Guarantee of the Obligations on the terms set forth herein and (B) if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(d) Indebtedness of the Borrower or any Restricted Subsidiary owing to any Loan Party or any other Restricted Subsidiary (or issued or transferred to any direct or indirect parent of a Loan Party which is substantially contemporaneously transferred to a Loan Party or any Restricted Subsidiary of a Loan Party) to the extent constituting a Restricted Investment permitted by Section 7.06 or a Permitted Investment; *provided* that all such Indebtedness of any Loan Party owed to any Non-Loan Party shall be unsecured and subordinated to the Obligations pursuant to the Intercompany Note;

(e) (i) Attributable Indebtedness and other Indebtedness (including Capitalized Leases) financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred by the Borrower or any Restricted Subsidiary prior to or within two hundred seventy (270) days after the acquisition, construction, repair, replacement, lease or improvement of the applicable asset and any Permitted Refinancing thereof in an aggregate amount not to exceed the greater of \$20,000,000 and 2.00% of Total Assets, in each case determined at the time of incurrence at any time outstanding and (ii) Attributable Indebtedness arising out of Sale Leaseback and any Permitted Refinancing of such Attributable Indebtedness;

(f) Indebtedness in respect of Swap Contracts designed to hedge against Holdings', the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes and Guarantees thereof;

(g) Indebtedness of the Borrower or any Restricted Subsidiary (i) assumed (including Acquired Indebtedness) in connection with any Permitted Acquisition or (ii) incurred to finance a Permitted Acquisition and, in the case of clauses (i) and (ii), any Permitted Refinancing of any such Indebtedness; *provided* that after giving Pro Forma Effect to such Permitted Acquisition and the assumption or incurrence of such Indebtedness incurred or assumed pursuant to this clause (g), either:

(A) the Consolidated Cash Interest Coverage Ratio is at least 2.00:1.00, or

(B) the Consolidated Cash Interest Coverage Ratio is equal to or greater than immediately prior to such Permitted Acquisition, or

(C) the Total Net Leverage Ratio is no greater than 6.25:1.00, or

(D) the Total Net Leverage Ratio is equal to or less than immediately prior to such Permitted Acquisition;

provided that (1) any such Indebtedness incurred (but not assumed) does not mature or have scheduled amortization or payments of principal (other than customary "AHYDO catch-up payments", customary offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) prior to the Maturity Date of the Term B Loans at the time such Indebtedness is incurred and (2) any such Indebtedness incurred by a Non-Loan Party does not exceed in the aggregate at any time outstanding the greater of \$20,000,000 and 2.00% of Total Assets, in each case determined at the time of incurrence;

(h) Indebtedness representing deferred compensation to employees of the Borrower (and any direct or indirect parent thereof) or any of its Restricted Subsidiaries incurred in the ordinary course of business;

(i) Indebtedness to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests or other equity-based awards of the Borrower or any direct or indirect parent of the Borrower permitted by Section 7.06;

(j) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition, in each case, constituting indemnification obligations or obligations in respect of purchase price (including earnouts) or other similar adjustments;

(k) Indebtedness consisting of obligations of the Borrower or any of its Restricted Subsidiaries under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions, and Permitted Acquisitions or any other Investment expressly permitted under this Agreement;

(l) Cash Management Obligations and other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements in the ordinary course of business and any Guarantees thereof;

(m) Indebtedness which, when aggregated with the principal amount of all other Indebtedness incurred pursuant to this clause (m) and then outstanding, does not exceed the greater of \$45,000,000 and 4.50% of Total Assets (in each case determined at the time of incurrence or assumption, it being understood that any Indebtedness incurred pursuant to this Section 7.03(m) shall cease to be deemed incurred or outstanding for purposes of this Section 7.03(m) but shall be deemed incurred for the purposes of this covenant from and after the first date on which the Borrower or such Restricted Subsidiary could have incurred such Indebtedness under Section 7.03(s) without reliance on this Section 7.03(m));

(n) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, incurred in the ordinary course of business;

(o) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(p) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(q) (x) Indebtedness incurred under the Second Lien Credit Agreement, Second Lien Incremental Equivalent Debt and Second Lien Refinancing Equivalent Debt, in an aggregate principal amount not exceeding an amount at any time outstanding equal to (1) \$96,000,000 *plus* (2) the Second Lien Incremental Usage Amount at such time and (y) Indebtedness incurred under the Second Lien Credit Agreement or Second Lien Incremental Equivalent Debt to the extent (1) if such Indebtedness is secured, the Secured Net Leverage Ratio on a Pro Forma Basis after giving effect to such incurrence and the use of proceeds thereof does not exceed 6.25:1.00 and (2) if such Indebtedness is unsecured, the Total Net Leverage Ratio on a Pro Forma Basis after giving effect to such incurrence and the use of proceeds thereof does not exceed 6.25:1.00 and (z) Permitted Refinancings or Second Lien Refinancing Equivalent Debt in respect of Indebtedness incurred pursuant to clause (x) or (y) hereof;

(r) Indebtedness supported by a Letter of Credit, in a principal amount not to exceed the face amount of such Letter of Credit;

(s) Permitted Ratio Debt and any Permitted Refinancing thereof;

(t) Refinancing Equivalent Debt;

(u) Indebtedness of a Non-Loan Party which, when aggregated with the principal amount of all other Indebtedness incurred pursuant to this clause (u) and then outstanding, does not exceed the greater of \$15,000,000 and 1.25% of Total Assets (in each case determined at the date of incurrence or issuance, it being understood that any Indebtedness incurred pursuant to this Section 7.03(u) shall cease to be deemed incurred or outstanding for purposes of this Section 7.03(u) but shall be deemed incurred or issued for the purposes of this covenant from and after the first date on which the Borrower or such Restricted Subsidiary could have incurred such Indebtedness under Section 7.03(s) without reliance on this Section 7.03(u));

(v) Indebtedness incurred by a Securitization Subsidiary in a Qualified Securitization Financing that is not recourse (except for Standard Securitization Undertakings and Limited Originator Recourse) to the Borrower or any of the Restricted Subsidiaries;

(w) Incremental Equivalent Debt;

(x) Indebtedness of the Borrower or any Restricted Subsidiary (and any Permitted Refinancing thereof) in an aggregate principal amount not to exceed the amount of the net cash proceeds received by the Borrower since the Closing Date from the issuance or sale of Equity Interests of the Borrower or cash contributed to the capital of the Borrower (in each case, other than proceeds of Disqualified Equity Interests, sales of Equity Interests to the Borrower or any of its Subsidiaries or proceeds which have been designated as a Cure Amount) as determined in accordance with clauses (b) and (c) of the definition of "Cumulative Credit" to the extent such net cash proceeds have not been applied pursuant to such clauses to make Restricted Payments pursuant to Section 7.06 or to prepay, redeem, purchase, defease or satisfy Indebtedness pursuant to Section 7.13, so long as (i) such Indebtedness is incurred within one (1) year following the receipt by the Borrower of such net cash proceeds and (ii) such Indebtedness is designated as "Contribution Indebtedness" on the date incurred;

(y) unsecured Indebtedness in respect of obligations of the Borrower or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; *provided* that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money; and

(z) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (y) above.

For purposes of determining compliance with Section 7.03, in the event that an item of Indebtedness (or any portion thereof) at any time, whether at the time of incurrence or upon the application of all or a portion of the proceeds thereof or subsequently, meets the criteria of more than one of the categories of permitted Indebtedness described in Section 7.03(a) through (z) above, the Borrower, in its sole discretion, will classify and may subsequently reclassify such item of Indebtedness (or any portion thereof) in any one or more of the types of Indebtedness described in Section 7.03(a) through (z) and will only be required to include the amount and type of such Indebtedness in such of the above clauses as determined by the Borrower at such time. The Borrower will be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in Section 7.03(a) through (z). Notwithstanding the foregoing, Indebtedness incurred (a) under the Loan Documents, any Incremental Commitments, any Incremental Loans, any Refinancing Commitments and any Refinancing Loans shall only be classified as incurred under Section 7.03(a), (b) as Refinancing Equivalent Debt shall only be classified as incurred under Section 7.03(t), (c) as Incremental Equivalent Debt shall only be classified as incurred under Section 7.03(w) and (d) under the Second Lien Credit Agreement and Second Lien Incremental Equivalent Debt and Second Lien Refinancing Equivalent Debt shall only be classified as incurred under Section 7.03(q).

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and expenses (including OID) incurred in connection with such refinancing.

The accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.03. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP. Notwithstanding the foregoing, no Non-Loan Party shall guarantee Indebtedness for borrowed money of any Loan Party.

Section 7.04 Fundamental Changes.

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (other than as part of the Transactions), except that:

(a) any Restricted Subsidiary may merge, amalgamate or consolidate with (i) the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that the Borrower shall be the continuing or surviving Person or (ii) one or more other Restricted Subsidiaries; *provided* that when any Person that is a Loan Party (other than the Borrower) is merging with a Restricted Subsidiary, a Loan Party shall be the continuing or surviving Person unless the resulting Investment made in connection with a Loan Party merging with a Non-Loan Party shall otherwise be a Restricted Investment permitted by Section 7.06 or a Permitted Investment;

(b) (i) any Subsidiary that is a Non-Loan Party may merge, amalgamate or consolidate with or into any other Subsidiary that is a Non-Loan Party, (ii) any Subsidiary (other than the Borrower) may liquidate or dissolve and (iii) the Borrower or any Subsidiary may change its legal form if, with respect to clauses (ii) and (iii), the Borrower determines in good faith that such action is in the best interest of the Borrower and its Subsidiaries and if not materially disadvantageous to the Lenders (it being understood that in the case of any change in legal form, the Borrower will remain the Borrower and a Subsidiary that is a Guarantor will remain a Guarantor unless such Guarantor is otherwise permitted to cease being a Guarantor hereunder);

(c) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then (i) the transferee must be a Loan Party or (ii) to the extent constituting an Investment, such Investment must be a Restricted Investment permitted by Section 7.06 or a Permitted Investment;

(d) so long as no Default has occurred and is continuing or would result therefrom, the Borrower may merge or consolidate with any other Person; *provided* that (i) the Borrower shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the "**Successor Company**"), (A) the Successor Company shall be an entity organized or existing under the Laws of the United States, any state thereof, or the District of Columbia, (B) the Successor Company shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have confirmed that its Guarantee shall apply to the Successor Company's obligations under the Loan Documents, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement and other applicable Collateral Documents confirmed that its obligations thereunder shall apply to the Successor Company's obligations under the Loan Documents, (E) if requested by the Administrative Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, shall have by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Administrative Agent) confirmed that its obligations thereunder shall apply to the Successor Company's obligations under the Loan Documents, and (F) the Borrower shall have delivered to the Administrative Agent an officer's certificate and an opinion of counsel, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement; *provided, further*, that if the foregoing are satisfied, the Successor Company will succeed to, and be substituted for, the Borrower under this Agreement;

(e) so long as no Event of Default has occurred and is continuing or would result therefrom (in the case of a merger, amalgamation or consolidation involving a Loan Party), any Restricted Subsidiary may merge, amalgamate or consolidate with any other Person in order to effect an Investment permitted pursuant to Section 7.06 or a Permitted Investment; *provided* that the continuing or surviving Person shall be a Restricted Subsidiary of the Borrower, which together with each of its Restricted Subsidiaries, shall have complied with the requirements of Section 6.11 to the extent required pursuant to the Collateral and Guarantee Requirement;

(f) the Borrower and the Restricted Subsidiaries may consummate the Merger, related transactions contemplated by the Merger Agreement (and documents related thereto) and the Transactions; and

(g) so long as no Event of Default has occurred and is continuing or would result therefrom, a merger, consolidation, amalgamation, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 7.05.

Section 7.05 Dispositions.

Make any Disposition (other than as part of or in connection with the Transactions), except:

(a) (w) Dispositions of obsolete, worn out, used or surplus property, whether now owned or hereafter acquired, in the ordinary course of business, (x) Dispositions of property no longer used or useful in the conduct of the business of the Borrower or any of its Restricted Subsidiaries and (y) Dispositions to landlords of improvements made to leased real property pursuant to customary terms of leases entered into in the ordinary course of business;

(b) Dispositions of inventory, goods held for sale in the ordinary course of business and immaterial assets in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(d) Dispositions of property to the Borrower or any Restricted Subsidiary; *provided* that if the transferor of such property is a Loan Party (i) the transferee thereof must be a Loan Party or (ii) if such transaction constitutes an Investment, such Investment must be a Restricted Investment permitted by Section 7.06 or a Permitted Investment;

(e) Dispositions that are permitted by Section 7.04 (other than Section 7.04(g)) or otherwise constitute a Restricted Payment (including a Restricted Investment) permitted by Section 7.06 and Liens permitted by Section 7.01 (other than Section 7.01(l)(ii));

(f) Dispositions of non-core assets acquired in connection with Permitted Acquisitions taking place following the Closing Date;

(g) Dispositions of Cash Equivalents;

(h) (i) leases, subleases, licenses, cross-licenses or sublicenses, in each case in the ordinary course of business and which do not materially interfere with the business of the Borrower or any of its Restricted Subsidiaries and (ii) Dispositions of intellectual property that are not material to the business of the Borrower or any of its Restricted Subsidiaries;

(i) transfers of property subject to Casualty Events;

(j) Dispositions of property; *provided* that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Default has occurred and is continuing), no Event of Default shall have occurred and be continuing or would result from such Disposition and (ii) with respect to any Disposition pursuant to this clause (j) for a purchase price in excess of \$10,000,000 the Borrower or any of its Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 7.01, Liens permitted by Section 7.01(a), clauses (ii) and (iii) of Section 7.01(k), Section 7.01(m), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(v), Section 7.01(w), Section 7.01(aa), Section 7.01(bb) (solely to the extent the Obligations under the Term Loans and Revolving Credit Loans that are secured on a first lien basis shall be secured on a *pari passu* or senior basis with such Liens), Section 7.01(cc), Section 7.01(dd) and Section 7.01(gg)); *provided, however*, that for the purposes of this clause (j)(ii), the following shall be deemed to be cash: (A) any liabilities (as shown on the Borrower's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that (i) are assumed by the transferee with respect to the applicable Disposition or (ii) are otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Borrower or its Restricted Subsidiaries) and, in each case, for which the Borrower and all of its Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities, notes or other obligations or assets received by the Borrower or the applicable Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within one hundred eighty (180) days following the closing of the applicable Disposition, and (C) aggregate non-cash consideration received by the Borrower or the applicable Restricted Subsidiary having an aggregate fair market value (determined as of the closing of the applicable Disposition for which such non-cash consideration is received) not to exceed the greater of \$20,000,000 and 2.00% of Total Assets as determined at the time of such Dispositions (net of any non-cash consideration converted into cash and Cash Equivalents);

(k) to the extent allowable under Section 1031 of the Code (or comparable or successor provision), any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Borrower or any of the Restricted Subsidiaries that is not in contravention of Section 7.07;

(l) Dispositions or discounts without recourse of accounts receivable in connection with the compromise or collection thereof in the ordinary course of business;

(m) Dispositions by any Loan Party to any wholly-owned Restricted Subsidiary of the type described in clauses (d), (h) and (i) of the definition of "Excluded Subsidiary" to the extent consisting of contributions or other Dispositions of Equity Interests in other Restricted Subsidiaries of the type described in clauses (d), (h) and (i) of the definition of "Excluded Subsidiary" to such wholly-owned Restricted Subsidiary;

(n) any swap of assets in exchange for services or other assets in the ordinary course of business of comparable or greater value or usefulness to the business of the Borrower and its Subsidiaries as a whole, as determined in good faith by the management of the Borrower;

(o) any sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(p) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(q) the unwinding of any Swap Contract;

(r) the lapse or abandonment in the ordinary course of business of any registrations or applications for registration of any immaterial IP Rights;

(s) any Disposition of Securitization Assets to a Securitization Subsidiary;

(t) any Disposition of the Sale Leaseback Properties in connection with a Sale Leaseback (each, a "**Sale Leaseback Transaction**"); and

(u) Dispositions in the aggregate pursuant to this clause (u) not to exceed the greater of \$10,000,000 and 0.75% of Total Assets as determined at the time of such Disposition;

provided that any Disposition of any property pursuant to this Section 7.05 (except pursuant to Sections 7.05(a), (d), (e), (h), (i), (l), (m), (p), (q) and (r) and except for Dispositions from a Loan Party to any other Loan Party) shall be for no less than the fair market value of such property at the time of such Disposition. To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than Holdings, the Borrower or a Restricted Subsidiary, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and the Administrative Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

Section 7.06 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower, and other Restricted Subsidiaries of the Borrower (and, in the case of a Restricted Payment by a non- wholly owned Restricted Subsidiary, to the Borrower and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) the Borrower and each Restricted Subsidiary may declare and make dividend payments or other Restricted Payments payable solely in the Equity Interests (other than Disqualified Equity Interests not otherwise permitted by Section 7.03) of such Person;

(c) Restricted Payments made (i) to consummate the Transactions, (ii) in respect of working capital adjustments or purchase price adjustments pursuant to the Merger Agreement, (iii) in order to satisfy indemnity and other similar obligations under the Merger Agreement and (iv) to holders of Equity Interests of Borrower (immediately prior to giving effect to the Transactions) in connection with, or as a result of, their exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, in each case, with respect to the Transactions;

(d) to the extent constituting Restricted Payments, the Borrower (or any direct or indirect parent thereof) and its Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Section 7.04 or 7.08 (other than Section 7.08(f) or 7.08(l));

(e) repurchases of Equity Interests in the Borrower or any Restricted Subsidiary of the Borrower deemed to occur upon exercise of stock options or warrants or the settlement or vesting of other equity-based awards if such Equity Interests represent a portion of the exercise price of, or tax withholdings with respect to, such options, warrants or other equity-based awards;

(f) the Borrower and each Restricted Subsidiary may (i) pay (or make Restricted Payments to allow Holdings or any other direct or indirect parent thereof to pay) for the repurchase, retirement or other acquisition or retirement for value of Equity Interests or settlement of equity-based awards of such Restricted Subsidiary (or of the Borrower or any other such direct or indirect parent thereof) held by any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) or any of its Subsidiaries or (ii) make Restricted Payments in the form of distributions to allow Holdings or any direct or indirect parent of Holdings to pay principal or interest on promissory notes that were issued to any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) in lieu of cash payments for the repurchase, retirement or other acquisition or retirement for value of such Equity Interests or equity-based awards held by such Persons, in each case, upon the death, disability, retirement or termination of employment or services, as applicable, of any such Person or pursuant to any employee, manager or director equity plan, employee, manager or director stock option plan or any other employee, manager or director benefit plan or any agreement (including any stock subscription agreement, shareholder agreement or stockholders' agreement) with any employee, director, officer or consultant of such

Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) or any of its Restricted Subsidiaries; *provided* that the aggregate amount of Restricted Payments made pursuant to this clause (f) together with the aggregate amount of loans and advances to Holdings or any parent thereof made pursuant to clause (25) of the definition of "Permitted Investments" in lieu of Restricted Payments permitted by this clause (f) shall not exceed \$10,000,000 in any calendar year (which shall increase to \$15,000,000 subsequent to the consummation of a Qualified IPO) (with 100% of the unused amounts in any calendar year being carried over to succeeding calendar years); *provided further* that such amount in any calendar year may further be increased by an amount not to exceed:

(A) amounts used to increase the Cumulative Credit pursuant to clauses (b) and (c) of the definition of "Cumulative Credit";

(B) the Net Proceeds of key man life insurance policies received by the Borrower or its Restricted Subsidiaries less the amount of Restricted Payments previously made with the cash proceeds of such key man life insurance policies;

and *provided further* that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from members of management of the Borrower, any of the Borrower's direct or indirect parent companies or any of the Borrower's Restricted Subsidiaries in connection with a repurchase of Equity Interests of any of the Borrower's direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of this Agreement;

(g) the Borrower and its Restricted Subsidiaries may make Restricted Payments in an aggregate amount not to exceed (x) the greater of \$20,000,000 and 2.00% of Total Assets as determined at the time of such Restricted Payment (less the amount of any prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings in reliance on the dollar amount set forth in Section 7.13(a)(iv)), *plus* (y) the Cumulative Credit at such time (*provided*, that with respect to any Restricted Payment (other than a Restricted Investment) made out of amounts under clause (a)(ii) of the definition of "Cumulative Credit" pursuant to this clause (y), no Event of Default has occurred and is continuing or would result therefrom and the Borrower, immediately after giving effect to such Restricted Payment on a Pro Forma Basis, could incur \$1.00 of additional Permitted Ratio Debt);

(h) the Borrower may make Restricted Payments to any direct or indirect parent of the Borrower:

(i) to pay its operating costs and expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries, Transaction Expenses and any reasonable and indemnification claims made by directors or officers of such parent attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries;

(ii) the proceeds of which shall be used to pay (or make Restricted Payments to allow any direct or indirect parent thereof to pay) franchise and similar taxes and other fees and expenses required to maintain its (or any of its direct or indirect parents') corporate existence;

(iii) for any taxable period for which the Borrower is a disregarded entity or a partnership for U.S. federal income tax purposes or for which the Borrower and/or any of its Subsidiaries is a member of a consolidated, combined or similar income tax group of which a direct or indirect parent of the Borrower is the common parent, in an amount equal to the product of (x) taxable income of the Borrower and, to the extent applicable, its Subsidiaries and (y) the highest combined marginal income tax rate applicable to an individual or corporate resident in New York City that holds equity in the Borrower ("**Tax Distribution**").

(iv) to finance any Permitted Investments and other Investments that would be permitted to be made pursuant to this Section 7.06 and Section 7.08 if made by the Borrower or any of its Restricted Subsidiaries; *provided* that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or the Restricted Subsidiaries or (2) the merger (to the extent permitted in Section 7.04) of the Person formed or acquired into the Borrower or its Restricted Subsidiaries in order to consummate such Permitted Acquisition or Investment, in each case, in accordance with the requirements of Section 6.11;

(v) the proceeds of which (A) shall be used to pay salary, commissions, bonus and other benefits payable to and indemnities provided on behalf of officers, employees, directors and members of management of Holdings or any direct or indirect parent company of Holdings and any payroll social security or similar taxes thereof to the extent such salaries, commissions, bonuses and other benefits are attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries or (B) shall be used to make payments permitted under Sections 7.08 (e), (i), (k) and (p) (but only to the extent such payments have not been and are not expected to be made by the Borrower or a Restricted Subsidiary); and

(vi) the proceeds of which shall be used by Holdings to pay (or to make Restricted Payments to allow any direct or indirect parent thereof to pay) (A) fees and expenses (other than to Affiliates) related to any unsuccessful equity or debt offering by Holdings (or any direct or indirect parent thereof) that is directly attributable to the operations of the Borrower and its Restricted Subsidiaries and (B) expenses and indemnities of the trustee with respect to any debt offering by Holdings (or any direct or indirect parent thereof);

(i) payments made or expected to be made by Holdings, the Borrower or any of the Restricted Subsidiaries in respect of withholding or other payroll and other similar Taxes payable by or with respect to any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) and any repurchases of Equity Interests in consideration of such payments including deemed repurchases in connection with the exercise of stock options or the vesting or settlement of other equity-based awards;

(j) after a Qualified IPO, (i) any Restricted Payment by the Borrower or any other direct or indirect parent of the Borrower to pay listing fees and other costs and expenses attributable to being a publicly traded company which are reasonable and customary and (ii) additional Restricted Payments in an aggregate amount per annum not to exceed an amount equal to 6% of the net proceeds received by (or contributed to) the Borrower and its Restricted Subsidiaries from such Qualified IPO;

(k) Holdings, the Borrower or any of the Restricted Subsidiaries may pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted Acquisition;

(l) Restricted Payments in an aggregate amount not to exceed the net cash proceeds received by the Borrower or any Restricted Subsidiary from a Person other than Holdings or a Subsidiary thereof from the sale of the Sale Leaseback Properties pursuant to a Sale Leaseback Transaction; *provided*, that immediately after giving effect to any such Restricted Payment (A) no Event of Default has occurred and is continuing and (B) the Total Net Leverage Ratio on a Pro Forma Basis is not greater than 6.50:1.00; and

(m) additional Restricted Payments (the proceeds of which may be utilized by Holdings to make additional Restricted Payments) so long as immediately after giving effect to such Restricted Payment, the Total Net Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 4.75 to 1.00, and satisfaction of such test shall be evidenced by a certificate from a Responsible Officer of the Borrower demonstrating such satisfaction calculated in reasonable detail.

Section 7.07 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date or any business or any other activities reasonably related, complementary, synergistic or ancillary thereto (including related, complementary, synergistic or ancillary technologies) or reasonable extensions thereof.

Section 7.08 Transactions with Affiliates.

Enter into any transaction of any kind with any Affiliate of the Borrower involving aggregate payments or consideration in excess of \$1,500,000 for any individual transaction or series of related transactions, whether or not in the ordinary course of business, other than

(a) transactions among Holdings, the Borrower and its Restricted Subsidiaries,

(b) on terms substantially as favorable to the Borrower or such Restricted Subsidiary as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate,

(c) the Transactions and the payment of fees and expenses (including Transaction Expenses) as part of or in connection with the Transactions,

(d) the issuance of Equity Interests or equity-based awards to any officer, director, employee or consultant of the Borrower or any of its Restricted Subsidiaries or any direct or indirect parent of Holdings in connection with the Transactions,

(e) the payment of management, monitoring, consulting, advisory and other fees (including transaction and termination fees), indemnities and expenses pursuant to the Sponsor Management Agreement (plus any unpaid management, consulting, monitoring, advisory and other fees, indemnities and expenses accrued in any prior year),

(f) Restricted Payments permitted under Section 7.06 and Permitted Investments other than Permitted Investments under clauses (3), (10), (11) and (13) of the definition thereof,

(g) transactions by the Borrower and its Restricted Subsidiaries permitted under an express provision (including any exceptions thereto) of this Article VII,

(h) employment, consulting, severance and other service or benefit related arrangements between the Borrower and its Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option and other equity award plans and employee benefit plans and arrangements in the ordinary course of business,

(i) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, officers, employees and consultants of Holdings, the Borrower and its Restricted Subsidiaries (or any direct or indirect parent of the Borrower) in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries,

(j) transactions pursuant to agreements, instruments or arrangements in existence on the Closing Date and set forth in Schedule 7.08 or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect,

(k) payments by the Borrower and any of its Restricted Subsidiaries to one or more direct or indirect holders of Equity Interests in Holdings (including any Sponsor) made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions or divestitures), which payments are approved by the majority of the members of the Board of Directors or a majority of the disinterested members of the Board of Directors of the Borrower in good faith,

(l) payments by the Borrower or any of its Subsidiaries pursuant to any tax sharing agreements with any direct or indirect parent of the Borrower to the extent attributable to the ownership or operation of the Borrower and the Subsidiaries, but only to the extent permitted by Section 7.06(h)(iii),

(m) the issuance or transfer of Equity Interests (other than Disqualified Equity Interests) of Holdings to any Permitted Holder or to any former, current or future director, manager, officer, employee or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees or Affiliate of any of the foregoing) of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof,

(n) transactions with customers, clients, joint venture partners, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party,

(o) any payments required to be made pursuant to the Merger Agreement,

(p) the payment of reasonable out-of-pocket costs and expenses and indemnities to equity holders of any direct or indirect parent of Holdings pursuant to the stockholders' agreement entered into, and as in effect on, on the Closing Date,

(q) transactions in which the Borrower or any of the Restricted Subsidiaries, as the case may be, deliver to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (b) of this Section 7.08,

(r) payments to or from, and transactions with, joint ventures (to the extent any such joint venture is only an Affiliate as a result of Investments by Holdings and the Restricted Subsidiaries in such joint venture) to the extent otherwise constituting a Permitted Investment or Restricted Payment permitted under Section 7.06, and

(s) any Disposition of Securitization Assets or related assets, Investment permitted pursuant to clause (14) of the definition of "Permitted Investments" or Standard Securitization Undertakings and Limited Originator Recourse, in each case in connection with any Qualified Securitization Financing.

Section 7.09 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability of:

(a) any Non-Loan Party to make Restricted Payments to any Loan Party or

(b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Lenders with respect to the Facilities and the Obligations or under the Loan Documents; *provided* that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which

(i) (x) exist on the Closing Date and (to the extent not otherwise permitted by this Section 7.09) are listed in Schedule 7.09 and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such Contractual Obligation,

(ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary of the Borrower, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary of the Borrower,

(iii) are customary restrictions that arise in connection with (x) any Lien permitted by Sections 7.01(k), (l), (p), (q), (r)(i), (r)(ii), (s) and (ee) and relate to the property subject to such Lien or (y) arise in connection with any Disposition permitted by Section 7.04 or 7.05 and relate solely to the assets or Person subject to such Disposition,

(iv) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures constituting Permitted Investments or otherwise permitted under Section 7.06 and applicable solely to such joint venture,

(v) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 7.03 but solely to the extent any negative pledge relates to the property financed by such Indebtedness and the proceeds and products thereof,

(vi) are customary restrictions on leases, subleases, licenses, cross-licenses, sublicenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the property interest, rights or the assets subject thereto,

(vii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 7.03(e), (g), (n)(i) and (u) to the extent that such restrictions apply only to the property or assets securing such Indebtedness or, in the case of Section 7.03(g), to the Restricted Subsidiaries incurring or guaranteeing such Indebtedness,

(viii) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary,

(ix) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business,

(x) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business,

(xi) arise in connection with cash or other deposits permitted under Sections 7.01 or the definition of Permitted Investments, and limited to such cash or deposits, and

(xii) comprise restrictions imposed by any agreement governing Indebtedness entered into on or after the Closing Date and permitted under Section 7.03 that are, taken as a whole, in the good faith judgment of the Borrower, no more restrictive with respect to the Borrower or any Restricted Subsidiary than customary market terms for Indebtedness of such type (and, in any event, are no more restrictive than the restrictions contained in this Agreement), so long as the Borrower shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required hereunder.

Section 7.10 [Reserved].

Section 7.11 Financial Covenants.

Permit the Consolidated First Lien Net Leverage Ratio as of any Compliance Date to be greater than 7.30:1.00 as of such Compliance Date (the “**Financial Covenant**”). The provisions of this Section 7.11 are for the benefit of the Revolving Credit Lenders only and the Required Revolving Credit Lenders may amend, waive or otherwise modify this Section 7.11 or the defined terms used for purposes of this Section 7.11 or waive any Default or Event of Default resulting from a breach of this Section 7.11 without the consent of any Lenders other than the Required Revolving Credit Lenders in accordance with the provisions of Section 10.01(i).

Section 7.12 Accounting Changes.

Make any change in its fiscal year; *provided, however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

Section 7.13 Prepayments, Etc. of Junior Financing.

(a) Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled principal, interest and mandatory prepayments shall be permitted) any Indebtedness incurred under the Second Lien Credit Agreement, Second Lien Incremental Equivalent Debt, Second Lien Refinancing Equivalent Debt or any other Indebtedness for borrowed money of a Loan Party that is subordinated in right of payment or Collateral to the Obligations expressly by its terms (including any Incremental Equivalent Debt or Refinancing Equivalent Debt that is subordinated in right of Collateral to the Liens securing the Obligations under Term Loans and Revolving Credit Loans required to be secured on a first lien basis) and any Permitted Refinancing of any of the foregoing (collectively, “**Junior Financing**”), except

(i) the refinancing thereof with any Indebtedness (to the extent such Indebtedness constitutes (x) a Permitted Refinancing and, if such Indebtedness was originally incurred under Section 7.03(g), is permitted pursuant to Section 7.03(g) or (y) in the case of Indebtedness incurred under the Second Lien Credit Agreement, Second Lien Incremental Equivalent Debt or Second Lien Refinancing Equivalent Debt “Refinancing Loans” (as defined in the Second Lien Credit Agreement) or Second Lien Refinancing Equivalent Debt), to the extent not required to prepay any Loans pursuant to Section 2.05(b),

(ii) the conversion or exchange of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of Holdings or any of its direct or indirect parents,

(iii) the prepayment of Indebtedness of the Borrower or any Restricted Subsidiary to the Borrower or any Restricted Subsidiary,

(iv) prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings prior to their scheduled maturity in an aggregate amount not to exceed (x) the greater of \$20,000,000 and 2.00% of Total Assets as determined at the time of such transaction (less the amount of any Restricted Payments made in reliance on the dollar amount set forth in Section 7.06(g)(x)) plus (y) the Cumulative Credit at such time (provided, that with respect to any prepayment, redemption, purchase, defeasance or other payment in respect of Junior Financings made out of amounts under clause (a)(ii) of the definition of "Cumulative Credit" pursuant to this clause (y), no Event of Default has occurred and is continuing or would result therefrom and the Borrower, immediately after giving effect to such prepayment, redemption, purchase, defeasance or other payment on a Pro Forma Basis, could incur \$1.00 of additional Permitted Ratio Debt), and

(v) additional prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings, so long as immediately after giving effect to such prepayment, redemption, purchase, defeasance or other payment, the Total Net Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 4.75 to 1.00, and satisfaction of such test shall be evidenced by a certificate from a Responsible Officer of the Borrower demonstrating such satisfaction calculated in reasonable detail.

(b) Amend, modify or change in any manner materially adverse to the interests of the Lenders, as determined in good faith by the Borrower, any term or condition of any Junior Financing Documentation in respect of any Junior Financing having an aggregate outstanding principal amount in excess of the Threshold Amount (other than as a result of any Permitted Refinancing in respect thereof) without the consent of the Administrative Agent (which consent shall not be unreasonably withheld, conditioned or delayed); *provided that*, in respect of any Junior Financing, the following shall not, in and of themselves, be deemed materially adverse to the interests of the Lenders: (1) any term or condition of any Junior Financing Documentation in respect of any Permitted Refinancing thereof, "Refinancing Loans" (as defined in the Second Lien Credit Agreement) or Second Lien Refinancing Equivalent Debt, (2) any modification to the All-In Yield or changes to, or additions of, premiums or penalties; (3) any increase in the aggregate principal amount to the extent otherwise permitted by this Agreement; (4) any extension of maturity date or increase to Weighted Average Life to Maturity; (5) any amendment, modification or change to any terms applicable only to periods after the Latest Maturity Date at the time of such amendment, modification or change, (6) amendments, modifications or changes to maintain consistency with, as applicable, those being made substantially concurrently to the Loan Documents (including, for the avoidance of doubt, the addition of any covenant or other provision added or extended (including the addition of a financial covenant or the extension of an existing financial covenant for the benefit of Term Lenders) under this Agreement, or any Incremental Equivalent Debt or Refinancing Equivalent Debt which is secured by the Collateral on a pari passu or senior basis to the Junior Financing, *provided* such additional covenant (including any financial covenant) includes a cushion on any dollar baskets, thresholds or covenant levels consistent with the existing cushion (if any) between applicable covenants in this Agreement and such Junior Financing) and (7) reductions to any cushion on levels, baskets or thresholds between covenants under this Agreement and substantially similar covenants under any Junior Financing to the extent such cushion is reduced by no more than 10% from the cushion in effect on the date such Junior Financing is incurred.

Section 7.14 Permitted Activities.

With respect to Holdings, engage in any material operating or business activities; *provided* that the following and any activities incidental thereto shall be permitted in any event: (i) its ownership of the Equity Interests of the Borrower and activities incidental thereto, including payment of dividends and other amounts in respect of its Equity Interests, (ii) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (iii) the performance of its obligations with respect to the Loan Documents, the Second Lien Loan Documents, Permitted Holdings Debt and any other Indebtedness, (iv) any public offering of its common stock or any other issuance or sale of its Equity Interests, (v) financing activities, including the issuance of securities, incurrence of Indebtedness, payment of dividends, making contributions to the capital of the Borrower and guaranteeing the obligations of the Borrower; *provided* that any such Indebtedness shall (a) be unsecured, (b) not be guaranteed by the Borrower or any Restricted Subsidiary and (c) not have a maturity date prior to the Latest Maturity Date in effect for the Term Loans on the date of incurrence of such Indebtedness, (vi) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and the Borrower, (vii) holding any cash or property (but not operate any property), (viii) providing indemnification to officers and directors and (ix) any activities incidental to the foregoing. Holdings shall not own any Equity Interests other than those of the Borrower.

**ARTICLE VIII.
EVENTS OF DEFAULT AND REMEDIES**

Section 8.01 Events of Default.

Any of the following from and after the Closing Date shall constitute an event of default (an “**Event of Default**”):

(a) *Non-Payment*. Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable (or required to be paid) hereunder or with respect to any other Loan Document; or

(b) *Specific Covenants*. The Borrower or, in the case of Section 7.14, Holdings, fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03(a) or 6.05(a) (solely with respect to the Borrower), Article VII or under the “Market Flex” section of the Fee Letter; *provided* that the Financial Covenant is subject to cure pursuant to Section 8.04; *provided, further*, that the Borrower’s failure to comply with the Financial Covenant shall not constitute an Event of Default with respect to any Term Loans or Term Commitments unless and until the Required Revolving Credit Lenders shall have terminated their Revolving Credit Commitments and declared all amounts outstanding thereunder to be due and payable pursuant to Section 8.02; or

(c) *Other Defaults*. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(d) *Representations and Warranties.* Any representation, warranty, certification or statement of fact made or deemed made by any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect in any material respect when made or deemed made; or

(e) *Cross-Default.* Any Loan Party or any Restricted Subsidiary (A) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate outstanding principal amount of not less than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts and not as a result of any other default thereunder by any Loan Party), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; *provided* that this clause (e)(B) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder; *provided, further*, that such failure is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to Section 8.02; or

(f) *Insolvency Proceedings, Etc.* Any Loan Party or any Restricted Subsidiary that is a Material Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) *Attachment.* Any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of the Borrower and the Restricted Subsidiaries, taken as a whole, and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) *Judgments.* There is entered against any Loan Party or any Restricted Subsidiary a final judgment and order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(i) *Invalidity of Loan Documents.* Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05) or as a result of acts or omissions by the Administrative Agent or any Lender or the satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document or the validity or priority of a Lien as required by the Collateral Documents on a material portion of the Collateral; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations and termination of the Aggregate Commitments), or purports in writing to revoke or rescind any Loan Document; or

(j) *Change of Control.* There occurs any Change of Control; or

(k) *Collateral Documents.* (i) Any Collateral Document after delivery thereof pursuant to Section 4.01, 6.11 or 6.13 shall for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction not prohibited under this Agreement) cease to create a valid and perfected Lien, with the priority required by the Collateral Documents on and security interest in any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01, (x) except to the extent that any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or results from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file Uniform Commercial Code continuation statements and (y) except as to Collateral consisting of Real Property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage or (ii) any Lien created or purported to be created by the Collateral Documents shall cease to have the lien priority established or purported to be established by the applicable Intercreditor Agreement; or

(l) *Duly Authorized Documents.* Any Deferred Loan Party fails to deliver any Duly Authorized Documents by 5:00 p.m. on the Closing Date; or

(m) *ERISA.* (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of a Loan Party or an ERISA Affiliate in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect.

Section 8.02 Remedies Upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Lenders, shall take any or all of the following actions:

- (i) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;
- (ii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;
- (iii) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and
- (iv) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code of the United States or any Debtor Relief Laws, the obligation of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

Notwithstanding anything to the contrary, if the only Events of Default then having occurred and continuing are pursuant to a failure to observe the Financial Covenant, the Administrative Agent shall only take the actions set forth in this Section 8.02 at the request of the Required Revolving Credit Lenders (as opposed to Required Lenders).

Section 8.03 Application of Funds.

Except as may be otherwise provided in any applicable Incremental Amendment with respect to Obligations under the applicable Incremental Loans or in any applicable Refinancing Amendment with respect to Obligations under the applicable Refinancing Loans (in each case, which shall not be more favorable to the holders of such Loans than the allocation described below), after the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), subject to the Second Lien Intercreditor Agreement, any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order (to the fullest extent permitted by mandatory provisions of applicable Law):

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs payable under Section 10.04 and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause *Second* payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and L/C Borrowings, and any fees, premiums and scheduled periodic payments due under Treasury Services Agreements or Secured Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Third* payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings (including to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit), and any breakage, termination or other payments under Treasury Services Agreements or Secured Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Fourth* held by them;

Fifth, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Notwithstanding the foregoing, no amount received from any Guarantor shall be applied to any Excluded Swap Obligation of such Guarantor.

Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause *Fourth* above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above and, if no Obligations remain outstanding, to the Borrower.

Section 8.04 Borrower's Right to Cure.

Notwithstanding anything to the contrary contained in Section 8.01 or Section 8.02:

(a) For the purpose of determining whether an Event of Default under the Financial Covenant has occurred, the Borrower may on one or more occasions designate any portion of the net cash proceeds from a sale or issuance of Qualified Equity Interests of the Borrower or any contribution to the common capital of the Borrower (or from any other contribution to capital or sale or issuance of any other Equity Interests on terms reasonably satisfactory to the

Administrative Agent) (the “Cure Amount”) as an increase to Consolidated EBITDA for the applicable fiscal quarter; *provided* that (i) such amounts to be designated are actually received by the Borrower on or after the first day of such applicable fiscal quarter and on or prior to the tenth Business Day after the date on which financial statements are required to be delivered with respect to such applicable fiscal quarter (the “Cure Expiration Date”), (ii) such amounts do not exceed the aggregate amount necessary to cure any Event of Default under the Financial Covenant as of such date and (iii) the Borrower shall have provided notice to the Administrative Agent on the date such amounts are designated as a “Cure Amount” (it being understood that to the extent any such notice is provided in advance of delivery of a Compliance Certificate for the applicable period, the amount of such net cash proceeds that is designated as the Cure Amount may be different than the amount necessary to cure any Event of Default under the Financial Covenant and may be modified, as necessary, in a subsequent corrected notice delivered on or before the Cure Expiration Date (it being understood that in any event the final designation of the Cure Amount shall continue to be subject to the requirements set forth in clauses (i) and (ii) above)). The Cure Amount used to calculate Consolidated EBITDA for one (1) fiscal quarter shall be used and included when calculating Consolidated EBITDA for each Test Period that includes such fiscal quarter.

(b) The parties hereby acknowledge that this Section 8.04 may not be relied on for purposes of calculating any financial ratios other than for determining actual compliance with Section 7.11 and shall not result in any adjustment to any amounts (including the amount of Indebtedness) or increase in cash (and shall not be included for purposes of determining pricing, mandatory prepayments and the availability or amount permitted pursuant to any covenant under Article VII) with respect to the quarter with respect to which such Cure Amount was made other than the amount of the Consolidated EBITDA referred to in the immediately preceding sentence.

(c) In furtherance of clause (a) above, (A) upon actual receipt and designation of the Cure Amount by the Borrower, the Financial Covenant shall be deemed satisfied and complied with as of the end of the relevant fiscal quarter with the same effect as though there had been no failure to comply with the Financial Covenant and any Event of Default under the Financial Covenant (and any other Default arising solely as a result thereof) shall be deemed not to have occurred for purposes of the Loan Documents, and (B) upon delivery to the Administrative Agent prior to the Cure Expiration Date of a notice from the Borrower stating its good faith intention to exercise its right set forth in this Section 8.04, neither the Administrative Agent on or after the last day of the applicable quarter nor any Lender may exercise any rights or remedies under Section 8.02 (or under any other Loan Document) on the basis of any actual or purported Event of Default under the Financial Covenant (and any other Default as a result thereof) until and unless the Cure Expiration Date has occurred without the Cure Amount having been received and designated; *provided* that, until such actual receipt and designation of such Cure Amount by the Borrower, no Revolving Credit Loan, Swing Line Loan or L/C Credit Extension shall be required to be made.

(d) (i) In each period of four consecutive fiscal quarters, there shall be at least two (2) fiscal quarters in which no cure right set forth in this Section 8.04 is exercised and (ii) there shall be no *pro forma* reduction in Indebtedness with the Cure Amount for determining compliance with the Financial Covenant for the fiscal quarter with respect to which such Cure Amount was made.

(e) There can be no more than five (5) fiscal quarters in which the cure rights set forth in this Section 8.04 are exercised during the term of the Initial Revolving Credit Commitments and any Extended Revolving Credit Commitments in respect thereof.

ARTICLE IX.
ADMINISTRATIVE AGENT AND OTHER AGENTS

Section 9.01 Appointment and Authority.

(a) Each of the Lenders and L/C Issuers hereby irrevocably appoints UBS to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX (other than Sections 9.06 (solely with respect to the removal and consent rights of the Borrower set forth therein) and Section 9.10 (solely with respect to the requirement for execution, filing and other actions with respect to the Collateral Documents and other collateral documentation set forth therein) and 9.10) are solely for the benefit of the Administrative Agent, the Lenders and each L/C Issuer, and no Loan Party shall have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article X (including the second paragraph of Section 10.05), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

Section 9.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 9.03 Exculpatory Provisions.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(d) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or the L/C Issuer.

(e) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 9.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.05 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Section 9.06 Resignation of Administrative Agent.

The Administrative Agent may resign as the Administrative Agent upon ten (10) days' notice to the Lenders and the Borrower; *provided* that if no successor agent is appointed in accordance with the terms set forth below within such ten (10)-day period, the Administrative Agent shall not be permitted to resign until the earlier to occur of (x) the date of the appointment of the successor agent or (y) the date that is thirty (30) days after the last day of such ten (10)-day period. If the Administrative Agent is subject to an Agent-Related Distress Event, the Borrower may remove the Administrative Agent upon ten (10) days' notice. Upon the resignation or removal of the Administrative Agent under this Agreement, the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which such appointment shall be subject to the consent of the Borrower (which consent of the Borrower shall not be unreasonably withheld or delayed if such successor is a commercial bank with a combined capital and surplus of at least \$5,000,000,000 that is a "U.S. person" and a "financial institution" within the meaning of Treasury Regulation Section 1.1441-1, and otherwise may be withheld at the Borrower's sole

discretion) at all times other than during the existence of an Event of Default under Section 8.01(a) or (f); *provided*, that in no event shall a Disqualified Institution be a successor agent. If no successor agent is appointed by the Required Lenders prior to the effective date of the resignation or removal of the Administrative Agent, the retiring or removed Administrative Agent may appoint, after consulting with the Lenders and subject to the Borrower's consent right set forth above, a successor agent from among the Lenders; *provided* that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments and communications provided to be made to or through the Administrative Agent shall instead be made to each Lender and the L/C Issuer directly and all determinations provided to be made by the Administrative Agent shall instead be made by the Required Lenders, in each case until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent. Upon resignation or removal, the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation or the removed Administrative Agent's removal hereunder and under the other Loan Documents, hereunder and under the other Loan Documents, the provisions of this Article and Sections 10.04 and 10.05 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

Any resignation by or removal of UBS as Administrative Agent pursuant to this Section 9.06 shall also constitute its resignation as L/C Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swing Line Lender, (ii) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

Section 9.07 Non-Reliance on Administrative Agent and Other Lenders.

Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 9.08 No Other Duties, Etc.

Anything herein to the contrary notwithstanding, none of the Administrative Agent, Bookrunners, Arrangers or Syndication Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

Section 9.09 Administrative Agent May File Proofs of Claim.

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(h) and (i), 2.09, 10.04 and 10.05) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09, 10.04 and 10.05.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer or in any such proceeding.

Section 9.10 Collateral and Guaranty Matters.

Each of the Lenders (including in its capacities as a potential Hedge Bank) and the L/C Issuer irrevocably authorize the Administrative Agent,

(a) to automatically release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations as to which no claim has been asserted and (B) obligations and liabilities under Treasury Services Agreements and Secured Hedge Agreements not due and payable) and the expiration or termination of all Letters of Credit (other than Letters of Credit that are Cash Collateralized or back-stopped by a letter of credit in form, amount and substance reasonably satisfactory to the Administrative Agent or a deemed reissuance under another facility as to which other arrangements satisfactory to the Administrative Agent and the L/C Issuer shall have been made), (ii) at the time the property subject to such Lien is Disposed or to be Disposed as part of or in connection with any Disposition permitted (other than a lease and other than to a Person that is a Loan Party) hereunder or under any other Loan Document, (iii) subject to Section 10.01, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to clause (c) below or (v) if such property becomes an Excluded Asset;

(b) to release or subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(u) to the extent required by the holder of, or pursuant to the terms of any agreement governing, the obligations secured by such Liens; and

(c) to release any Subsidiary Guarantor from its obligations under the Guaranty, if in the case of any such Subsidiary, such Person ceases to be a Material Domestic Subsidiary or becomes an Excluded Subsidiary as a result of a transaction or designation permitted hereunder; *provided* that no such release shall occur if such Guarantor continues to be a guarantor or obligor in respect of any Junior Financing, any Refinancing Equivalent Debt or any Incremental Equivalent Debt or any Permitted Refinancing in respect thereof.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will (and each Lender irrevocably authorizes the Administrative Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

Section 9.11 Secured Cash Management Agreements and Secured Hedge Agreements.

Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Treasury Services Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Hedge Bank.

The Lenders hereby authorize the Administrative Agent to enter into any First Lien Intercreditor Agreement, the Second Lien Intercreditor Agreement, any Subordination Agreement or other intercreditor agreement or arrangement permitted under this Agreement and the Lenders acknowledge that any such intercreditor agreement is binding upon the Lenders.

Section 9.12 Withholding Tax Indemnity.

To the extent required by any applicable Laws (as determined in good faith by the Administrative Agent), the Administrative Agent may withhold from any payment to any Lender under any Loan Document an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 3.01, each Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within ten (10) days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.12. The agreements in this Section 9.12 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations. For the avoidance of doubt, the term "Lender" shall, for purposes of this Section 9.12, include any L/C Issuer and any Swing Line Lender.

**ARTICLE X.
MISCELLANEOUS**

Section 10.01 Amendments, Etc.

Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (other than with respect to any amendment or waiver contemplated in Sections 10.01(a) through (i) below, which shall only require the consent of the Lenders expressly set forth therein and not the Required Lenders) (or by the Administrative Agent with the consent of the Required Lenders) and the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that, no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.02 or of any Default, mandatory prepayment or mandatory reduction of any Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.07(a)(B) or 2.08 (other than pursuant to Section 2.08(b)), without the written consent of each Lender directly and adversely affected thereby, it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest and it further being understood that any change to the definition of "Consolidated First Lien Net Leverage Ratio," "Consolidated Cash Interest Coverage Ratio," "Total Net Leverage Ratio" or "Secured Net Leverage Ratio" or, in each case, in the component definitions thereof shall not constitute a reduction in any amount of interest;

(c) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document (or extend the timing of payments of such fees or other amounts) without the written consent of each Lender directly and adversely affected thereby, it being understood that any change to the definition of "Consolidated First Lien Net Leverage Ratio," "Consolidated Cash Interest Coverage Ratio," "Total Net Leverage Ratio" or "Secured Net Leverage Ratio" or, in each case, in the component definitions thereof shall not constitute a reduction in any rate of interest; *provided* that, for the avoidance of doubt, only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) change any provision of this Section 10.01 or the definition of “Required Revolving Credit Lenders,” “Required Lenders,” “Required Class Lenders,” or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents, without the written consent of each Lender directly affected thereby (it being understood that each Lender shall be directly and adversely affected by a change to the “Required Lenders” or “Pro Rata Share” definitions);

(e) other than in connection with a transaction permitted under Section 7.04 or Section 7.05, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(f) other than in connection with a transaction permitted under Section 7.04 or Section 7.05, release all or substantially all of the aggregate value of the Guarantees, without the written consent of each Lender;

(g) (1) waive any condition set forth in Section 4.02 as to any Credit Extension under one or more Class of Revolving Credit Commitments or (2) amend, waive or otherwise modify any term or provision which directly affects Lenders under one or more Class of Revolving Credit Commitments and does not directly affect Lenders under any other Class, in each case, without the written consent of the Required Class Lenders under such applicable Class or Classes of Revolving Credit Commitments (and in the case of multiple Classes which are affected, such Required Class Lenders shall consent together as one Class) (it being understood that any amendment to the conditions of effectiveness of Incremental Commitments set forth in Section 2.14 shall be subject to clause (h) below); *provided, however*, that the waivers described in this clause (g) shall not require the consent of any Lenders other than (x) the Required Class Lenders under such Class or Classes and (y) in the case of any waiver that otherwise would be subject to clause (a), (b), (c), (d) or (e) above, each Lender, each directly affected Lender or each directly and adversely affected Lender (as specified in clause (a), (b), (c), (d) or (e) above) under the applicable Class or Classes of Revolving Credit Commitments;

(h) amend, waive or otherwise modify any term or provision (including the availability and conditions to funding under Section 2.14 with respect to Incremental Term Loans and Incremental Revolving Credit Commitments and the rate of interest applicable thereto) which directly affects Lenders of one or more Incremental Term Loans or Incremental Revolving Credit Commitments (including Loans extended under such Commitments) and does not directly affect Lenders under any other Class, in each case, without the written consent of the Required Class Lenders under such applicable Incremental Term Loans or Incremental Revolving Credit Commitments (and in the case of multiple Classes which are affected, such Required Class Lenders shall consent together as one Class); *provided, however*, that the waivers described in this clause (h) shall not require the consent of any Lenders other than (x) the Required Class Lenders under such applicable Incremental Term Loans or Incremental Revolving Credit Commitments and (y) in the case of any waiver that otherwise would be subject to clause (a), (b), (c), (d) or (e) above, each Lender, each directly affected Lender or each directly and adversely affected Lender (as specified in clause (a), (b), (c), (d) or (e) above) under the applicable Class or Classes of Incremental Term Loans or Incremental Revolving Credit Commitments (including Loans extended under such Commitments); or

(i) amend or otherwise modify: (a) the Financial Covenant, (b) the exception set forth in Section 6.01(a)(ii) (or in the comparable provision in the paragraph immediately succeeding Section 6.01(d)) and (c) Section 8.04, and in each case any definition related thereto (as any such definition is used therein but not as otherwise used in this Agreement or any other Loan Document) or waive any Default or Event of Default resulting from a failure to perform or observe the Financial Covenant (including any related Default or Event of Default under Section 6.01) or Section 8.04 without the written consent of the Required Revolving Credit Lenders; *provided, that*, the waivers described in this clause (i) shall not require the consent of any Lenders other than the Required Revolving Credit Lenders;

and *provided, further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by each L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; *provided, however*, that this Agreement may be amended to adjust the mechanics related to the issuance of Letters of Credit, including mechanical changes relating to the existence of multiple L/C Issuers, with only the written consent of the Administrative Agent, the applicable L/C Issuer and the Borrower so long as the obligations of the Revolving Credit Lenders, if any, who have not executed such amendment, and if applicable the other L/C Issuers, if any who have not executed such amendment, are not adversely affected thereby; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; *provided, however*, that this Agreement may be amended to adjust the borrowing mechanics related to Swing Line Loans with only the written consent of the Administrative Agent, the Swing Line Lenders and the Borrower so long as the obligations of the Revolving Credit Lenders, if any, who have not executed such amendment are not adversely affected thereby; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; and (iv) Section 10.07(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification; *provided further however* that if at any time there is more than one Revolving Credit Lender but there are not at least three Revolving Credit Lenders, each of which Lenders is not an Affiliate of another Revolving Credit Lender, then the Required Class Lenders (if applicable to the Revolving Credit Commitments) and the Required Revolving Credit Lenders shall in any event constitute at least two Revolving Credit Lenders that are not Affiliates of one another.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any such Defaulting Lender may not be increased or extended without the consent of such Lender, (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms materially and adversely affects any Defaulting Lender to a greater extent than other affected Lenders shall require the consent of such Defaulting Lender and (x) the consent of any Defaulting Lender shall be required in respect of any amendments referred to in Section 10.01(b).

Notwithstanding the foregoing, no Lender consent is required to effect any amendment or supplement to any First Lien Intercreditor Agreement, the Second Lien Intercreditor Agreement, any Subordination Agreement or other intercreditor agreement or arrangement permitted under this Agreement (i) that is for the purpose of adding the holders of Permitted Pari Passu Secured Refinancing Debt, Permitted Junior Secured Refinancing Debt, subordinated Permitted Unsecured Refinancing Debt, Incremental Equivalent Debt (or, in each case, a Senior Representative with respect thereto), Second Lien Incremental Equivalent Debt or Second Lien Refinancing Equivalent Debt as parties thereto, as expressly contemplated by the terms of such First Lien Intercreditor Agreement, such Second Lien Intercreditor Agreement, such Subordination Agreement or such other intercreditor agreement or arrangement permitted under this Agreement, as applicable (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (ii) that is expressly contemplated by any First Lien Intercreditor Agreement, the Second Lien Intercreditor Agreement, any Subordination Agreement or other intercreditor agreement or arrangement permitted under this Agreement; *provided, further*, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent.

Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans, Revolving Credit Loans, Swing Line Loans and L/C Obligations and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

In addition, notwithstanding the foregoing, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the Replacement Term Loans (as defined below) to permit the refinancing of all outstanding Term Loans of any Class ("**Replaced Term Loans**") with replacement term loans ("**Replacement Term Loans**") hereunder; *provided* that (a) the aggregate principal amount of such Replacement Term Loans shall not exceed the aggregate principal amount of such Replaced Term Loans, plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees and expenses associated with such Replacement Term Loans, (b) the All-In Yield with respect to such Replacement Term Loans (or similar interest rate spread applicable to such Replacement Term Loans) shall not be higher than the All-In Yield for such Replaced Term Loans (or similar interest rate spread applicable to such Replaced Term Loans) immediately prior to such refinancing unless the maturity of the Replacement Term Loans is at least one (1) year later than the maturity of the Replaced Term Loans, (c) the Weighted Average Life to Maturity of such Replacement Term Loans shall not be shorter than the Weighted Average Life to Maturity of such Replaced Term Loans at the time of such refinancing (except by virtue of amortization or prepayment of the Replaced Term Loans prior to the time of such incurrence) and (d) all other terms applicable to such Replacement Term Loans shall be substantially identical to, or less favorable to the Lenders providing such Replacement Term Loans than, those applicable to such

Replaced Term Loans, except to the extent necessary to provide for covenants and other terms applicable to any period after the Latest Maturity Date of the Term Loans in effect immediately prior to such refinancing. Each amendment to this Agreement providing for Replacement Term Loans may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent and the Borrower to effect the provisions of this paragraph, and for the avoidance of doubt, this paragraph shall supersede any other provisions in this Section 10.01 to the contrary.

Notwithstanding anything to the contrary contained in this Section 10.01, guarantees, collateral security documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents.

If the Administrative Agent and the Borrower shall have jointly identified an obvious error (including, but not limited to, an incorrect cross-reference) or any error or omission of a technical or immaterial nature, in each case, in any provision of this Agreement or any other Loan Document (including, for the avoidance of doubt, any exhibit, schedule or other attachment to any Loan Document), then the Administrative Agent (acting in its sole discretion) and the Borrower or any other relevant Loan Party shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document. Notification of such amendment shall be made by the Administrative Agent to the Lenders promptly upon such amendment becoming effective.

Section 10.02 Notices and Other Communications; Facsimile Copies.

(a) Notices; Effectiveness; Electronic Communications.

(i) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (C) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(A) if to the Borrower, the Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(B) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrower, the Administrative Agent, the L/C Issuers and the Swing Line Lender.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (C) below shall be effective as provided in such subsection (C).

(C) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(b) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative

Agent or any of its Related Parties (collectively, the “**Agent Parties**”) have any liability to the Loan Parties, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Loan Parties, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(c) Change of Address, Etc. Each of the Borrower, the Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(d) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence, willful misconduct or bad faith of such Person, as determined by a final non-appealable judgment of a court of competent jurisdiction. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03 No Waiver; Cumulative Remedies.

No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.09 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided, further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 10.04 Attorney Costs and Expenses.

The Borrower agrees (a) if the Closing Date occurs, to pay or reimburse the Administrative Agent and the other Agents for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs, which shall be limited to Cahill Gordon & Reindel LLP and one local counsel as reasonably necessary in any relevant jurisdiction material to the interests of the Lenders taken as a whole (and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnitees similarly situated) and (b) after the Closing Date, to pay or reimburse the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all respective

Attorney Costs, which shall be limited to Attorney Costs of one counsel to the Administrative Agent and the Lenders taken as a whole and one local counsel as reasonably necessary in any relevant jurisdiction material to the interests of the Lenders taken as a whole and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnitees similarly situated). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within thirty (30) days after written demand therefor (together with backup documentation supporting such reimbursement request); *provided* that, with respect to the Closing Date, all amounts due under this Section 10.04 shall be paid on the Closing Date solely to the extent invoiced to the Borrower within three (3) Business Days prior to the Closing Date. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its discretion. For the avoidance of doubt, this Section 10.04 shall not apply to Taxes, except any Taxes that represent costs and expenses arising from any non-Tax claim.

Section 10.05 Indemnification by the Borrower.

The Borrower shall indemnify and hold harmless each Agent, Agent-Related Person, Lender, Arranger and Bookrunner and their Affiliates, and their respective officers, directors, employees, partners, agents, advisors and other representatives of the foregoing (collectively the “**Indemnitees**”) from and against any and all liabilities, losses, damages, claims, or out-of-pocket expenses (including Attorney Costs but limited in the case of legal fees and expenses to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, one local counsel for all Indemnitees taken as a whole in each relevant jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnitees similarly situated) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom including any refusal by an L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, or (c) any actual or alleged Environmental Liability of the Loan Parties or any Subsidiary, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) (a “**Proceeding**”) and regardless of whether any Indemnitee is a party thereto or whether or not such Proceeding is brought by the Borrower or any other Person and, in each case, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee (all of the foregoing, collectively, the “**Indemnified Liabilities**”); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, losses, damages, claims or out-of-pocket expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any of its Related Indemnified Persons, as determined by a final non-appealable judgment of a

court of competent jurisdiction, (y) a material breach of any obligations under any Loan Document by such Indemnitee or of any of its Related Indemnified Persons, as determined by a final non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent or arranger or any similar role under any Facility and other than any claims arising out of any act or omission of the Borrower or any of its Affiliates (as determined in a final and non-appealable judgment of a court of competent jurisdiction). No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement (except for direct (as opposed to indirect, special, punitive or consequential) damages resulting from the gross negligence, bad faith or willful misconduct, as determined by a court of competent jurisdiction in a final and non-appealable judgment, of any such Indemnitee), nor shall any Indemnitee, Related Indemnified Person, Loan Party or any Subsidiary have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party, or which are included in a third-party claim, and for any out-of-pocket expenses related thereto). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, any Subsidiary of any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents are consummated. All amounts due under this Section 10.05 shall be paid within thirty (30) days after written demand therefor (together with backup documentation supporting such reimbursement request); *provided, however*, that such Indemnitee shall promptly refund such amount to the extent that there is a final judicial or arbitral determination that such Indemnitee was not entitled to indemnification rights with respect to such payment pursuant to the express terms of this Section 10.05. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. For the avoidance of doubt, this Section 10.05 shall not apply to Taxes, except any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, demands, actions, prepayments, suits, costs, expenses and disbursements arising from any non-Tax claims.

To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under this Section 10.05 or Section 10.04 to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this paragraph are subject to the provisions of Section 2.12(e).

Section 10.06 Payments Set Aside.

To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (except as permitted by Section 7.04) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Assignee pursuant to an assignment made in accordance with the provisions of Section 10.07(b) (such an assignee, an “**Eligible Assignee**”) and (A) in the case of any Assignee that, immediately prior to or upon giving effect to such assignment, is an Affiliated Lender, Section 10.07(k), (B) in the case of any Assignee that is Holdings or any of its Subsidiaries, Section 10.07(l), or (C) in the case of any Assignee that, immediately prior to or upon giving effect to such assignment, is a Debt Fund Affiliate, Section 10.07(o), (ii) by way of participation in accordance with the provisions of Section 10.07(e), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(g) or (i) or (iv) to an SPC in accordance with the provisions of Section 10.07(h) (and any other attempted assignment or transfer by any party hereto shall be null and void); *provided, however*, that notwithstanding the foregoing, no Lender may assign or transfer by participation any of its rights or obligations hereunder to (i) any Person that is a Defaulting Lender, (ii) a natural Person or a Disqualified Institution or (iii) to Holdings, the Borrower or any of their respective Subsidiaries (except pursuant to Section 2.05(a)(v) or Section 10.07(l)). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(e) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement. The Administrative Agent shall promptly give notice to the Borrower of any request by a Lender to assign any of its rights or obligations hereunder to any Person that is on the Disqualified Institutions List or, to the extent it has knowledge, any Person that is an Affiliate of a Person on the Disqualified Institutions List.

(b) (i) Subject to the limitations set forth in paragraph (a) above and the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (“**Assignees**”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this Section 10.07(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed, except in connection with a proposed assignment to any Disqualified Institution) of:

(A) the Borrower, *provided* that no consent of the Borrower shall be required for (i) an assignment of all or a portion of the Term Loans to a Lender, an Affiliate of a Lender or an Approved Fund, (ii) other than with respect to any proposed assignment to any Person that is a Disqualified Institution, if an Event of Default under Section 8.01(a) or, solely with respect to the Borrower, Section 8.01(f) has occurred and is continuing, to any Assignee or (iii) an assignment of all or a portion of the Loans pursuant to Section 10.07(k), Section 10.07(l) or Section 10.07(o); *provided* that, other than with respect to any proposed assignment to any Person that is a Disqualified Institution, the Borrower shall be deemed to have consented to any such assignment of the Term Loans unless it shall have objected thereto by written notice to the Administrative Agent within fifteen (15) Business Days after having received notice thereof;

(B) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for an assignment of all or a portion of the Loans pursuant to Section 10.07(k), Section 10.07(l) or Section 10.07(o);

(C) each applicable L/C Issuer at the time of such assignment; *provided* that no consent of the applicable L/C Issuers shall be required for any assignment of a Term Loan or any assignment to an Agent or an Affiliate of an Agent; *provided* that the consent of the Existing L/C Issuer shall not be so required unless any Existing Letters of Credit are outstanding at such time; and

(D) the Swing Line Lender; *provided* that no consent of the Swing Line Lender shall be required for any assignment of a Term Loan or any assignment to an Agent or an Affiliate of an Agent.

Notwithstanding the foregoing or anything to the contrary set forth herein, to the extent any Lender is required to assign any portion of its Commitments, Loans and other rights, duties and obligations hereunder in order to comply with applicable Laws, such assignment may be made by such Lender without the consent of the Borrower, the Administrative Agent, any applicable L/C Issuer, the Swing Line Lender or any other party hereto so long as such Lender complies with the requirements of Section 10.07(b)(ii).

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than an amount of \$5,000,000 (in the case of each Revolving Credit Loan) or \$1,000,000 (in the case of a Term Loan), and shall be in increments of an amount of \$5,000,000 (in the case of each Revolving Credit Loan) or \$1,000,000 (in the case of Term Loans), in excess thereof unless each of the Borrower and the Administrative Agent otherwise consent; *provided* that such assignments shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (unless waived or reduced by the Administrative Agent in its sole discretion); and

(C) other than in the case of assignments pursuant to Section 10.07(l), the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

This paragraph (b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis among such Facilities.

In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(c) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(d), from and after the effective date specified in each Assignment and Assumption, (1) other than in connection with an assignment pursuant to Section 10.07(l), the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and (2) the assigning Lender thereunder shall, to the extent of the interest

assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (c) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(e).

(d) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption, each Affiliated Lender Assignment and Assumption delivered to it, and each notice of cancellation of any Loans delivered by the Borrower pursuant to Section 10.07(k) or Section 10.07(l) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans, L/C Obligations (specifying the Unreimbursed Amounts), L/C Borrowings and the amounts due under Section 2.03, owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent and any Lender (but in the case of any Lender, such inspection shall be limited to reviewing such Lender's own entry in the Register only), at any reasonable time and from time to time upon reasonable prior notice. This Section 10.07(d) and Section 2.11 shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations). Notwithstanding the foregoing, in no event shall the Administrative Agent be obligated to ascertain, monitor or inquire as to whether any Lender is an Affiliated Lender nor shall the Administrative Agent be obligated to monitor the aggregate amount of Term Loans or Incremental Term Loans held by Affiliated Lenders.

(e) Any Lender may at any time sell participations to any Person (other than a natural person, a Disqualified Institution or a Defaulting Lender) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; *provided* that such agreement or instrument may provide that such Lender will

not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (a) through (f) of the first proviso to Section 10.01 that requires the affirmative vote of such Lender. Subject to Section 10.07(f), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender (subject, for the avoidance of doubt, to the limitations and requirements of those Sections (including Section 3.01(d) and Sections 3.06 and 3.07) applying to each Participant as if it were a Lender, and it being understood that the documentation required under Section 3.01(d) shall be delivered solely to the participating Lender) and had acquired its interest by assignment pursuant to Section 10.07(c). To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. No Lender shall have the obligation to disclose all or a portion of the Participant Register (including the identity of the Participant or any information relating to a Participant's interest in any Loans or other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that any loans are in registered form for U.S. federal income tax purposes.

(f) A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent (not to be unreasonably withheld or delayed; for the avoidance of doubt, the Borrower shall have a reasonable basis for withholding consent if such Participant would result in a materially increased indemnification obligation to the Borrower at such time).

(g) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "**SPC**") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof, shall be appropriately reflected in the Participant Register.

Each party hereto hereby agrees that (i) an SPC shall be entitled to the benefit of Sections 3.01, 3.04 and 3.05 (subject to the requirements and the limitations of such Sections and Sections 3.06 and 3.07 and it being understood that the documentation required under Section 3.01(d) shall be delivered solely to the Granting Lender), but neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement except, in the case of Section 3.01, to the extent that the grant to the SPC was made with the prior written consent of the Borrower which may be withheld in the Borrower's sole and absolute discretion, (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the Lender hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of \$3,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(i) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the Administrative Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(j) Notwithstanding anything to the contrary contained herein, any L/C Issuer or Swing Line Lender may, upon thirty (30) days' notice to the Borrower and the Lenders, resign as an L/C Issuer or Swing Line Lender, respectively; *provided* that on or prior to the expiration of such thirty (30)-day period with respect to such resignation, the relevant L/C Issuer or Swing Line Lender shall have identified a successor L/C Issuer or Swing Line Lender reasonably acceptable to the Borrower willing to accept its appointment as successor L/C Issuer or Swing Line Lender, as applicable. In the event of any such resignation of an L/C Issuer or Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders willing to accept such appointment a successor L/C Issuer or Swing Line Lender hereunder; *provided* that no failure by the Borrower to appoint any such successor shall affect the resignation of the relevant L/C Issuer or the Swing Line Lender, as the case may be, except as expressly provided above. If an L/C Issuer resigns as an L/C Issuer, it shall retain all the rights and obligations of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed

Amounts pursuant to Section 2.03(c)). If the Swing Line Lender resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c).

(k) Any Lender may at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to a Person who is or will become, after such assignment, an Affiliated Lender through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis consistent with the procedures set forth in Section 2.05(a)(v) or (y) open market purchase on a non-pro rata basis, in each case subject to the following limitations:

(i) the assigning Lender and the Affiliated Lender purchasing such Lender's Term Loans shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit K hereto (an "**Affiliated Lender Assignment and Assumption**");

(ii) Affiliated Lenders will not receive information provided solely to Lenders by the Administrative Agent or any Lender and will not be permitted to attend or participate in conference calls or meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices of prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II;

(iii) (A) each Affiliated Lender that purchases any Term Loans pursuant to clause (x) above shall represent and warrant to the selling Lender and the Administrative Agent (other than any other Affiliated Lender), or shall make a statement that such representation cannot be made, that it does not possess material non-public information with respect to Holdings and its Subsidiaries or the securities of any of them that has not been disclosed to the Term Lenders generally (other than Term Lenders who elect not to receive such information) and (B) each Lender (other than any other Affiliated Lender) that assigns any Term Loans to an Affiliated Lender pursuant to clause (k)(y) above shall deliver to the Administrative Agent and the applicable Affiliated Lender a customary Big Boy Letter;

(iv) the aggregate principal amount of Term Loans held at any one time by Affiliated Lenders shall not exceed 25% of the original principal amount of all Term Loans at such time outstanding; (such percentage, the "**Affiliated Lender Cap**"); *provided* that to the extent any assignment to an Affiliated Lender would result in the aggregate principal amount of all Loans held by Affiliated Lenders exceeding the Affiliated Lender Cap, the assignment of such excess amount will be void *ab initio*; and

(v) as a condition to each assignment pursuant to this clause (k), the Administrative Agent and the Borrower shall have been provided a notice in the form of Exhibit E-2 to this Agreement in connection with each assignment to an Affiliated Lender or a Person that upon effectiveness of such assignment would constitute an Affiliated Lender pursuant to which such Affiliated Lender shall waive any right to bring any action in connection with such Term Loans against the Administrative Agent, in its capacity as such.

Each Affiliated Lender agrees to notify the Administrative Agent promptly (and in any event within ten (10) Business Days) if it acquires any Person who is also a Lender, and each Lender agrees to notify the Administrative Agent promptly (and in any event within ten (10) Business Days) if it becomes an Affiliated Lender. Such notice shall contain the type of information required and be delivered to the same addressee as set forth in Exhibit E-2.

Notwithstanding anything to the contrary contained herein, any Affiliated Lender that has purchased Term Loans pursuant to this subsection (k) and any Debt Fund Affiliate that has purchased Term Loans may, in their sole discretion, contribute, directly or indirectly, principal amount of such Term Loans, plus all accrued and unpaid interest thereon, to the Borrower for the purpose of cancelling and extinguishing such Term Loans. Upon the date of such contribution, assignment or transfer, (x) the aggregate outstanding principal amount of Term Loans shall reflect such cancellation and extinguishing of the Term Loans then held by the Borrower and (y) the Borrower shall promptly provide notice to the Administrative Agent of such contribution of such Term Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Term Loans in the Register.

(l) Any Lender may, so long as no Default or Event of Default has occurred and is continuing, at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to Holdings or the Borrower through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis consistent with the procedures set forth in Section 2.05(a)(v) or (y) notwithstanding Sections 2.12 and 2.13 or any other provision in this Agreement, open market purchase on a non-pro rata basis; *provided that*:

(i) if Holdings is the assignee, upon such assignment, transfer or contribution, Holdings shall automatically be deemed to have contributed the principal amount of such Term Loans, plus all accrued and unpaid interest thereon, to the Borrower;

(ii) (a) the principal amount of such Term Loans, along with all accrued and unpaid interest thereon, so contributed, assigned or transferred to the Borrower shall be deemed automatically cancelled and extinguished on the date of such contribution, assignment or transfer, (b) the aggregate outstanding principal amount of Term Loans of the remaining Lenders shall reflect such cancellation and extinguishing of the Term Loans then held by the Borrower and (c) the Borrower shall promptly provide notice to the Administrative Agent of such contribution, assignment or transfer of such Term Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Term Loans in the Register; and

(iii) purchases of Term Loans shall not be funded with the proceeds of Revolving Credit Loans or Swing Line Loans.

(m) Notwithstanding anything in Section 10.01 or the definition of "Required Lenders" or "Required Class Lenders" to the contrary, for purposes of determining whether the Required Lenders and Required Class Lenders (in respect of a Class of Term Loans) have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, or subject to Section 10.07(n), any plan of reorganization pursuant to the U.S.

Bankruptcy Code, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, no Affiliated Lender shall have any right to consent (or not consent), otherwise act or direct or require the Administrative Agent or any Lender to take (or refrain from taking) any such action, and all Term Loans held by any Affiliated Lenders shall be disregarded for all purposes of calculating whether the Required Lenders, Required Class Lenders (in respect of a Class of Term Loans) or all Lenders have taken any actions (and shall be deemed to have voted pro rata with other lenders that are not Affiliated Lenders), except that no amendment, modification or waiver of any Loan Document shall, without the consent of the applicable Affiliated Lender, deprive any Affiliated Lender of its Pro Rata Share of any payment to which all Lenders of the applicable Class of Term Loans are entitled or affect an Affiliated Lender in a manner that is disproportionate to the effect on any Lender of the same Class of Term Loans.

(n) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, each Affiliated Lender hereby agrees that (and each Affiliated Lender Assignment and Assumption shall provide a confirmation that) if a proceeding under any Debtor Relief Law shall be commenced by or against the Borrower or any other Loan Party at a time when such Lender is an Affiliated Lender, such Affiliated Lender irrevocably authorizes and empowers the Administrative Agent to vote on behalf of such Affiliated Lender with respect to the Term Loans held by such Affiliated Lender in a manner such that all Affiliated Lenders will be deemed to vote in the same proportion as Lenders that are not Affiliated Lenders, unless the Administrative Agent instructs such Affiliated Lender to vote, in which case such Affiliated Lender shall vote with respect to the Term Loans held by it in order to provide that all Affiliated Lenders will be deemed to vote in the same proportion as Lenders that are not Affiliated Lenders; *provided* that such Affiliated Lender shall be entitled to vote in accordance with its sole discretion (and not in accordance with the direction of the Administrative Agent) in connection with any plan of reorganization to the extent any such plan of reorganization proposes to treat any Obligations held by such Affiliated Lender in a manner that has a disproportionate effect on such Affiliated Lender as compared to the proposed treatment of similar Obligations held by Term Lenders that are not Affiliated Lenders.

(o) Although Debt Fund Affiliates shall be Eligible Assignees and shall not be subject to the provisions of Section 10.07(m) or (n), any Lender may, at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to a Person who is or will become, after such assignment, a Debt Fund Affiliate only through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis consistent with the procedures set forth in Section 2.05(a)(v) (for the avoidance of doubt, without requiring any representation as to the possession of material non-public information by such Affiliate and without regard to whether a Default or an Event of Default has occurred and is continuing) or (y) open market purchase on a non-pro rata basis. Notwithstanding anything in Section 10.01 or the definition of "Required Lenders" to the contrary, for purposes of determining whether the Required Lenders have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, (ii) otherwise acted on any matter related to any Loan Document or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, all Term Loans, Revolving Credit Commitments and Revolving Credit Loans held by Debt Fund Affiliates, in the aggregate, may not account for more than 49.9% of the Term Loans, Revolving Credit Commitments and Revolving Credit Loans of Lenders included in determining whether the Required Lenders have consented to any action pursuant to Section 10.01.

(p) The aggregate outstanding principal amount of the Term Loans of the applicable Class shall be deemed reduced by the full par value of the aggregate principal amount of the Term Loans purchased by, or contributed to (in each case, and subsequently cancelled hereunder), the Borrower pursuant to Section 10.07(k) or (l) and the principal repayment installments with respect to the Term Loans of such Class pursuant to Section 2.07(a)(i) shall be reduced pro rata by the par value of the aggregate principal amount of Term Loans so purchased or contributed (and subsequently cancelled), with such reduction being applied solely to the Term Loans of the Lenders which sold such Term Loans.

Section 10.08 Confidentiality.

Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and its and its Affiliates' managers, administrators, directors, officers, employees, trustees, partners, investors, investment advisors and agents, including accountants, legal counsel, service providers and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any Governmental Authority or self-regulatory authority having or asserting jurisdiction over such Person (including any Governmental Authority regulating any Lender or its Affiliates), *provided* that the Administrative Agent or such Lender, as applicable, agrees that it will notify the Borrower prior to any such disclosure by such Person to the extent practicable (other than at the request of a regulatory authority or any self-regulatory authority having or asserting jurisdiction over such Person) unless such notification is prohibited by law, rule or regulation; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, *provided* that the Administrative Agent or such Lender, as applicable, agrees that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority or any self-regulatory authority having or asserting jurisdiction over such Person) unless such notification is prohibited by law, rule or regulation; (d) to any other party to this Agreement; (e) subject to an agreement containing provisions at least as restrictive as those of this Section 10.08 (or as may otherwise be reasonably acceptable to the Borrower), to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be an Additional Lender, any pledgee referred to in Section 10.07(g), or any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations; (f) with the written consent of the Borrower; (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.08 or becomes available to the Administrative Agent, any Arranger, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than a Loan Party or any Sponsor or their respective related parties (so long as such source is not known to the Administrative Agent, such Arranger, such Lender, the L/C Issuer or any of their respective Affiliates to be bound by confidentiality obligations to any Loan Party); (h) to any rating agency when required by it on a customary basis

and after consultation with the Borrower (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to Loan Parties and their Subsidiaries received by it from such Lender); (i) in connection with the exercise of any remedies hereunder, under any other Loan Document or the enforcement of its rights hereunder or thereunder; or (j) to the extent such Information is independently developed by such Person or its Affiliates so long as not based on Information obtained in a manner that would otherwise violate this Section 10.08.

For purposes of this Section 10.08, "**Information**" means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof other than as a result of a breach of this Section 10.08; *provided* that all information received after the Closing Date from Holdings, the Borrower or any of its Subsidiaries shall be deemed confidential unless such information is clearly identified at the time of delivery as not being confidential.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower or any of its Subsidiaries, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

Section 10.09 Setoff.

In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates (and the Administrative Agent, in respect of any unpaid fees, costs and expenses payable hereunder) is authorized at any time and from time to time, without prior notice to the Borrower, any such notice being waived by the Borrower (on its own behalf and on behalf of each Loan Party and each of its Subsidiaries) to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates or the Administrative Agent to or for the credit or the account of the respective Loan Parties and their Subsidiaries against any and all Obligations (other than, with respect to any Guarantor, Excluded Swap Obligations of such Guarantor) owing to such Lender and its Affiliates or the Administrative Agent hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuers, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to

which it exercised such right of setoff. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; *provided* that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent and each Lender under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent and such Lender may have at Law.

Section 10.10 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "**Maximum Rate**"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.11 Counterparts; Electronic Execution of Assignments and Certain Other Documents.

This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier, .pdf or other electronic imaging means of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Agents may also require that any such documents and signatures delivered by telecopier, .pdf or other electronic imaging means be confirmed by a manually signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by telecopier, .pdf or other electronic imaging means.

The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.12 Integration; Termination.

This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements (other than the Fee Letter) written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided* that the inclusion of supplemental rights or remedies in favor of the Agents or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof. Notwithstanding anything contained herein or in any Loan Document or any other agreement among the parties or anything else to the contrary, the Fee Letter and all obligations thereunder shall survive the execution, delivery and performance of the Loan Documents and the occurrence of the Closing Date.

Section 10.13 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied (other than Obligations under Secured Hedge Agreements, Treasury Services Agreements or contingent indemnification obligations, in any such case, not then due and payable) or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or such Letter of Credit has been deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer).

Section 10.14 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.14, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 10.15 GOVERNING LAW.

(a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY (BOROUGH OF MANHATTAN) OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY, EACH AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS AND AGREES THAT IT WILL NOT COMMENCE OR SUPPORT ANY SUCH ACTION OR PROCEEDING IN ANOTHER JURISDICTION. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN OR IN ANY OTHER LOAN DOCUMENT WILL PREVENT ANY LENDER OR THE ADMINISTRATIVE AGENT FROM BRINGING ANY ACTION TO ENFORCE ANY AWARD OR JUDGMENT OR EXERCISE ANY RIGHT UNDER THE SECURITY DOCUMENTS OR AGAINST ANY COLLATERAL OR ANY OTHER PROPERTY OF ANY LOAN PARTY IN ANY OTHER FORUM IN WHICH JURISDICTION CAN BE ESTABLISHED. EACH LOAN PARTY, EACH AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS IN THE MANNER PROVIDED FOR NOTICES (OTHER THAN TELECOPIER) IN SECTION 10.02. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.16 WAIVER OF RIGHT TO TRIAL BY JURY.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER

PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.16.

Section 10.17 Binding Effect.

This Agreement shall become effective when (i) it shall have been executed by the Loan Parties and the Administrative Agent and (ii) the Administrative Agent shall have been notified by each Lender, Swing Line Lender and L/C Issuer that each such Lender, Swing Line Lender and L/C Issuer has executed it and thereafter shall be binding upon and inure to the benefit of the Loan Parties, each Agent and each Lender and their respective successors and assigns, in each case in accordance with Section 10.07 (if applicable) and except that no Loan Party shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders except as permitted by Section 7.04.

Section 10.18 USA Patriot Act.

Each Lender that is subject to the USA Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name, address and tax identification number of such Loan Party and other information regarding such Loan Party that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the USA Patriot Act. This notice is given in accordance with the requirements of the USA Patriot Act and is effective as to the Lenders and the Administrative Agent.

Section 10.19 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the other Arrangers are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Administrative Agent, the other Arrangers and the Lenders, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, each other Arranger and each Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for each Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, any other Arranger nor any Lender has any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the

Administrative Agent, the other Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Administrative Agent nor any other Arranger nor any Lender has any obligation to disclose any of such interests to the Loan Parties or any of their respective Affiliates. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the other Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.20 INTERCREDITOR AGREEMENTS.

(a) PURSUANT TO THE EXPRESS TERMS OF EACH INTERCREDITOR AGREEMENT, IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE TERMS OF THE RELEVANT INTERCREDITOR AGREEMENT AND ANY OF THE LOAN DOCUMENTS, THE PROVISIONS OF THE RELEVANT INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL.

(b) EACH LENDER AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT TO ENTER INTO THE RELEVANT INTERCREDITOR AGREEMENT ON BEHALF OF SUCH LENDER, AND TO TAKE ALL ACTIONS (AND EXECUTE ALL DOCUMENTS) REQUIRED (OR DEEMED ADVISABLE) BY IT IN ACCORDANCE WITH THE TERMS OF SUCH INTERCREDITOR AGREEMENT(S). EACH LENDER AGREES TO BE BOUND BY AND WILL TAKE NO ACTIONS CONTRARY TO THE PROVISIONS OF THE RELEVANT INTERCREDITOR AGREEMENT.

(c) THE PROVISIONS OF THIS SECTION 10.20 ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF THE RELEVANT INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO THE RELEVANT INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF THE RELEVANT INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NO AGENT (AND NONE OF ITS AFFILIATES) MAKES ANY REPRESENTATION TO ANY LENDER AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN THE RELEVANT INTERCREDITOR AGREEMENT.

(d) THE PROVISIONS OF THIS SECTION 10.20 SHALL APPLY WITH EQUAL FORCE, MUTATIS MUTANDIS, TO THE FIRST LIEN INTERCREDITOR AGREEMENT, THE SECOND LIEN INTERCREDITOR AGREEMENT, THE SUBORDINATION AGREEMENT AND ANY OTHER INTERCREDITOR AGREEMENT OR ARRANGEMENT PERMITTED BY THIS AGREEMENT.

**ARTICLE XI.
GUARANTEE**

Section 11.01 The Guarantee.

Each Guarantor hereby jointly and severally with the other Guarantors guarantees, as a primary obligor and not as a surety, to each Secured Party and their respective successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of (i) the Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code and (ii) any other Debtor Relief Laws) on the Loans made by the Lenders to, and the Notes held by each Lender of, the Borrower, and all other Obligations (excluding, with respect to any Guarantor, any Excluded Swap Obligations of such Guarantor) from time to time owing to the Secured Parties by any Loan Party under any Loan Document or any Secured Hedge Agreement or any Treasury Services Agreement, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the “**Guaranteed Obligations**”). The Guarantors hereby jointly and severally agree that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Section 11.02 Obligations Unconditional.

The obligations of the Guarantors under Section 11.01 shall constitute a guaranty of payment and to the fullest extent permitted by applicable Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower under this Agreement, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

- (i) at any time or from time to time, without notice to the Guarantors, to the extent permitted by Law, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;
- (ii) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;

(iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or except as permitted pursuant to Section 11.09, any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien or security interest granted to, or in favor of, an L/C Issuer or any Lender or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or

(v) the release of any other Guarantor pursuant to Section 11.09.

The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and, to the extent permitted by Law, all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive, to the extent permitted by Law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other Person at any time of any right or remedy against the Borrower or against any other Person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Lenders, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

Section 11.03 Reinstatement.

The obligations of the Guarantors under this Article XI shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

Section 11.04 Subrogation; Subordination.

Each Guarantor hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 11.01, whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party to any Non-Loan Party permitted pursuant to Section 7.03(b)(ii) or 7.03(d) shall be subordinated to such Loan Party's Obligations in the manner set forth in the Intercompany Note evidencing such Indebtedness.

Section 11.05 Remedies.

The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in Section 8.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 8.02) for purposes of Section 11.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 11.01.

Section 11.06 Instrument for the Payment of Money.

Each Guarantor hereby acknowledges that the guarantee in this Article XI constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

Section 11.07 Continuing Guarantee.

The guarantee in this Article XI is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

Section 11.08 General Limitation on Guarantee Obligations.

In any action or proceeding involving any state corporate limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under Section 11.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, any Loan Party or any other Person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 11.10) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

Section 11.09 Release of Guarantors.

If, in compliance with the terms and provisions of the Loan Documents, (i) all or substantially all of the Equity Interests or property of any Subsidiary Guarantor are sold or otherwise transferred to a Person or Persons none of which is a Loan Party or (ii) any Subsidiary Guarantor becomes an Excluded Subsidiary (any such Subsidiary Guarantor, and any Subsidiary Guarantor referred to in clause (i), a “**Transferred Guarantor**”), such Transferred Guarantor shall, upon the consummation of such sale or transfer or other transaction, be automatically released from its obligations under this Agreement (including under Section 10.05 hereof) and its obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and, in the case of a sale of all or substantially all of the Equity Interests of the Transferred Guarantor, the pledge of such Equity Interests to the Administrative Agent pursuant to the Collateral Documents shall be automatically released, and, so long as the Borrower shall have provided the Agents such certifications or documents as any Agent shall reasonably request, the Administrative Agent shall take such actions as are necessary to effect each release described in this Section 11.09 in accordance with the relevant provisions of the Collateral Documents.

Subject to the immediately preceding paragraph of this Section 11.09, the Guarantees made herein shall remain in full force and effect so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements as to which arrangements reasonably satisfactory to the applicable Hedge Bank have been made) hereunder which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or such Letter of Credit has been deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer).

Section 11.10 Right of Contribution.

Each Guarantor hereby agrees that to the extent that a Subsidiary Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Subsidiary Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Subsidiary Guarantor’s right of contribution shall be subject to the terms and conditions of Section 11.04. The provisions of this Section 11.10 shall in no respect limit the obligations and liabilities of any Subsidiary Guarantor to the Administrative Agent, the L/C Issuer, the Swing Line Lender and the Lenders, and each Subsidiary Guarantor shall remain liable to the Administrative Agent, the L/C Issuer, the Swing Line Lender and the Lenders for the full amount guaranteed by such Subsidiary Guarantor hereunder.

Section 11.11 Keepwell.

Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally, and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guaranty in respect of any Swap Obligation (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 11.11 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 11.11, or otherwise under this Guaranty, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 11.11 shall remain in full force and effect until the payment in full and discharge of the Guaranteed Obligations. Each Qualified ECP Guarantor intends that this Section 11.11 constitute, and this Section 11.11 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Guarantor for all purposes of section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

PHD MERGER SUB LLC

By: /s/ Joshua A. Lutzker

Name: Joshua A. Lutzker

Title: President

PHD INTERMEDIATE LLC

PORTILLO'S FOOD SERVICE, LLC

GOLDEN DOGS, LLC

PORTILLO'S HOT DOGS, LLC

RICHPORT HOLDINGS, LLC

PORTILLO'S OF ARIZONA, LLC

PORTILLO'S HOT DOGS OF INDIANA, LLC

By: /s/ Karen L. Peterson

Name: Karen L. Peterson

Title: Vice President, Chief Financial Officer and
Treasurer

[Signature Page to First Lien Credit Agreement]

UBS AG, STAMFORD BRANCH, as Administrative Agent, L/C Issuer, Swing Line Lender and as a Lender

By: /s/ Lana Gifas

Name: Lana Gifas

Title: Director

By: /s/ Jennifer Anderson

Name: Jennifer Anderson

Title: Associate Director

[Signature Page to First Lien Credit Agreement]

By: /s/ E.J. Hess

Name: E.J. Hess

Title: Managing Director

[Signature Page to First Lien Credit Agreement]

**WINTRUST BANK (formerly known as NORTH
SHORE COMMUNITY BANK & TRUST
COMPANY), as L/C Issuer and as a Lender**

By: /s/ Bailey Moore

Name: Bailey Moore

Title: AVP

[Signature Page to First Lien Credit Agreement]

AMENDMENT NO. 1 TO FIRST LIEN CREDIT AGREEMENT

AMENDMENT NO. 1 TO FIRST LIEN CREDIT AGREEMENT, dated as of October 25, 2016 (this "Agreement"), by and among Portillo's Holdings, LLC, a Delaware limited liability company (the "Borrower"), PHD Intermediate LLC, a Delaware limited liability company ("Holdings"), each Term B-2 Lender party hereto, each Lender party hereto, UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent"), and each of the other Loan Parties party hereto.

RECITALS:

WHEREAS, reference is hereby made to the First Lien Credit Agreement, dated as of August 1, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Credit Agreement" and, as amended by this Agreement, the "Credit Agreement"), among Holdings, the Borrower, the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and the Administrative Agent (capitalized terms used but not defined herein having the meanings provided in the Existing Credit Agreement);

WHEREAS, Section 10.01 of the Existing Credit Agreement permits certain amendments to it with the consent of the Required Lenders and the Required Revolving Credit Lenders;

WHEREAS, pursuant to Section 2.14(a) of the Existing Credit Agreement, the Borrower hereby notifies the Administrative Agent that it is requesting Incremental Term Commitments in an aggregate principal amount of \$71,000,000 (the "Term B-2 Commitments"), which will be available on the Effective Date (as defined below) and which Term B-2 Commitments and the Incremental Term Loans thereunder (the "Term B-2 Loans") shall constitute Term Loans under the Credit Agreement and will be treated as the same tranche (and same Class) as the Term B Loans outstanding under the Existing Credit Agreement, the proceeds of which Term B-2 Loans will be used, together with the proceeds of a \$25,000,000 incremental loan pursuant to the Second Lien Credit Agreement (the "2016 Second Lien Incremental Term Loan") and cash on hand to pay a distribution to its indirect shareholders (the "Special Distribution") in an amount not to exceed \$110,000,000 and to pay fees and expenses in connection with the transactions contemplated hereby (collectively, the "Transactions");

WHEREAS, pursuant to Section 2.14(a) of the Existing Credit Agreement the Borrower hereby notifies the Administrative that it is requesting a Revolving Commitment Increase of the Revolving Credit Commitments in an aggregate amount of \$15,000,000 on terms identical to those applicable to the existing Revolving Credit Commitment (including as to pricing, tenor, rights of payment and prepayment and right of security), as amended by this Agreement, which additional commitments (the "Additional Commitments") will be available on the Effective Date;

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

1. **Amendments to Loan Documents.** Effective as of the Effective Date:
 - (a) Section 1.01 of the Existing Credit Agreement is hereby amended by inserting in appropriate alphabetical order the following new definitions:

“**Amendment No. 1**” means Amendment No. 1 to this Agreement, dated as of October 25, 2016, among the Borrower, Holdings, the other Loan Parties party thereto, the Administrative Agent and the Lenders party thereto.

“**Amendment No. 1 Effective Date**” shall mean the “Effective Date” under and as defined in Amendment No. 1.

“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“**Bail-In Legislation**” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“**De Novo Store**” means any store that has been continuously operational for less than six consecutive fiscal quarters.

“**EEA Financial Institution**” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“**EEA Member Country**” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“**EEA Resolution Authority**” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“**Second Lien Credit Agreement Amendment No. 1**” means that certain Amendment No. 1 to Second Lien Credit Agreement, dated as of October 25, 2016, by and among Holdings, the Borrower, the other Guarantors party thereto, the lenders party thereto in their capacities as lenders and the Second Lien Administrative Agent.

“**Special Distribution**” shall mean the “Special Distribution” under and as defined in Amendment No. 1.

“**Term B-2 Loan Commitment**” means, as to any Lender, its obligation to make a Term B-2 Loan to the Borrower pursuant to Amendment No. 1 in an aggregate amount not to exceed the amount set forth opposite such Lender’s name on Schedule I to Amendment No. 1 or in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including Section 2.14). The aggregate amount of the Lenders’ Term B-2 Loan Commitments on the Amendment No. 1 Effective Date (immediately prior to the incurrence of the Term B-2 Loans on such date) is \$71,000,000.

“**Term B-2 Loan**” means the term loans made by the Term B-2 Lenders to the Borrower pursuant to Section 2.14 on the Amendment No. 1 Effective Date.

“**Term B-2 Lenders**” means any Lender with a Term B-2 Loan Commitment or an outstanding Term B-2 Loan.

“**Write-Down and Conversion Powers**” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

- (b) Clause (a) of the definition of “Applicable Rate” contained in Section 1.01 of the Existing Credit Agreement is hereby amended in its entirety to read as follows:
- (a) Term B Loans and Term B-2 Loans, (A) for Eurocurrency Rate Loans, 4.50%, (B) for Base Rate Loans, 3.50% and
- (c) Clause (a)(xiv) of the definition of “Consolidated EBITDA” contained in Section 1.01 of the Existing Credit Agreement is hereby amended in its entirety to read as follows:
- (xiv) other adjustments and add-backs of the type identified in the Quality of Earnings Analysis dated June 25, 2014, including without limitation, if greater than zero, an amount equal to the pro forma “run rate” Consolidated EBITDA attributable to any De Novo Store, which will be assumed to be (A)(1) the median Consolidated EBITDA margin before cash rent expense of comparable stores that have been operating for at least six consecutive fiscal quarters for such period multiplied by (2) the projected (in the good faith determination of the Borrower) mature annual revenue of such De Novo Store, minus (b)(i) the annual cash rent expense of the relevant De Novo Store and (B) the actual Consolidated EBITDA generated by the relevant De Novo Store;
- (d) Clause (a)(i) of the definition of “Cumulative Credit” contained in Section 1.01 of the Existing Credit Agreement is hereby amended in its entirety to read as follows:
- \$10,000,000, *plus* subject, at the time of the proposed use of such component of the Cumulative Credit, to compliance on a Pro Forma Basis with a Total Net Leverage Ratio as of the most recently ended Test Period that is no greater than 5.80:1.00, \$20,000,000, *plus*
- (e) Clause (d)(i) of the definition of “Defaulting Lender” contained in Section 1.01 of the Existing Credit Agreement is hereby amended in its entirety to read as follows:
- (i) become the subject of a proceeding under any Debtor Relief Law or a Bail-In Action,

- (f) The *proviso* at the end of the definition of “Eurocurrency Rate” contained in Section 1.01 of the Existing Credit Agreement is hereby amended by adding the following immediately prior to the period:
- and the Eurocurrency Rate with respect to Revolving Credit Loans (including Swing Line Loans) and unused Revolving Credit Commitments shall not be less than 0.00% per annum.
- (g) The definition of “Maturity Date” contained in Section 1.01 of the Existing Credit Agreement is hereby amended in its entirety to read as follows:
- “**Maturity Date**” means (i) with respect to the Term B Loans and Term B-2 Loans, the seventh anniversary of the Closing Date; (ii) with respect to the Initial Revolving Credit Commitments, the fifth anniversary of the Closing Date; (iii) with respect to any Class of Extended Term Loans or Extended Revolving Credit Commitments, the final maturity date as specified in the applicable Extension Request accepted by the respective Lender or Lenders, (iv) with respect to any Refinancing Term Loans or Refinancing Revolving Credit Commitments, the final maturity date as specified in the applicable Refinancing Amendment and (v) with respect to any Incremental Loans or Incremental Revolving Credit Commitments, the final maturity date as specified in the applicable Incremental Amendment; *provided* that, in each case, if such day is not a Business Day, the Maturity Date shall be the Business Day immediately succeeding such day.
- (h) The definition of “Second Lien Incremental Usage Amount” contained in Section 1.01 of the Existing Credit Agreement is hereby amended in its entirety to read as follows:
- “**Second Lien Incremental Usage Amount**” means, at any time, the sum of (x) the aggregate principal amount of “Incremental Commitments” (as defined in the Second Lien Credit Agreement) established at or before such time pursuant to Section 2.14(d)(iii)(B) of the Second Lien Credit Agreement (as in effect as of the date hereof but after giving effect to Second Lien Credit Agreement Amendment No. 1) and (y) the aggregate principal amount of “Incremental Equivalent Debt” (as defined in the Second Lien Credit Agreement) incurred at or before such time pursuant to Section 2.14(h)(i)(B) of the Second Lien Credit Agreement (as in effect as of the date hereof but after giving effect to Second Lien Credit Agreement Amendment No. 1).
- (i) The definition of “Term Loan” contained in Section 1.01 of the Existing Credit Agreement is hereby amended in its entirety to read as follows:
- “**Term Loan**” means any Term B Loan, Term B-2 Loan, Incremental Term Loan, Refinancing Term Loan or Extended Term Loan, as the context may require.
- (j) Section 2.05(a)(vi) of the Existing Credit Agreement is hereby amended in its entirety to read as follows:
- Notwithstanding the foregoing, in the event that, on or prior to the date that is six (6) months after the Amendment No. 1 Effective Date, the Borrower (x) prepays, refinances, substitutes or replaces any Term B Loans or Term B-2 Loans pursuant to a Repricing Transaction (including, for avoidance of doubt, any prepayment made pursuant to Section 2.05(b)(iii) that constitutes a Repricing Transaction), or (y) effects any amendment of this Agreement resulting in a Repricing Transaction, the Borrower shall

pay to the Administrative Agent, for the ratable account of each of the applicable Term Lenders, (I) in the case of clause (x), a prepayment premium of 1.00% of the aggregate principal amount of the Term B Loans or Term B-2 Loans so prepaid, refinanced, substituted or replaced and (II) in the case of clause (y), a fee equal to 1.00% of the aggregate principal amount of the applicable Term B Loans or Term B-2 Loans subject to such amendment. Such amounts shall be due and payable on the date of effectiveness of such Repricing Transaction.

(k) Section 2.07(a)(i) of the Existing Credit Agreement is hereby amended in its entirety to read as follows:

The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders (A) on the last Business Day of each March, June, September and December, an aggregate principal amount equal to \$1,018,622.45 (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05 and 10.07(p)) and (B) on the Maturity Date for any Class of Term Loans, the aggregate principal amount of all Term Loans of such Class outstanding on such date.

(l) Section 2.14(d)(iii) of the Existing Credit Agreement is hereby amended by inserting the following immediately after "\$85,000,000":

(m) (provided, that such amount shall not be reduced by the Term B-2 Loans, Additional Commitments (as defined in Amendment No. 1) or the 2016 Second Lien Incremental Term Loan (as defined in Amendment No. 1))

(n) Section 2.14(h) of the Existing Credit Agreement is hereby amended by inserting the following immediately after "\$85,000,000":

(provided, that such amount shall not be reduced by the Term B-2 Loans, Additional Commitments (as defined in Amendment No. 1) or the 2016 Second Lien Incremental Term Loan (as defined in Amendment No. 1))

(o) Section 7.06 of the Existing Credit Agreement is hereby amended by (i) deleting "and" at the end of clause (l) thereof, (ii) deleting "." at the end of clause (m) thereof and inserting in its place "; and" and (iii) inserting a new clause (n) at the end thereof as follows:

(n) the Special Distribution in an amount not to exceed \$110 million.

(p) Article X of the Existing Credit Agreement is amended by inserting a new Section 10.21 at the end thereof as follows:

Section 10.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

2. Term B-2 Loans.

- (a) Terms Generally. Subject to the satisfaction of the conditions set forth in Section 4 of this Agreement, each Term B-2 Lender hereby acknowledges and agrees that it has a Term B-2 Commitment in the amount set forth on Schedule I to this Agreement and agrees to make Term B-2 Loans on the Effective Date in accordance with Section 2.14 of the Existing Credit Agreement. From and after the Effective Date, each Term B-2 Lender shall be a Term Lender for all purposes under the Credit Agreement and the other Loan Documents. The Term B Loans and the Term B-2 Loans shall be a single tranche of Term Loans for all purposes under the Credit Agreement and payments of the Term B Loans or Term B-2 Loans of interest, principal (whether optional or mandatory) and premiums shall be made on pro rata basis among the Term B Loans and Term B-2 Loans. The Term B-2 Loans shall have identical terms as the existing Term B Loans and shall rank *pari passu* in right of payment and security with the existing Term Loans, and in furtherance thereof and for the avoidance of doubt, each reference to the Term B Loans in the Loan Documents (other than in the preliminary statements to the Credit Agreement, the definitions of “Equity Contribution”, “Term B Commitment”, “Term B Loan” and “Transactions” in the Credit Agreement, and Sections 2.06(b) and 4.01(c) of the Credit Agreement) shall be deemed to include the Term B-2 Loans.
- (b) Administrative Matters. Each of the parties hereto hereby agrees that the Administrative Agent may take any and all action as may be reasonably necessary to ensure that all such Term B-2 Loans, when originally made, are a single tranche (and Class) with the outstanding Term B Loans for all purposes under the Loans Documents and are included in each Borrowing of outstanding Term B Loans on a pro rata basis. This may be accomplished at the discretion of the Administrative Agent by allocating a portion of each such Term B-2 Loan to each outstanding Eurocurrency Rate Loan that is a Term B Loan of the same Type on a pro rata basis, even though as a result thereof such Term B-2 Loan may effectively have a shorter Interest Period than the Term B-2 Loans included in the Borrowing of which they are a part (and notwithstanding any other provision of the Credit Agreement that would prohibit such an initial Interest Period). This Section 2(b) is for administrative purposes only and shall, under no circumstances, result in any additional obligations, expenses or fees for the Borrower.

3. **Lender Reallocations.** Effective as of the Effective Date (i) each Revolving Credit Lender immediately prior to the Effective Date will automatically and without further action be deemed to have assigned to each Lender providing a portion of the Additional Commitments (each an “Additional Commitment Lender”), and each such Additional Commitment Lender will automatically and without further act be deemed to have assumed, a portion of such Revolving Credit Lender’s participations hereunder in outstanding Letters of Credit and Swing Line Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (A) participations in Letters of Credit and (B) participations in Swingline Loans held by each Revolving Credit Lender (including each such Additional Commitment Lender) will equal the percentage of the Revolving Credit Commitments of all Revolving Credit Lenders represented by such Revolving Credit Lender’s Revolving Credit Commitment and (ii) if, on the Effective Date, there are any Revolving Credit Loans outstanding, such Revolving Credit Loans shall on or prior to the effectiveness of such Additional Commitments be prepaid from the proceeds of additional Revolving Loans made hereunder on the Effective Date by the Additional Commitment Lenders in respect of their Additional Commitments (reflecting each such Revolving Credit Lender’s ratable share of the outstanding Revolving Credit Loans in accordance with their Revolving Credit Commitments), which prepayment shall be accompanied by accrued interest on the Revolving Loans being prepaid and any costs incurred by any Lender in accordance with Section 3.05 of the Credit Agreement. The Administrative Agent and the Revolving Credit Lenders hereby agree that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained in the Credit Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence. The Additional Commitments shall be made effective by, on the Effective Date, automatically increasing the Revolving Credit Commitment of each Person listed on Schedule II hereto by the amount set forth opposite such Person’s name on Schedule II hereto. Each Person listed on Schedule II hereto, by such Person’s signature to this Amendment as an Additional Commitment Lender, hereby agrees to such increase. In connection with the foregoing, it is understood and agreed that the respective Revolving Credit Commitments of the Revolving Credit Lenders and respective Pro Rata Shares of the Revolving Credit Lenders in the Revolving Credit Commitments shall be as set forth in the Register, which Register shall, in accordance with the definition of the term Revolving Credit Commitment, operate to amend the portion of Schedule 1.01A of the Credit Agreement pertaining to Revolving Credit Commitments.
4. **Effective Date Conditions.** This Agreement will become effective on the date (the “Effective Date”) on which each of the following conditions have been satisfied (or waived) in accordance with the terms herein:
- (a) the Administrative Agent shall have received counterparts of this Agreement executed by (i) Term B-2 Lenders with Term B-2 Commitments representing 100% of the Term B-2 Commitments, (ii) the Additional Commitment Lenders with Additional Commitments representing 100% of the Additional Commitments, (iii) the Required Lenders, (iv) the Required Revolving Credit Lenders, (v) the Swing Line Lender, (vi) the L/C Issuer and (vii) the Borrower and each other Loan Party;

- (b) for the ratable benefit of each (x) Term B-2 Lender providing a Term B-2 Loan as of the Effective Date, an upfront fee (the "Term B-2 Upfront Fee") in an amount equal to 1.0% of the stated principal amount of such Term B-2 Lender's Term B-2 Loan, earned and due and payable to such Term B-2 Lender on the Effective Date and (y) Additional Commitment Lender an Additional Commitment as of the Effective Date, an upfront fee (the "Additional Commitment Upfront Fee") in an amount equal to 0.5% of the stated principal amount of such Additional Commitment Lender's Additional Commitment, earned and due and payable to such Additional Commitment Lender on the Effective Date. The Term B-2 Loans may be net funded on the Effective Date to account for the Term B-2 Upfront Fee;
- (c) the Administrative Agent shall have received payment from or on behalf of the Borrower for the account of each Lender that shall have consented to this Agreement by delivering a counterpart signature page to this Agreement to the Administrative Agent prior to 5:00 p.m., New York City time, on October 17, 2016, of an amendment fee for each such Lender in an amount equal to 0.25% of the outstanding principal amount of the Term B Loans or amount of the Revolving Credit Commitments, as applicable, of such Lender;
- (d) the representations and warranties in Section 5 of this Agreement shall be true and correct in all material respects as of the Effective Date;
- (e) no Default or Event of Default shall exist, or would result from the incurrence of the Term B-2 Loans or the Additional Commitments and the consummation of the Transactions contemplated hereby, including from the application of the proceeds therefrom;
- (f) the Administrative Agent shall have received a certificate, in form and substance reasonably satisfactory to the Administrative Agent, of the Borrower dated as of the Effective Date signed by a Responsible Officer of the Borrower (i) (A) certifying and attaching the resolutions or similar consents adopted by the Borrower approving or consenting to this Agreement and the Term B-2 Loans and the Additional Commitments, (B) certifying that the certificate of formation and limited liability company agreement of the Borrower either (x) has not been amended since the Closing Date or (y) is attached as an exhibit to such certificate, and (C) certifying as to the incumbency and specimen signature of each officer executing this Agreement and any related documents on behalf of the Borrower and (ii) certifying as to the matters set forth in clauses (d) and (e) above;
- (g) the Administrative Agent shall have received, on behalf of itself, the Term B-2 Lenders and the Additional Commitment Lenders on the Effective Date, a favorable written opinion of Weil, Gotshal & Manges LLP, counsel for Holdings, the Borrower and each other Loan Party, (A) dated the Effective Date, (B) addressed to the Administrative Agent, the Term B-2 Lenders and the Additional Commitment Lenders and (C) in form and substance reasonably satisfactory to the Administrative Agent and covering such matters relating to this Agreement as the Administrative Agent shall reasonably request;
- (h) the Administrative Agent shall have received a Borrowing Request executed by the Borrower;
- (i) all fees and out-of-pocket expenses for which invoices have been presented at least three business day prior to the Effective Date (including the reasonable fees and expenses of legal counsel) required to be paid or reimbursed by the Borrower pursuant to Section 10.04 of the Credit Agreement in connection with this Agreement shall have been paid or reimbursed by (or on behalf of) the Borrower; and

- (j) The borrowing of the 2016 Second Lien Incremental Term Loans under Second Lien Credit Agreement Amendment No. 1 shall have been consummated.
5. **Representations and Warranties.** By its execution of this Agreement, each Loan Party hereby represents and warrants that:
- (a) the execution, delivery and performance of this Agreement is within such Loan Party's corporate or other organizational powers and has been duly authorized by all necessary corporate or other organizational action of such Loan Party;
 - (b) this Agreement has been duly executed and delivered by such Loan Party and is a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity and principles of good faith and dealing; and
 - (c) the execution and delivery of this Agreement by such Loan Party and the performance by such Loan Party hereof do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01 of the Credit Agreement), or require any payment to be made under (x) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject or (iii) violate any Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) (A) referred to in clauses (ii) and (iii), to the extent that such violation, conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect.
6. **Reference to and Effect on Loan Documents; Reaffirmation of the Loan Parties.**
- (a) On and after the effectiveness of this Agreement, each reference in the Existing Credit Agreement and the other Loan Documents to any of the Loan Documents, "this Agreement", "hereunder", "hereof" or words of like import referring to any Loan Document shall mean and be a reference to the applicable Loan Document, as specifically amended by this Agreement.
 - (b) Each Loan Party hereby consents to the amendment of the Existing Credit Agreement and the Loan Documents effected hereby and confirms and agrees that, notwithstanding the effectiveness of this Agreement, each Loan Document to which such Loan Party is a party is, and the obligations of such Loan Party contained in the Existing Credit Agreement, this Agreement or in any other Loan Document to which it is a party are, and shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects, in each case as amended by this Agreement. For greater certainty and without limiting the foregoing, each Loan Party hereby confirms and reaffirms, as of the date hereof, (i) that the existing security interests granted by such Loan Party in favor of the Administrative Agent for the benefit of the Secured Parties (including without limitation the Term B-2 Lenders and Lenders providing Additional Commitments) pursuant to the Loan Documents in the Collateral described therein shall continue to secure the Obligations as and to the extent provided in the Loan Documents and (ii) its Guaranty of the Obligations and the covenants and agreements contained in each of the other Loan

Documents to which it is a party, including, in each case, such security interest, covenants and agreements as in effect immediately after giving to this Agreement and the transactions contemplated hereby. Neither the modification of the Existing Credit Agreement effected pursuant to this Agreement nor the execution, delivery, performance or effectiveness of this Agreement (i) impairs the validity, effectiveness or priority of the Liens granted pursuant to any Loan Document, and such Liens continue unimpaired with the same priority to secure repayment of all Obligations, whether heretofore or hereafter incurred; or (ii) requires that any new filings be made or other action taken to perfect or to maintain the perfection of such Liens.

7. **Amendment, Modification and Waiver.** This Agreement may not be amended, modified or waived except as permitted by Section 10.01 of the Credit Agreement.
8. **Entire Agreement.** This Agreement, the engagement letter among certain of the parties hereto (or their respective affiliates) related to the transactions described herein, the Credit Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties or any of them with respect to the subject matter hereof. The parties hereto acknowledge and agree that the amendment of the Credit Agreement pursuant to this Agreement and all other Loan Documents amended and/or executed and delivered in connection herewith shall not constitute a novation of the Existing Credit Agreement and the other Loan Documents as in effect prior to the Effective Date.
9. **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.
10. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
11. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier, .pdf or other electronic imaging means of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement.
12. **WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.

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13. **Loan Document.** On and after the Effective Date, this Agreement shall constitute a “Loan Document” for all purposes of the Credit Agreement and the other Loan Documents (it being understood that for the avoidance of doubt this Agreement may be amended or waived solely by the parties hereto as set forth in Section 7 above).

[signature pages to follow]

IN WITNESS WHEREOF, each of the undersigned has caused its duly authorized officer to execute and deliver this Agreement as of the date first set forth above.

PHD INTERMEDIATE LLC

By: /s/ Tom Stoltz
Name: Tom Stoltz
Title: Chief Financial Officer

PORTILLO'S HOLDINGS, LLC

By: /s/ Tom Stoltz
Name: Tom Stoltz
Title: Chief Financial Officer

GOLDEN DOGS, LLC
PORTILLO'S HOT DOGS, LLC
RICHPORT HOLDINGS, LLC

By: /s/ Tom Stoltz
Name: Tom Stoltz
Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to
First Lien Credit Agreement]

UBS AG, STAMFORD BRANCH, as Administrative
Agent, L/C Issuer and Swing Line Lender

By: /s/ Kenneth Chin

Name: Kenneth Chin

Title: Director

By: /s/ Darlene Arias

Name: Darlene Arias

Title: Director

[Portillo's – Signature Page to Amendment No. 1 to
First Lien Credit Agreement]

UBS AG, STAMFORD BRANCH, as the Term B-2
Lender, an Additional Commitment Lender and a Lender

By: /s/ Kenneth Chin

Name: Kenneth Chin

Title: Director

By: /s/ Darlene Arias

Name: Darlene Arias

Title: Director

[Portillo's – Signature Page to Amendment No. 1 to
First Lien Credit Agreement]

JEFFERIES FINANCE LLC, as an Additional
Commitment Lender and a Lender

By: /s/ Brian Buoye
Name: Brian Buoye
Title: Managing Director

[Portillo's – Signature Page to Amendment No. 1 to
First Lien Credit Agreement]

A Voce CLO, Ltd.

as a Lender

By: Invesco Senior Secured Management, Inc. as
Collateral Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

ACAS CLO 2014-1, Ltd.

as a Lender

By: American Capital CLO Management, LLC, its Manager

By: /s/ William Weiss

Name: William Weiss

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): American Capital

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

ACAS CLO 2014-2, Ltd.

as a Lender

By: American Capital CLO Management, LLC, its
Manager

By: /s/ William Weiss

Name: William Weiss

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): American Capital

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Allstate Insurance Company, as a Lender

By: /s/ Kyle Roth
Kyle Roth
Authorized Signatory

By: /s/ Mark D. Pittman
Mark D. Pittman
Authorized Signatory

Name of Fund Manager (if any): _____

Allstate Life Insurance Company, as a Lender

By: /s/ Kyle Roth
Kyle Roth
Authorized Signatory

By: /s/ Mark D. Pittman
Mark D. Pittman
Authorized Signatory

Name of Fund Manager (if any): _____

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

AIMCO CLO, Series 2015-A, as a Lender

By: /s/ Kyle Roth
Kyle Roth
Authorized Signatory

By: /s/ Mark D. Pittman
Mark D. Pittman
Authorized Signatory

Name of Fund Manager (if any): Allstate Investment Management Company, as Collateral Manager

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

AIMCO CLO, Series 2014-A,
as a Lender

By: /s/ Kyle Roth
Kyle Roth
Authorized Signatory

By: /s/ Mark D. Pittman
Mark D. Pittman
Authorized Signatory

Name of Fund Manager (if any): Allstate Investment Management Company, as Collateral Manager

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

American General Life Insurance Company

as a Lender

By: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

American Home Assurance Company

as a Lender

By: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

AMMC CLO 15, LIMITED

as a Lender

BY: American Money Management Corp., as Collateral
Manager

By: /s/ David P. Meyer

Name: David P. Meyer

Title: Senior Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): American Money Management Corp.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

AMMC CLO 16, LIMITED

as a Lender

By: American Money Management Corp., as Collateral
Manager

By: /s/ David P. Meyer

Name: David P. Meyer

Title: Senior Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): American Money Management Corp.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

AMMC CLO 17, LIMITED

as a Lender

By: American Money Management Corp., as Collateral
Manager

By: /s/ David P. Meyer

Name: David P. Meyer

Title: Senior Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): American Money Management Corp.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

AMMC CLO 18, LIMITED

as a Lender

By: American Money Management Corp., as Collateral
Manager

By: /s/ David Meyer

Name: David Meyer

Title: Senior Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): American Money Management Corp.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

AMMC CLO XI, LIMITED

as a Lender

By: American Money Management Corp., as Collateral
Manager

By: /s/ David P. Meyer

Name: David P. Meyer

Title: Senior Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): American Money Management Corp.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

AMMC CLO XII, LIMITED

as a Lender

By: American Money Management Corp., as Collateral
Manager

By: /s/ David P. Meyer

Name: David P. Meyer

Title: Senior Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): American Money Management Corp.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

AMMC CLO XIII, LIMITED

as a Lender

By: American Money Management Corp., as Collateral
Manager

By: /s/ David P. Meyer

Name: David P. Meyer

Title: Senior Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): American Money Management Corp.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

AMMC CLO XIV, LIMITED

as a Lender

By: /s/ David P. Meyer

Name: David P. Meyer

Title: Senior Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): American Money Management Corp.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Annisa CLO, Ltd.

as a Lender

By: Invesco RR Fund L.P. as Collateral Manager

By: Invesco RR Associates LLC, as general partner

By: Invesco Senior Secured Management, Inc. as sole member

By: /s/ Egan, Kevin

Name: Egan, Kevin

Title: M

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Axis Specialty Limited

as a Lender

By: Voya Investment Management Co. LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

[First Lien Revolving Credit Lender Signature Page]

Bank of America, N.A.

as a Lender

By: /s/ Kunal Shah

Name: Kunal Shah

Title: Vice President

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Betony CLO, Ltd.

as a Lender

By: Invesco Senior Secured Management, Inc. as Collateral
Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Blue Hill CLO, Ltd.

as a Lender

By: Invesco Senior Secured Management, Inc. as Collateral
Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

BOC Pension Investment Fund

as a Lender

BY: Invesco Senior Secured Management, Inc. as Attorney
in Fact

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Carlyle Global Market Strategies CLO 2012-3, Ltd.
as a Lender

By: /s/ Linda Pace

Name: Linda Pace

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Carlyle

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Carlyle Global Market Strategies CLO 2012-4, Ltd.
as a Lender

By: /s/ Linda Pace

Name: Linda Pace

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Carlyle

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Carlyle Global Market Strategies CLO 2013-1, Ltd.
as a Lender

By: /s/ Linda Pace

Name: Linda Pace

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Carlyle

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Carlyle Global Market Strategies CLO 2013-2, Ltd.
as a Lender

By: /s/ Linda Pace

Name: Linda Pace

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Carlyle

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Carlyle Global Market Strategies CLO 2013-3, Ltd.
as a Lender

By: /s/ Linda Pace

Name: Linda Pace

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Carlyle

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Carlyle Global Market Strategies CLO 2013-4, Ltd.
as a Lender

By: /s/ Linda Pace

Name: Linda Pace

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Carlyle

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Carlyle Global Market Strategies CLO 2014-1, Ltd.
as a Lender

By: /s/ Linda Pace

Name: Linda Pace

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Carlyle

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Carlyle Global Market Strategies CLO 2014-2, Ltd.
as a Lender

By: /s/ Linda Pace

Name: Linda Pace

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Carlyle

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Carlyle Global Market Strategies CLO 2014-3, Ltd.
as a Lender

By: /s/ Linda Pace

Name: Linda Pace

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Carlyle

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Carlyle Global Market Strategies CLO 2014-4, Ltd.
as a Lender

By: /s/ Linda Pace

Name: Linda Pace

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Carlyle

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Carlyle Global Market Strategies CLO 2014-5, Ltd.
as a Lender

By: /s/ Linda Pace

Name: Linda Pace

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Carlyle

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Carlyle Global Market Strategies CLO 2015-1, Ltd.
as a Lender

By: /s/ Linda Pace

Name: Linda Pace

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Carlyle

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Carlyle Global Market Strategies CLO 2015-4, Ltd.
as a Lender

By: /s/ Linda Pace

Name: Linda Pace

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Carlyle

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Carlyle Global Market Strategies CLO 2016-2 Ltd.
as a Lender

By: /s/ Linda Pace

Name: Linda Pace

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Carlyle

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

[First Lien Term Loan Signature Page]

Covenant Credit Partners CLO I, Ltd., as a Lender

By: /s/ Chris Brogdon

Name: Chris Brogdon

Title: Asst. Portfolio Manager

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): _____

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Covenant Credit Partners CLO II, Ltd., as a Lender

By: /s/ Chris Brogdon

Name: Chris Brogdon

Title: Asst. Portfolio Manager

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): _____

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

CQS Credit Multi Asset Fund, a sub-fund of CQS
Global Funds (Ireland) plc as a Lender

By: /s/ Gerry Rowe-Ham
Name: Gerry Rowe-Ham
Title: Authorised Signatory

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

[First Lien Term Loan Signature Page]

Eastspring Investments US Bank Loan Special
Asset Mother Investment Trust [Loan Claim], as a Lender

By: /s/ David C. Wagner
PPM America, Inc., as Delegated Manager
Name: David C. Wagner
Title: Managing Director

Name of Fund Manager (if any): PPM America, Inc.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

[First Lien Term Loan Signature Page]

JNL/PPM America Floating Rate Income Fund, a
series of the JNL Series Trust, as a Lender

By: /s/ David C. Wagner
PPM America, Inc., as sub adviser
Name: David C. Wagner
Title: Managing Director

Name of Fund Manager (if any): PPM America, Inc.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

First Trust Dividend and Income Fund

as a Lender

BY: First Trust Advisors L.P.

By: /s/ Ryan Kommers

Name: Ryan Kommers

Title: Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): First Trust Advisors L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

First Trust Senior Floating Rate Income Fund II

as a Lender

By: First Trust Advisors L.P., its investment manager

By: /s/ Ryan Kommers

Name: Ryan Kommers

Title: Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): First Trust Advisors L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

First Trust Senior Loan ETF (CAD-Hedged)

as a Lender

BY: First Trust Advisors L.P.

By: /s/ Ryan Kommers

Name: Ryan Kommers

Title: Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): First Trust Advisors L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

First Trust Senior Loan Fund

as a Lender

BY: First Trust Advisors L.P., its Investment Advisor

By: /s/ Ryan Kommers

Name: Ryan Kommers

Title: Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): First Trust Advisors L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

First Trust Short Duration High Income Fund

as a Lender

BY: First Trust Advisors L.P., its investment manager

By: /s/ Ryan Kommers

Name: Ryan Kommers

Title: Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): First Trust Advisors L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

First Trust Tactical High Yield ETF

as a Lender

By: First Trust Advisors L.P., its Investment Advisor

By: /s/ Ryan Kommers

Name: Ryan Kommers

Title: Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): First Trust Advisors L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

as a Lender - Golub Capital Partners CLO 14, Ltd.
By: GC Advisors LLC, as agent

By: /s/ Christina D. Jamieson
Name: Christina D. Jamieson
Title: Designated Signatory

Name of Fund Manager (if any): **Golub Capital**

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

as a Lender - Golub Capital Partners CLO 15, Ltd.
By: GC Advisors LLC, as agent

By: /s/ Christina D. Jamieson
Name: Christina D. Jamieson
Title: Designated Signatory

Name of Fund Manager (if any): **Golub Capital**

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

as a Lender - Golub Capital Partners CLO 22(B), Ltd.
By: GC Advisors LLC, as agent

By: /s/ Christina D. Jamieson
Name: Christina D. Jamieson
Title: Designated Signatory

Name of Fund Manager (if any): **Golub Capital**

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

as a Lender- Golub Capital Partners CLO 23(B), Ltd.
By: GC Advisors LLC, as agent

By: /s/ Christina D. Jamieson
Name: Christina D. Jamieson
Title: Designated Signatory

Name of Fund Manager (if any): **Golub Capital**

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

ICG US CLO 2014-1, Ltd.
as a Lender

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Intermediate Capital Group, Inc.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

ICG US CLO 2014-2 Ltd
as a Lender

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Intermediate Capital Group, Inc.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

ICG US CLO 2014-3, Ltd.
as a Lender

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Intermediate Capital Group, Inc.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

ICG US CLO 2015-1, Ltd
as a Lender

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Intermediate Capital Group, Inc.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

ICG US CLO 2015-2, Ltd.

as a Lender

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Intermediate Capital Group, Inc.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

**Invesco Bank Loan Fund A Series Trust of Multi
Manager Global Investment Trust**

as a Lender

By: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

**Invesco Bank Loan Fund Series 2 A Series Trust
of Multi Manager Global Investment Trust**

as a Lender

By: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Invesco BL Fund, Ltd.

as a Lender

By: Invesco Management S.A. As Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Invesco Leveraged Loan Fund 2016 A Series
Trust of Global Multi Portfolio Investment Trust

as a Lender

By: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Invesco Polaris US Bank Loan Fund

as a Lender

BY: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

INVESCO SSL FUND LLC

as a Lender

By: Invesco Senior Secured Management, Inc. as
Collateral Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Invesco Zodiac Funds - Invesco US Senior Loan Fund
as a Lender

By: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

ISL Loan Trust II

as a Lender

BY: Voya Investment Management Co. LLC, as its
investment advisor

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

JFIN REVOLVER CLO 2014 LTD.

By: Jefferies Finance LLC, as Portfolio Manager

By: /s/ J. Paul McDonnell

Name: J. Paul McDonnell

Title: Managing Director

JFIN REVOLVER CLO 2015 II LTD.

By: Jefferies Finance LLC, as Portfolio Manager

By: /s/ J. Paul McDonnell

Name: J. Paul McDonnell

Title: Managing Director

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Kaiser Foundation Hospitals

as a Lender

By: Invesco Senior Secured Management, Inc. as Investment
Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Kaiser Permanente Group Trust

as a Lender

By: Invesco Senior Secured Management, Inc. as Investment
Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

LCM XI Limited Partnership
By: LCM Asset Management LLC
As Collateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

LCM XII Limited Partnership
By: LCM Asset Management LLC
As Collateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

LCM XIII Limited Partnership
By: LCM Asset Management LLC
As Collateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

LCM XIV Limited Partnership
By: LCM Asset Management LLC
As Collateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

LCM XV Limited Partnership
By: LCM Asset Management LLC
As Collateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

LCM XVI Limited Partnership
By: LCM Asset Management LLC
As Collateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

LCM XVII Limited Partnership
By: LCM Asset Management LLC
As Collateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

LCM XVIII Limited Partnership
By: LCM Asset Management LLC
As Collateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

LCM XIX Limited Partnership
By: LCM Asset Management LLC
As Collateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

LCM XX Limited Partnership
By: LCM Asset Management LLC
As Co1lateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

LCM XXI Limited Partnership
By: LCM Asset Management LLC
As Collateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Lexington Insurance Company

as a Lender

By: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Limerock CLO II, Ltd.

as a Lender

BY: Invesco Senior Secured Management, Inc. as
Collateral Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Limerock CLO III, Ltd.

as a Lender

BY: Invesco Senior Secured Management, Inc. as
Collateral Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Linde Pension Plan Trust

as a Lender

By: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Marea CLO, Ltd.

as a Lender

BY: Invesco Senior Secured Management, Inc. as
Collateral Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Medtronic Holding Switzerland GMBH

as a Lender

By: Voya Investment Management Co. LLC,
as its investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By:

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Mercer QIF Fund plc (in respect of Mercer Multi - Asset
Credit Fund) as a Lender

By: /s/ Gerry Rowe-Ham
Name: Gerry Rowe-Ham
Title: Authorised Signatory

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

**National Union Fire Insurance Company of Pittsburgh,
Pa.**

as a Lender

By: Invesco Senior Secured Management, Inc. as Investment
Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

NN(L) Flex - Senior Loans

as a Lender

BY: Voya Investment Management Co. LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

NN(L) Flex - Senior Loans Select

as a Lender

Voya Investment Management Co. LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Nomad CLO, Ltd.

as a Lender

BY: Invesco Senior Secured Management, Inc. as Collateral
Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

North End CLO, Ltd

as a Lender

BY: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

OHA CREDIT PARTNERS IX, LTD.

as a Lender

By: Oak Hill Advisors, L.P.

as Portfolio Manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

OHA CREDIT PARTNERS VI, LTD.

as a Lender

By: Oak Hill Advisors, L.P. As its portfolio manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

OHA CREDIT PARTNERS VII, LTD.

as a Lender

BY: Oak Hill Advisors, L.P., as Portfolio Manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

OHA CREDIT PARTNERS VIII, LTD.

as a Lender

By: Oak Hill Advisors, L.P.

as Warehouse Portfolio Manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

OHA CREDIT PARTNERS X, LTD.

as a Lender

By: Oak Hill Advisors, L.P. as Portfolio Manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

OHA Credit Partners XI, LTD.

as a Lender

By: Oak Hill Advisors, L.P.

As Warehouse Portfolio Manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

OHA CREDIT PARTNERS XII, LTD.

as a Lender

By: Oak Hill Advisors, L.P.

as Portfolio Manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

OHA LOAN FUNDING 2013-1, LTD.

as a Lender

By: Oak Hill Advisors, L.P.

as Portfolio Manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

OHA LOAN FUNDING 2013-2, LTD.

as a Lender

By: Oak Hill Advisors, L.P.

As Portfolio Manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

OHA LOAN FUNDING 2014-1, LLC

as a Lender

BY: Oak Hill Advisors, L.P. as Portfolio Manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

OHA LOAN FUNDING 2015-1 LTD.

as a Lender

BY: Oak Hill Advisors, L.P. as Portfolio Manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

OZLM Funding III, Ltd.,
as a Lender

By: Och-Ziff Loan Management LP, its collateral manager
By: Och-Ziff Loan Management LLC, its general partner

By: /s/ Joel Frank
Name: Joel Frank
Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

[First Lien Term Loan Signature Page]

OZLM Funding IV, Ltd.,
as a Lender

By: Och-Ziff Loan Management LP, its collateral manager
By: Och-Ziff Loan Management LLC, its general partner

By: /s/ Joel Frank
Name: Joel Frank
Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

[First Lien Term Loan Signature Page]

OZLM Funding V, Ltd.,
as a Lender

By: Och-Ziff Loan Management LP, its collateral manager
By: Och-Ziff Loan Management LLC, its general partner

By: /s/ Joel Frank
Name: Joel Frank
Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

[First Lien Term Loan Signature Page]

OZLM VII, Ltd.,
as a Lender

By: Och-Ziff Loan Management LP, its Collateral manager
By: Och-ziff Loan Management LLC, its general partner

By: /s/ Joel Frank
Name: Joel Frank
Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

[First Lien Term Loan Signature Page]

OZLM VIII, Ltd.,
as a Lender

By: Och-ziff Loan Management LP, its collateral manager
By: Och-Ziff Loan Management LLC, its general partner

By: /s/ Joel Frank

Name: Joel Frank

Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

[First Lien Term Loan Signature Page]

OZLM IX, Ltd.,
as a Lender

By: Och-Ziff Loan Management LP, its collateral manager
By: Och-Ziff Loan Management LLC, its general partner

By: /s/ Joel Frank
Name: Joel Frank
Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Schlumberger Group Trust

as a Lender

By: Voya Investment Management Co. LLC,
as its investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Sentry Insurance a Mutual Company

as a Lender

BY: Invesco Senior Secured Management, Inc. as
Sub-Advisor

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

BEAN CREEK CLO, LTD.

as a Lender

By: /s/ Zackery Sizemore

Name: Zackery Sizemore

Title: Authorized Signor

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): _____

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

CEDAR CREEK CLO, LTD.

as a Lender

By: /s/ Zackery Sizemore

Name: Zackery Sizemore

Title: Authorized Signor

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): _____

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

CLEAR CREEK CLO, LTD.

as a Lender

By: /s/ Zackery Sizemore

Name: Zackery Sizemore

Title: Authorized Signor

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): _____

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

MILL CREEK CLO II, LTD.

as a Lender

By: /s/ Zackery Sizemore

Name: Zackery Sizemore

Title: Authorized Signor

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): _____

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

SILVER CREEK CLO, LTD.

as a Lender

By: /s/ Zackery Sizemore

Name: Zackery Sizemore

Title: Authorized Signor

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): _____

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

[First Lien Term Loan Signature Page]

as a Lender, Bridgehampton National Bank

By: /s/ John M. Tuohy

Name: John M. Tuohy

Title: SVP

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): _____

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

The City of New York Group Trust

as a Lender

BY: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

The United States Life Insurance Company In the City of New York

as a Lender

By: Invesco Senior Secured Management, Inc. as Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

The Variable Annuity Life Insurance Company

as a Lender

By: Invesco Senior Secured Management, Inc. as Investment
Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

THL Credit Wind River 2012-1 CLO Ltd.

as a Lender

BY: THL Credit Senior Loan Strategies LLC, as Investment
Manager

By: /s/ James R. Fellows

Name: James R. Fellows

Title: Managing Director/Co-Head

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): THL Credit Senior Loan Strategies LLC

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

THL Credit Wind River 2013-2 CLO Ltd.

as a Lender

By THL Credit Advisors LLC, as Investment Manager

By: /s/ James R. Fellows

Name: James R. Fellows

Title: Managing Director/Co-Head

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): THL Credit Senior Loan Strategies LLC

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

THL Credit Wind River 2014-1 CLO Ltd.

as a Lender

By THL Credit Advisors LLC, as Investment Manager

By: /s/ James R. Fellows

Name: James R. Fellows

Title: Managing Director/Co-Head

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): THL Credit Senior Loan Strategies LLC

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

THL Credit Wind River 2014-2 CLO Ltd.

as a Lender

BY: THL Credit Senior Loan Strategies LLC, as Manager

By: /s/ James R. Fellows

Name: James R. Fellows

Title: Managing Director/Co-Head

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): THL Credit Senior Loan Strategies LLC

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

[First Lien Term Loan Signature Page]

UBS AG, Stamford Branch, as a Lender

By: /s/ Darlene Arias

Name: Darlene Arias

Title: Director

If a second signature is necessary:

By: /s/ Housseem Daly

Name: Housseem Daly

Title: Associate Director

Banking Products Services, US

Name of Fund Manager (if any): _____

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Upland CLO, Ltd.

as a Lender

By: Invesco Senior Secured Management, Inc. as Collateral
Manager

By: /s/ Egan, Kevin

Name: Egan, Kevin

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

VENTURE XII CLO, Limited

as a Lender

BY: its investment advisor

MJX Asset Management LLC

By: /s/ John Calaba

Name: John Calaba

Title: Managing Director

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): MJX Asset Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

VENTURE XIV CLO, Limited

as a Lender

By: its investment advisor MJX Asset Management LLC

By: /s/ John Calaba

Name: John Calaba

Title: Managing Director

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): MJX Asset Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

VENTURE XIX CLO, Limited

as a Lender

By: its investment advisor MJX Asset Management LLC

By: /s/ John Calaba

Name: John Calaba

Title: Managing Director

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): MJX Asset Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

VENTURE XV CLO, Limited

as a Lender

By: its investment advisor
MJX Asset Management LLC

By: /s/ John Calaba

Name: John Calaba

Title: Managing Director

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): MJX Asset Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

VENTURE XVI CLO, Limited

as a Lender

By: its investment advisor

MJX Asset Management LLC

By: /s/ John Calaba

Name: John Calaba

Title: Managing Director

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): MJX Asset Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Venture XVII CLO Limited

as a Lender

BY: its investment advisor,
MJX Asset Management, LLC

By: /s/ John Calaba

Name: John Calaba

Title: Managing Director

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): MJX Asset Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Venture XVIII CLO, Limited

as a Lender

By: its investment advisor
MJX Asset Management LLC

By: /s/ John Calaba

Name: John Calaba

Title: Managing Director

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): MJX Asset Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

VENTURE XX CLO, Limited

as a Lender

By: its investment advisor

MJX Asset Management LLC

By: /s/ John Calaba

Name: John Calaba

Title: Managing Director

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): MJX Asset Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya CLO 2012-2, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya CLO 2012-3, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya CLO 2012-4, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya CLO 2013-1, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya CLO 2013-2, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya CLO 2013-3, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya CLO 2014-1, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya CLO 2014-2, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya CLO 2014-3, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya CLO 2014-4, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya CLO 2015-1, Ltd.

as a Lender

By: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya CLO 2015-2, Ltd.

as a Lender

By: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya CLO 2015-3, Ltd.

as a Lender

By: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya CLO 2016-1, Ltd.

as a Lender

By: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya CLO 2016-2, Ltd.

as a Lender

By: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya Credit Opportunities Master Fund

as a Lender

By: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya Floating Rate Fund

as a Lender

BY: Voya Investment Management Co. LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

**Voya Investment Trust Co. Plan for Common Trust
Funds - Voya Senior Loan Common Trust Fund**

as a Lender

BY: Voya Investment Trust Co. as its trustee

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

**Voya Investment Trust Co. Plan for Employee Benefit
Investment Funds - Voya Senior Loan Trust Fund**

as a Lender

BY: Voya Investment Trust Co. as its trustee

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya Prime Rate Trust

as a Lender

BY: Voya Investment Management Co. LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Voya Senior Income Fund

as a Lender

BY: Voya Investment Management Co. LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

Wasatch CLO Ltd

as a Lender

BY: Invesco Senior Secured Management, Inc. as Portfolio
Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

[First Lien Revolving Credit Lender Signature Page]

Wintrust Bank, as a Lender

By: /s/ Timothy S. Irwin

Name: Timothy S. Irwin

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

[Portillo's – Signature Page to Amendment No. 1 to First Lien Credit Agreement]

AMENDMENT NO. 2 TO FIRST LIEN CREDIT AGREEMENT

AMENDMENT NO. 2 TO FIRST LIEN CREDIT AGREEMENT, dated as of May 18, 2018 (this "Agreement"), by and among Portillo's Holdings, LLC, a Delaware limited liability company (the "Borrower"), PHD Intermediate LLC, a Delaware limited liability company ("Holdings"), each Revolving Credit Lender party hereto, UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent"), and each of the other Loan Parties party hereto.

RECITALS:

WHEREAS, reference is hereby made to the First Lien Credit Agreement, dated as of August 1, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Credit Agreement" and, as amended by this Agreement, the "Credit Agreement"), among Holdings, the Borrower, the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and the Administrative Agent (capitalized terms used but not defined herein having the meanings provided in the Existing Credit Agreement);

WHEREAS, Section 10.01(a) of the Existing Credit Agreement permits amendments to extend the Commitment of any Lender with the written consent of such Lender;

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

1. **Amendments to Loan Documents.** Effective as of the Amendment No. 2 Effective Date:

- (a) Section 1.01 of the Existing Credit Agreement is hereby amended by inserting in appropriate alphabetical order the following new definitions:

"**Amendment No. 2**" means Amendment No. 2 to this Agreement, dated as of May 18, 2018, among the Borrower, Holdings, the other Loan Parties party thereto, the Administrative Agent and the Revolving Credit Lenders party thereto.

"**Amendment No. 2 Effective Date**" shall mean the "Amendment No. 2 Effective Date" under and as defined in Amendment No. 2.

- (b) The definition of "Maturity Date" contained in Section 1.01 of the Existing Credit Agreement is hereby amended in its entirety to read as follows:

"**Maturity Date**" means (i) with respect to the Term B Loans and Term B-2 Loans, the seventh anniversary of the Closing Date; (ii) with respect to the Initial Revolving Credit Commitments, February 28, 2021; (iii) with respect to any Class of Extended Term Loans or Extended Revolving Credit Commitments, the final maturity date as specified in the applicable Extension Request accepted by the respective Lender or Lenders, (iv) with respect to any Refinancing Term Loans or Refinancing Revolving Credit Commitments, the final maturity date as specified in the applicable Refinancing Amendment and (v) with respect to any Incremental Loans or Incremental Revolving Credit Commitments, the final maturity date as specified in the applicable Incremental Amendment; *provided that*, in each case, if such day is not a Business Day, the Maturity Date shall be the Business Day immediately succeeding such day.

2. **Effective Date Conditions.** This Agreement will become effective on the date (the “Amendment No. 2 Effective Date”) on which each of the following conditions have been satisfied (or waived) in accordance with the terms herein:
- (a) the Administrative Agent shall have received counterparts of this Agreement executed by (i) each Revolving Credit Lender, (ii) the Swing Line Lender, (iii) the L/C Issuer and (iv) the Borrower and each other Loan Party;
 - (b) the representations and warranties in Section 3 of this Agreement shall be true and correct in all material respects as of the Amendment No. 2 Effective Date;
 - (c) no Default or Event of Default shall exist, or would result from the consummation of the transactions contemplated hereby;
 - (d) the Administrative Agent shall have received a certificate, in form and substance reasonably satisfactory to the Administrative Agent, of the Borrower dated as of the Amendment No. 2 Effective Date signed by a Responsible Officer of the Borrower (i) (A) certifying and attaching the resolutions or similar consents adopted by the Borrower approving or consenting to this Agreement, (B) certifying that the certificate of formation and limited liability company agreement of the Borrower either (x) has not been amended since the Closing Date or (y) is attached as an exhibit to such certificate, and (C) certifying as to the incumbency and specimen signature of each officer executing this Agreement and any related documents on behalf of the Borrower and (ii) certifying as to the matters set forth in clauses (b) and (c) above; and
 - (e) all fees and out-of-pocket expenses for which invoices have been presented at least three business day prior to the Amendment No. 2 Effective Date (including the reasonable fees and expenses of legal counsel) required to be paid or reimbursed by the Borrower pursuant to Section 10.04 of the Credit Agreement in connection with this Agreement shall have been paid or reimbursed by (or on behalf of) the Borrower.
3. **Representations and Warranties.** By its execution of this Agreement, each Loan Party hereby represents and warrants that:
- (a) the execution, delivery and performance of this Agreement is within such Loan Party’s corporate or other organizational powers and has been duly authorized by all necessary corporate or other organizational action of such Loan Party;
 - (b) this Agreement has been duly executed and delivered by such Loan Party and is a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws affecting creditors’ rights generally and to general principles of equity and principles of good faith and dealing; and
 - (c) the execution and delivery of this Agreement by such Loan Party and the performance by such Loan Party hereof do not (i) contravene the terms of any of such Person’s Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01 of the Credit Agreement), or require any payment to be made under (x) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject or (iii) violate any Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) (A) referred to in clauses (ii) and (iii), to the extent that such violation, conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect.

4. **Reference to and Effect on Loan Documents; Reaffirmation of the Loan Parties.**
- (a) On and after the effectiveness of this Agreement, each reference in the Existing Credit Agreement and the other Loan Documents to any of the Loan Documents, “this Agreement”, “hereunder”, “hereof” or words of like import referring to any Loan Document shall mean and be a reference to the applicable Loan Document, as specifically amended by this Agreement.
 - (b) Each Loan Party hereby consents to the amendment of the Existing Credit Agreement and the Loan Documents effected hereby and confirms and agrees that, notwithstanding the effectiveness of this Agreement, each Loan Document to which such Loan Party is a party is, and the obligations of such Loan Party contained in the Existing Credit Agreement, this Agreement or in any other Loan Document to which it is a party are, and shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects, in each case as amended by this Agreement. For greater certainty and without limiting the foregoing, each Loan Party hereby confirms and reaffirms, as of the date hereof, (i) that the existing security interests granted by such Loan Party in favor of the Administrative Agent for the benefit of the Secured Parties (including without limitation the Revolving Credit Lenders) pursuant to the Loan Documents in the Collateral described therein shall continue to secure the Obligations as and to the extent provided in the Loan Documents and (ii) its Guaranty of the Obligations and the covenants and agreements contained in each of the other Loan Documents to which it is a party, including, in each case, such security interest, covenants and agreements as in effect immediately after giving to this Agreement and the transactions contemplated hereby. Neither the modification of the Existing Credit Agreement effected pursuant to this Agreement nor the execution, delivery, performance or effectiveness of this Agreement (i) impairs the validity, effectiveness or priority of the Liens granted pursuant to any Loan Document, and such Liens continue unimpaired with the same priority to secure repayment of all Obligations, whether heretofore or hereafter incurred; or (ii) requires that any new filings be made or other action taken to perfect or to maintain the perfection of such Liens.
5. **Amendment, Modification and Waiver.** This Agreement may not be amended, modified or waived except as permitted by Section 10.01 of the Credit Agreement.
6. **Entire Agreement.** This Agreement, the Credit Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties or any of them with respect to the subject matter hereof. The parties hereto acknowledge and agree that the amendment of the Credit Agreement pursuant to this Agreement and all other Loan Documents amended and/or executed and delivered in connection herewith shall not constitute a novation of the Existing Credit Agreement and the other Loan Documents as in effect prior to the Amendment No. 2 Effective Date.

7. **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.
8. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
9. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier, .pdf or other electronic imaging means of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement.
10. **WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.
11. **Loan Document.** On and after the Amendment No. 2 Effective Date, this Agreement shall constitute a "Loan Document" for all purposes of the Credit Agreement and the other Loan Documents (it being understood that for the avoidance of doubt this Agreement may be amended or waived solely by the parties hereto as set forth in Section 5 above).

[signature pages to follow]

UBS AG, STAMFORD BRANCH, as Administrative Agent,
L/C Issuer and Swing Line Lender

By: /s/ Kenneth Chin

Name: Kenneth Chin

Title: Director

By: /s/ Housseem Daly

Name: Housseem Daly

Title: Associate Director

[Portillo's - Signature Page to Amendment No. 2 to First Lien Credit Agreement]

UBS AG, STAMFORD BRANCH, as a Revolving Credit Lender

By: /s/ Kenneth Chin

Name: Kenneth Chin

Title: Director

By: /s/ Housseem Daly

Name: Housseem Daly

Title: Associate Director

[Portillo's - Signature Page to Amendment No. 2 to First Lien Credit Agreement]

By: /s/ KUNAL SHAH

Name: KUNAL SHAH

Title: VICE PRESIDENT

[Portillo's - Signature Page to Amendment No. 2 to First Lien Credit Agreement]

SECURITY BENEFIT LIFE INSURANCE COMPANY, as
a Revolving Credit Lender

By: CBAM Partners, LLC, its Investment Manager

By: /s/ John H. Garrett

Name: John H. Garrett

Title: Managing Director

[Portillo's - Signature Page to Amendment No. 2 to First Lien Credit Agreement]

By: /s/ Daniel Harvey

Name: Daniel Harvey

Title: Group Senior Vice President

[Portillo's - Signature Page to Amendment No. 2 to First Lien Credit Agreement]

AMENDMENT NO. 3 TO FIRST LIEN CREDIT AGREEMENT

AMENDMENT NO. 3 TO FIRST LIEN CREDIT AGREEMENT, dated as of December 6, 2019 (this "Amendment"), by and among Portillo's Holdings, LLC, a Delaware limited liability company (the "Borrower"), PHD Intermediate LLC, a Delaware limited liability company ("Holdings"), each Revolving Credit Lender party hereto, UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent"), the Person(s) listed under the column "Amendment No. 3 Additional Revolving Credit Commitment Lenders" on Schedule I hereto (in such capacity, the "Amendment No. 3 Additional Revolving Credit Commitment Lenders"), the Persons listed under the column "Additional Term B-3 Lender" on Schedule III hereto (in such capacity, the "Additional Term B-3 Lenders"), and each of the other Loan Parties party hereto and amendment to the FIRST LIEN SECURITY AGREEMENT dated as of August 1, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Security Agreement") among the Borrower, the Grantors identified therein and the Administrative Agent.

RECITALS:

WHEREAS, reference is hereby made to the First Lien Credit Agreement, dated as of August 1, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Credit Agreement" and, as amended by this Amendment, the "Credit Agreement"), among Holdings, the Borrower, the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and the Administrative Agent (capitalized terms used but not defined herein having the meanings provided in the Existing Credit Agreement or the Credit Agreement, as the case may be);

WHEREAS, pursuant to Section 2.14(a) of the Existing Credit Agreement, the Borrower hereby notifies the Administrative Agent that it is requesting from the Amendment No. 3 Additional Revolving Credit Commitment Lender(s) Revolving Commitment Increases of the Initial Revolving Credit Commitments in an aggregate amount of \$5,000,000, on terms identical to those applicable to the Initial Revolving Credit Commitments, as amended by this Amendment, which additional commitments (the "Additional Commitments") will be available as of the Amendment No. 3 Effective Date;

WHEREAS, the Borrower has requested the Additional Term B-3 Lender to make the Additional Term B-3 Loans;

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

- Amendments to Loan Documents.** The Existing Credit Agreement is, effective as of the Amendment No. 3 Effective Date (as defined below), hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Existing Credit Agreement attached as Exhibit A hereto. Each Person party to this Amendment (other than UBS AG, Stamford Branch in its capacity as a Lender and any Loan Party) by its execution of a Consent, authorizes the Administrative Agent to approve the Agreement on its behalf and agrees that UBS AG, Stamford Branch's execution of this Amendment in its capacity as Administrative Agent constitutes such Person's irrevocable approval of this Amendment (or, if such Person was not a Lender immediately prior to the Amendment No. 3 Effective Date, constitutes such Person's irrevocable agreement to become a Lender as of the Amendment No. 3 Effective Date).

2. **Execution of Consents.** Each Lender with a Term B Loan or a Term B-2 Loan that has executed a consent to this Amendment in the form attached hereto (a "Consent") in its capacity as a Term B Lender or a Term B-2 Lender, as the case may be, and that has checked the box "Term B/Term B-2 Lender Conversion Option" on such Consent has agreed to consent to the Amendment and to have such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, converted in each case to Term B-3 Loans on the Amendment No. 3 Effective Date ("Allocated Amount", as to any Term B Lender or Term B-2 Lender, is the aggregate principal amount of such Term B Lender's Term B Loans or Term B-2 Lender's Term B-2 Loans, as the case may be, or such lesser principal amount allocated to such Term B Lender or Term B-2 Lender, as the case may be, by the Administrative Agent in the allocation of the Term B-3 Loans) (and, for the avoidance of doubt, the Allocated Amount of Term B Loans and Term B-2 Loans shall each be converted into Term B-3 Loans).
3. **Consent and Cash Out Lenders.** Each Lender with Term B Loans or Term B-2 Loans that has executed a Consent in its capacity as a Term B Lender or Term B-2 Lender, as the case may be, and checked the box "Term B/Term B-2 Lender Consent and Cash-Out Option" on such Consent has agreed to consent to the Amendment but has not agreed to have its outstanding Term B Loans or Term B-2 Loans, as the case may be, converted to Term B-3 Loans on the Amendment No. 3 Effective Date (and such Term B Loans or Term B-2 Loans, as the case may be, shall be repaid in cash upon the Amendment No. 3 Effective Date);
4. **Revolving Credit Lender Reallocations.** Effective as of the Amendment No. 3 Effective Date (i) each Person that shall be a Revolving Credit Lender as of the Amendment No. 3 Effective Date after giving effect to Amendment No. 3 as set forth on Schedule II hereto (each such Person, a "Amendment No. 3 Revolving Credit Lender") will automatically and without further action be deemed to have accepted in such Revolving Credit Lender's capacity as a Revolving Credit Lender (and, if such Amendment No. 3 Revolving Credit Lender was a Revolving Credit Lender immediately prior to the Amendment No. 3 Effective Date, assigned to other Amendment No. 3 Revolving Credit Lenders, to the extent necessary) a portion of participations in outstanding Letters of Credit and Swing Line Loans such that, after giving effect to each such deemed assignment, assumption and/or acceptance of participations, the percentage of the aggregate outstanding (A) participations in Letters of Credit and (B) participations in Swing Line Loans held by each Revolving Credit Lender will equal the percentage of the Revolving Credit Commitments of all Revolving Credit Lenders represented by such Revolving Credit Lender's Revolving Credit Commitment as set forth on Schedule II hereto and (ii) if, on the Amendment No. 3 Effective Date, there are any Revolving Credit Loans outstanding immediately prior to giving effect to this Amendment, then Amendment No. 3 Revolving Credit Lenders shall make such Revolving Credit Loans in amounts specified by the Administrative Agent in accordance with their respective Pro Rata Shares of the Revolving Credit Commitments and the proceeds of such Revolving Credit Loans so made shall be used to prepay the Revolving Credit Loans of any Person that is a Revolving Credit Lender immediately prior to the effectiveness of this Amendment but will not be a Revolving Credit Lender after giving effect to this Amendment (any such Person, a "Non-Continuing Revolving Credit Lender") and otherwise such that the Revolving Credit Loans made by the Revolving Credit Lenders reflect the Pro Rata Shares of the Revolving Credit Commitments as set forth on Schedule II. The Administrative Agent and the Amendment No. 3 Revolving Credit Lenders hereby agree that the minimum borrowing, pro rata borrowing, pro rata commitment reduction and pro rata payment requirements contained in the Credit Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence and Section 17 hereof. The Additional Commitments and any changes in the amounts of Revolving Credit Commitments due to the operation of Section 17 below shall be

made effective by, on the Amendment No. 3 Effective Date, automatically increasing the Revolving Credit Commitment of each Person listed on Schedule I hereto by the amount set forth opposite such Person's name on Schedule I hereto and by increasing or decreasing the Revolving Credit Commitment of each Person listed on Schedule II hereto such that the Revolving Credit Commitment of each Amendment No. 3 Revolving Credit Lender as of the Amendment No. 3 Effective Date after giving effect to this Amendment is equal to the amount listed opposite the name of such Revolving Credit Lender on Schedule II hereto. Each Person listed on Schedule I hereto and Schedule II hereto, by such Person's signature to this Amendment as an Amendment No. 3 Additional Revolving Credit Commitment Lender and Revolving Credit Lender, hereby agrees to such increase (or, if applicable, decrease) to the extent it may be applicable to such Person. In connection with the foregoing, it is understood and agreed that (x) the Amendment No. 3 Revolving Credit Lenders hereby authorize and instruct the Administrative Agent to revise the Register to reflect the Additional Commitments and the allocation of the Revolving Credit Commitments as reflected on Schedule II hereto and all increases and decreases in the outstanding Revolving Credit Loans and participations in Swing Line Loans and Letters of Credit contemplated by the foregoing and (y) the respective Revolving Credit Commitments of the Revolving Credit Lenders and respective Pro Rata Shares of the Revolving Credit Lenders in the Revolving Credit Commitments shall be as set forth in the Register and Schedule II hereto after giving effect to the Additional Commitments and the allocation of Revolving Credit Commitments as of the Amendment No. 3 Effective Date after giving effect to this Amendment.

5. **Effective Date Conditions.** This Amendment will become effective on the date (the "Amendment No. 3 Effective Date") on which each of the following conditions have been satisfied (or waived) in accordance with the terms herein:
- (a) the Administrative Agent shall have received executed signature pages to (or consents authorizing the relevant party's consent to) this Amendment from (i) the Amendment No. 3 Revolving Credit Lenders, (ii) the Amendment No. 3 Additional Revolving Credit Commitment Lenders, (iii) the Additional Term B-3 Lender, (iv) the Swing Line Lender, (v) the L/C Issuer and (vi) the Borrower and each other Loan Party;
 - (b) the representations and warranties in Section 8 of this Amendment shall be true and correct in all material respects as of the Amendment No. 3 Effective Date;
 - (c) no Default or Event of Default shall exist, or would result from the incurrence of the Term B-3 Loans or the Additional Commitments and the consummation of the transactions contemplated hereby, including from the application of the proceeds therefrom;
 - (d) the Administrative Agent shall have received a certificate, in form and substance reasonably satisfactory to the Administrative Agent, of the Borrower dated as of the Amendment No. 3 Effective Date signed by a Responsible Officer of the Borrower (i) (A) certifying and attaching the resolutions or similar consents adopted by the Borrower approving or consenting to this Amendment and the Term B-3 Loans and the Additional Commitments, (B) certifying that the certificate of formation and limited liability company agreement of the Borrower either (x) has not been amended since the Closing Date or (y) is attached as an exhibit to such certificate, and (C) certifying as to the incumbency and specimen signature of each officer executing this Amendment and any related documents on behalf of the Borrower and (ii) certifying as to the matters set forth in clauses (b) and (c) above;

- (e) the Administrative Agent shall have received, on behalf of itself, the Term B-3 Lenders, the Revolving Credit Lenders and the Amendment No. 3 Additional Revolving Credit Commitment Lenders on the Amendment No. 3 Effective Date, a favorable written opinion of Weil, Gotshal & Manges LLP, counsel for Holdings, the Borrower and each other Loan Party, (A) dated the Amendment No. 3 Effective Date, (B) addressed to the Administrative Agent, the L/C Issuer, the Swing Line Lender, the Term B-3 Lenders, the Revolving Credit Lenders and the Amendment No. 3 Additional Revolving Credit Commitment Lenders and (C) in form and substance reasonably satisfactory to the Administrative Agent and covering such matters relating to this Agreement as the Administrative Agent shall reasonably request;
- (f) to the extent requested by the Administrative Agent or any Lender not less than five (5) Business Days prior to the Amendment No. 3 Effective Date, the Administrative Agent or such Lender shall have received not less than three (3) days prior to the Amendment No. 3 Effective Date (x) all documentation and other information about the Borrower and the Guarantors as the Administrative Agent or such Lender reasonably determines is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act, and (y) a certification regarding beneficial ownership as required by 31 C.F.R. § 1010.230 (the “Beneficial Ownership Regulation”) in relation to the Borrower if it qualifies as a “legal entity customer” under the Beneficial Ownership Regulation;
- (g) the Administrative Agent shall have received a Committed Loan Notice executed by the Borrower with respect to the Term B-3 Loans to be incurred by the Borrower as of the Amendment No. 3 Effective Date; and
- (h) the Administrative Agent shall have received (or, in the case of clause (A) below, shall substantially simultaneously with the occurrence of the Amendment No. 3 Effective Date shall receive from the proceeds of the Term B-3 Loans made by the Additional Term B-3 Lender) from the Borrower funds sufficient to (A) repay the aggregate principal amount of all Term B Loans that are not converted to Term B-3 Loans and all Term B-2 Loans that are not converted to Term B-3 Loans, (B) pay all accrued and unpaid interest through but excluding the Amendment No. 3 Effective Date on the Term B Loans and the Term B-2 Loans, (C) pay all out-of-pocket expenses for which invoices have been presented at least three Business Days prior to the Amendment No. 3 Effective Date (including the reasonable fees and expenses of legal counsel) required to be paid or reimbursed by the Borrower pursuant to Section 10.04 of the Existing Credit Agreement in connection with this Amendment, (D) pay all accrued and unpaid interest on Revolving Credit Loans, accrued and unpaid fees related to Letters of Credit under Sections 2.03(h) and (i) of the Existing Credit Agreement and all accrued and unpaid fees relating to the Revolving Credit Commitments under Section 2.09(a) of the Existing Credit Agreement, in each case through but excluding the Amendment No. 3 Effective Date and (E) pay all fees payable to any Lenders or any of their respective Affiliates in connection with the Amendment.

For the avoidance of doubt, the Amendment No. 3 Effective Date is December 6, 2019.

6. **Change to Security Agreement.** The Security Agreement shall be amended as of the Amendment No. 3 Effective Date by adding the following text to the end of Section 6.11(b) immediately prior to the period appearing in such Section: “; *provided* that notwithstanding the foregoing, if any Grantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition

of “Excluded Subsidiary” in the Credit Agreement, such Grantor shall not be released from its obligations hereunder or any other Loan Document unless (x) such Grantor would no longer be a direct or indirect Subsidiary of the Borrower or (y) after giving pro forma effect to such release and the consummation of the relevant transaction, the Borrower would be permitted to make an Investment in such Person to be so released pursuant to clause (1) of the definition of “Permitted Investments” (and, if this clause (y) shall be applicable, Borrower shall be deemed to have made such an Investment in such Person pursuant to such clause (1)) in the Credit Agreement.

7. **Increase of Initial Revolving Credit Commitments and Borrowing of Additional Term B-3 Loans.** Subject to the terms and conditions set forth herein and in the Credit Agreement on the Amendment No. 3 Effective Date: (A) the Amendment No. 3 Additional Revolving Credit Commitment Lender(s), by its signature of this Amendment, agrees to make the Additional Commitments available to the Borrower and (B) the Additional Term B-3 Lender, by its signature of this Amendment, agrees to make the Additional Term B-3 Loans to the Borrower.
8. **Representations and Warranties.** By its execution of this Amendment, each Loan Party hereby represents and warrants that:
 - (a) the execution, delivery and performance of this Amendment is within such Loan Party’s corporate or other organizational powers and has been duly authorized by all necessary corporate or other organizational action of such Loan Party;
 - (b) this Amendment has been duly executed and delivered by such Loan Party and is a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws affecting creditors’ rights generally and to general principles of equity and principles of good faith and dealing; and
 - (c) the execution and delivery of this Amendment by such Loan Party and the performance by such Loan Party hereof do not (i) contravene the terms of any of such Person’s Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01 of the Credit Agreement), or require any payment to be made under (x) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject or (iii) violate any Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clauses (ii) and (iii), to the extent that such violation, conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect.
9. **Reference to and Effect on Loan Documents; Reaffirmation of the Loan Parties.**
 - (a) On and after the effectiveness of this Amendment, each reference in the Existing Credit Agreement and the other Loan Documents to any of the Loan Documents, “this Agreement”, “hereunder”, “hereof” or words of like import referring to any Loan Document shall mean and be a reference to the applicable Loan Document, as specifically amended by this Amendment.
 - (b) Each Loan Party hereby consents to the amendment of the Existing Credit Agreement and the Loan Documents effected hereby and confirms and agrees that, notwithstanding

the effectiveness of this Amendment, each Loan Document to which such Loan Party is a party is, and the obligations of such Loan Party contained in the Existing Credit Agreement, this Amendment or in any other Loan Document to which it is a party are, and shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects, in each case as amended by this Amendment. For greater certainty and without limiting the foregoing, each Loan Party hereby confirms and reaffirms, as of the date hereof, (i) that the existing security interests granted by such Loan Party in favor of the Administrative Agent for the benefit of the Secured Parties (including, without limitation, the Term B-3 Lenders and Lenders providing Additional Commitments) pursuant to the Loan Documents in the Collateral described therein shall continue to secure the Obligations as and to the extent provided in the Loan Documents and (ii) its Guaranty of the Obligations and the covenants and agreements contained in each of the other Loan Documents to which it is a party, including, in each case, such security interest, covenants and agreements as in effect immediately after giving to this Amendment and the transactions contemplated hereby. Neither the modification of the Existing Credit Agreement effected pursuant to this Amendment nor the execution, delivery, performance or effectiveness of this Amendment (i) impairs the validity, effectiveness or priority of the Liens granted pursuant to any Loan Document, and such Liens continue unimpaired with the same priority to secure repayment of all Obligations, whether heretofore or hereafter incurred; or (ii) requires that any new filings be made or other action taken to perfect or to maintain the perfection of such Liens.

- (c) Each Lender party hereto or which signs and delivers a Consent hereby waives its right to reimbursement under Section 3.05 of the Existing Credit Agreement solely as it relates to any prepayment of any Term B Loan or Term B-2 Loan on the Amendment No. 3 Effective Date or any of the assignments of Revolving Credit Loans on the Amendment No 3 Effective Date deemed made pursuant to Section 4 above.
10. **Amendment, Modification and Waiver.** This Amendment may not be amended, modified or waived except as permitted by Section 10.01 of the Credit Agreement.
11. **Entire Agreement.** This Amendment, the Credit Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties or any of them with respect to the subject matter hereof. The parties hereto acknowledge and agree that the amendment of the Existing Credit Agreement and the Security Agreement pursuant to this Amendment and all other Loan Documents amended and/or executed and delivered in connection herewith shall not constitute a novation of the Existing Credit Agreement, the Security Agreement or any other Loan Document as in effect prior to the Amendment No. 3 Effective Date.
12. **GOVERNING LAW.** THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.
13. **Severability.** If any provision of this Amendment is held to be illegal, invalid or unenforceable (a) the legality, validity and enforceability of the remaining provisions of this Amendment shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

14. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier, .pdf or other electronic imaging means of an executed counterpart of a signature page to this Amendment shall be effective as delivery of an original executed counterpart of this Amendment.
15. **WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 15.
16. **Loan Document.** On and after the Amendment No. 3 Effective Date, this Amendment shall constitute a “Loan Document” for all purposes of the Credit Agreement and the other Loan Documents (it being understood that for the avoidance of doubt this Amendment may be amended or waived solely by the parties hereto as set forth in Section 10 above).
17. **Restatement of Schedule of Revolving Credit Commitments.** Notwithstanding anything to the contrary contained in any Loan Document, each Person listed on Schedule II and the Loan Parties hereby agree that the Revolving Credit Commitment of each such Person shall be as set forth opposite the name of such Person on Schedule II to this Amendment, the amount of which Revolving Credit Commitment shall be subject to increase or decrease following the Amendment No. 3 Effective Date in accordance with the terms of the Loan Documents. For the avoidance of doubt, any Non-Continuing Revolving Credit Lender shall no longer be a Revolving Credit Lender after giving effect to Amendment No. 3, and each Amendment No. 3 Revolving Credit Lender consents to such non-continuation of such Non-Continuing Revolving Credit Lender as a Revolving Credit Lender.
18. **Tax Treatment.** On and after the Amendment No. 3 Effective Date, the initial Term B-3 Loans, whether issued for cash or in exchange for Term B Loans or Term B-2 Loans, shall be treated as a single fungible tranche for U.S. federal income tax purposes.
19. **Refinancing Amendment.** Section 2 of this Amendment and Section 2.01(a) of the Credit Agreement shall constitute a “Refinancing Amendment” under the Existing Credit Agreement (such Sections shall be collectively referred to herein as the “2019 Refinancing Amendment”) and the 2019 Refinancing Amendment shall constitute a “Refinancing Loan Request” delivered pursuant to the Existing Credit Agreement. The Term B Loans and Term B-2 Loans shall constitute “Refinanced Debt” under the Existing Credit Agreement. The Consent of each Term B Lender and Term B-2 Lender to convert into Term B-3 Loans and the Additional Term B-3 Commitment shall constitute “Refinancing Commitments” under the Existing Credit Agreement (and the Term B-3 Lenders with respect thereto shall constitute “Refinancing Lenders” under the Existing Credit Agreement), in each case to the extent that the Term B-3 Loans do not exceed the principal amount of such Refinanced Debt. The Loan Parties and all Lenders under the Credit Agreement immediately after giving effect to such 2019 Refinancing Amendment hereby approve

all other amendments to the Existing Credit Agreement contained in this Amendment (including the amendment and restatement of the Revolving Credit Commitments contained herein) and the Credit Agreement and hereby approve the amount of the Additional Term B-3 Commitment (and the aggregate amount of the Revolving Credit Commitments set forth on Schedule II hereto) and the Term B-3 Loans and hereby agree that any and all requirements of Section 2.15 of the Existing Credit Agreement and the Credit Agreement, solely as such Section 2.15 of either the Existing Credit Agreement or the Credit Agreement relate to the establishment and incurrence of the Term B-3 Loans on the Amendment No. 3 Effective Date, shall have been satisfied.

[signature pages to follow]

IN WITNESS WHEREOF, each of the undersigned has caused its duly authorized officer to execute and deliver this Amendment as of the date first set forth above.

**PHD INTERMEDIATE LLC
PORTILLO'S HOLDINGS, LLC
PORTILLO'S HOT DOGS, LLC**

By: /s/ Thomas W. Stoltz
Name: Thomas W. Stoltz
Title: Chief Financial Officer

PHD CARD SERVICES, LLC

By: /s/ Tim Benson
Name: Tim Benson
Title: President

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

UBS AG, STAMFORD BRANCH, as Administrative Agent, L/C Issuer, Swing Line Lender, and Revolving Credit Lender

By: /s/ Darlene Arias
Name: Darlene Arias
Title: Director

By: /s/ Housseem Daly
Name: Housseem Daly
Title: Associate Director

UBS AG, STAMFORD BRANCH, as Additional Term B-3 Lender

By: /s/ Darlene Arias
Name: Darlene Arias
Title: Director

By: /s/ Housseem Daly
Name: Housseem Daly
Title: Associate Director

UBS AG, STAMFORD BRANCH, as Amendment No. 3 Additional Revolving Credit Commitment Lender

By: /s/ Darlene Arias
Name: Darlene Arias
Title: Director

By: /s/ Housseem Daly
Name: Housseem Daly
Title: Associate Director

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

By: /s/ Aashish Dhakad
Name: Aashish Dhakad
Title: Managing Director

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

By: /s/ Brian Buoye
Name: Brian Buoye
Title: Managing Director

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Birch Grove CLO Ltd.,

By: /s/ Todd A. Berry

Name: Todd A. Berry

Title: COO of its general partner, Birch Grove
Advisors LLC

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Premia AmTrust 2017 Aggregate Reinsurance Trust,

By: /s/ Todd A. Berry

Name: Todd A. Berry
Title: COO of its general partner, Birch Grove
Advisors LLC

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Carlyle Global Market Strategies CLO 2012-3, Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Carlyle Global Market Strategies CLO 2012-4, Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Carlyle Global Market Strategies CLO 2013-1, Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Carlyle Global Market Strategies CLO 2013-2, Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

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Carlyle Global Market Strategies CLO 2013-3, Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

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Carlyle Global Market Strategies CLO 2013-4, Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

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Carlyle Global Market Strategies CLO 2014-1, Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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Carlyle Global Market Strategies CLO 2014-2-R, Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

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Carlyle Global Market Strategies CLO 2014-3-R, Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

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REVOLVING CREDIT LENDERS:

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Carlyle Global Market Strategies CLO 2014-4-R, Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

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REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

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Carlyle Global Market Strategies CLO 2014-5, Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Carlyle Global Market Strategies CLO 2015-1, Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Carlyle Global Market Strategies CLO 2015-4, Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Carlyle Global Market Strategies CLO 2016-2 Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Carlyle US CLO 2016-4, Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

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Carlyle US CLO 2017-1, Ltd.,

By: /s/ Linda Pace
Name: Linda Pace
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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Credit Opportunities Fund,
By: Loomis, Sayles & Company, L.P., Its Investment

Adviser

By: Loomis, Sayles & Company, Incorporated, Its General

Partner

By: /s/ Mary McCarthy
Name: Mary McCarthy
Title: Vice President, Legal and Compliance Analyst

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

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Crestline Denali CLO XIV, LTD.,
By: Crestline Denali Capital, L.P., collateral manager for
Crestline Denali CLO XIV, LTD.

By: /s/ John Thacker
Name: John Thacker
Title: Senior Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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Crestline Denali CLO XVI, LTD.,
By: Crestline Denali Capital, L.P., collateral manager

By: /s/ John Thacker
Name: John Thacker
Title: Senior Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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Crestline Denali CLO XVII, LTD.,
By: Crestline Denali Capital, L.P., collateral manager

By: /s/ John Thacker
Name: John Thacker
Title: Senior Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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Bean Creek CLO, Inc,

(Name Of Institution)

By: /s/ Bryan S. Higgins

Name: Bryan S. Higgins
Title: Manager

[If a second signature is necessary:

By: _____
Name:
Title:]

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

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Bean Creek CLO, Inc,

(Name of Institution)

By: /s/ Bryan S. Higgins

Name: Bryan S. Higgins
Title: Manager

[If a second signature is necessary:

By: _____
Name:
Title:]

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

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The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Deer Creek CLO, Inc,

(Name of Institution)

By: /s/ Bryan S. Higgins

Name: Bryan S. Higgins
Title: Manager

[If a second signature is necessary:

By: _____
Name:]
Title:]

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Silver Creek CLO, Inc,

(Name of Institution)

By: /s/ Bryan S. Higgins

Name: Bryan S. Higgins
Title: Manager

[If a second signature is necessary:

By: _____
Name:
Title:]

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Denali Capital CLO XII, Ltd.,
BY: Crestline Denali Capital, L.P., collateral manager for

DENALI CAPITAL CLO XII, LTD.

By: /s/ John Thacker
Name: John Thacker
Title: Senior Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Golub Capital Partners CLO 19(B)-R, Ltd.,
By: GC Advisors LLC, as Collateral Manager

By: /s/ Scott Morrison
Name: Scott Morrison
Title: Designated Signatory

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Golub Capital Partners CLO 22(B)-R, Ltd.,
By: OPAL BSL LLC, as Collateral Manager

By: /s/ Scott Morrison
Name: Scott Morrison
Title: Designated Signatory

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Golub Capital Partners CLO 23(B)-R, Ltd.,
By: OPAL BSL LLC, as Collateral Manager

By: /s/ Scott Morrison
Name: Scott Morrison
Title: Designated Signatory

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Golub Capital Partners CLO 26(B)-R, Ltd.,
By: OPAL BSL LLC, as Collateral Manager

By: /s/ Scott Morrison
Name: Scott Morrison
Title: Designated Signatory

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Golub Capital Partners CLO 35(B), Ltd.,
By: GC Advisors LLC, as Collateral Manager

By: /s/ Scott Morrison
Name: Scott Morrison
Title: Designated Signatory

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Golub Capital Partners CLO 37(B), Ltd.,
By: OPAL BSL LLC, as Collateral Manager

By: /s/ Scott Morrison
Name: Scott Morrison
Title: Designated Signatory

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Golub Capital Partners CLO 39(B), Ltd.,
By: OPAL BSL LLC, as Collateral Manager

By: /s/ Scott Morrison
Name: Scott Morrison
Title: Designated Signatory

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Golub Capital Partners CLO 40(B), Ltd.,
By: OPAL BSL LLC, as Collateral Manager

By: /s/ Scott Morrison
Name: Scott Morrison
Title: Designated Signatory

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Golub Capital Partners CLO 41(B), Ltd.,
By: OPAL BSL LLC, as Collateral Manager

By: /s/ Scott Morrison
Name: Scott Morrison
Title: Designated Signatory

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Golub Capital Partners CLO 43(B), Ltd.,
By: OPAL BSL LLC, as Collateral Manager

By: /s/ Scott Morrison
Name: Scott Morrison
Title: Designated Signatory

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

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Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

JNL/PPM America Floating Rate Income Fund, a series of
the JNL Series Trust,
By: PPM America, Inc., as sub-adviser

By: /s/ David Wagner
Name: David Wagner
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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Kayne CLO 4, Ltd.,

By: /s/ John Eanes

Name: John Eanes

Title: Portfolio Manager

If a second signature is necessary:

By:

Name:

Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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Kayne CLO 5, Ltd.,

By: /s/ John Eanes
Name: John Eanes
Title: Portfolio Manager

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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Kayne CLO I, Ltd.,

By: /s/ John Eanes
Name: John Eanes
Title: Portfolio Manager

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

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Kayne CLO II, Ltd.,

By: /s/ John Eanes
Name: John Eanes
Title: Portfolio Manager

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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Kayne CLO III, Ltd.,

By: /s/ John Eanes
Name: John Eanes
Title: Portfolio Manager

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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Loomis Sayles Senior Floating Rate & Fixed Income Fund,
By: Loomis, Sayles & Company, L.P., Its Investment
Manager

By: Loomis, Sayles & Company, Incorporated, Its General
Partner

By: /s/ Mary McCarthy
Name: Mary McCarthy
Title: Vice President, Legal and Compliance Analyst

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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Natixis Loomis Sayles Senior Loan Fund,
By: Loomis, Sayles & Company, L.P., Its Investment
Manager

By: Loomis, Sayles & Company, Incorporated, Its General
Partner

By: /s/ Mary McCarthy
Name: Mary McCarthy
Title: Vice President, Legal and Compliance Analyst

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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PPM CLO 2 Ltd.,
By: PPM Loan Management Company, LLC,

as Asset Manager

By: /s/ David Wagner
Name: David Wagner
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

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PPM CLO 2018-1 Ltd.,

By: /s/ David Wagner

Name: David Wagner

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

PPM CLO 3 Ltd.,
By: PPM Loan Management Company, LLC,

as Portfolio Manager

By: /s/ David Wagner
Name: David Wagner
Title: Managing Director

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

PPM Floating Rate Income Fund, a series of the PPM Funds,
By: PPM America, Inc.,

as agent and investment adviser on behalf of the Fund

By: /s/ David Wagner

Name: David Wagner

Title: Managing Director

If a second signature is necessary:

By:

Name:

Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Schlumberger Group Trust Agreement,
By: Voya Investment Management Co. LLC,

as its investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Senior Floating Rate Loan Fund,
By: Loomis, Sayles & Company, L.P., Its Investment
Manager

By: Loomis, Sayles & Company, Incorporated, Its General
Partner

By: /s/ Mary McCarthy
Name: Mary McCarthy
Title: Vice President, Legal and Compliance Analyst

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Senior Floating Rate Fund LLC,
By: Loomis, Sayles & Company, L.P., Its Investment
Adviser

By: Loomis, Sayles & Company, Incorporated, Its General
Partner

By: /s/ Mary McCarthy
Name: Mary McCarthy
Title: Vice President, Legal and Compliance Analyst

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

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UBS AG, STAMFORD BRANCH

By: /s/ ANTHONY N. JOSEPH
Name: ANTHONY N JOSEPH
Title: ASSOCIATE DIRECTOR

By: /s/ Darlene Arias
Name: Darlene Arias
Title: Director

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

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REVOLVING CREDIT LENDERS:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

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Voya CLO 2012-4, Ltd.,
BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

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Voya CLO 2013-1, Ltd.,
BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

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Voya CLO 2013-2, Ltd.,
BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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Voya CLO 2013-3, Ltd.,
BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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Voya CLO 2014-1, Ltd.,
BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Voya CLO 2014-2, Ltd.,
BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

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Voya CLO 2014-3, Ltd.,
BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Voya CLO 2014-4, Ltd.,
BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Voya CLO 2015-1, Ltd.,
By: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Voya CLO 2015-2, Ltd.,
By: Voya Alternative Asset Management LLC,

as its investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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Voya CLO 2015-3, Ltd.,
By: Voya Alternative Asset Management LLC,

as its investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

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Voya CLO 2016-1, Ltd.,
By: Voya Alternative Asset Management LLC,

as its investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

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Voya CLO 2016-2, Ltd.,
By: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

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Voya CLO 2016-3, Ltd.,
By: Voya Alternative Asset Management LLC,

as its investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

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Voya CLO 2016-4, Ltd.,
By: Voya Alternative Asset Management LLC,

as its investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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Voya CLO 2017-1, Ltd.,
By: Voya Alternative Asset Management LLC,

as its investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Voya CLO 2017-2, Ltd.,
By: Voya Alternative Asset Management LLC,

as its investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

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Voya CLO 2017-3, Ltd.,
By: Voya Alternative Asset Management LLC,

as its investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Voya CLO 2017-4, Ltd.,
By: Voya Alternative Asset Management LLC,

as its investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Voya CLO 2018-1, Ltd.,
By: Voya Alternative Asset Management LLC,

as its Portfolio Manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Voya CLO 2018-2, Ltd.,
By: Voya Alternative Asset Management LLC,

as its investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Voya CLO 2018-3, Ltd.,
By: Voya Alternative Asset Management LLC,

as its investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

Voya CLO 2018-4, Ltd.,
By: Voya Alternative Asset Management LLC,

as its investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

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Voya CLO 2019-1, Ltd.,
By: Voya Alternative Asset Management LLC,

as its Investment Manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

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Voya CLO 2019-2, Ltd.,
By: Voya Alternative Asset Management LLC,

as its Investment Manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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VOYA CLO 2019-3, LTD.,
By: Voya Alternative Asset Management LLC,

as its Investment Manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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Voya MJP Senior Loan Fund,
By: Voya Investment Management Co. LLC,

as its investment manager

By: /s/ Kelly Byrne
Name: Kelly Byrne
Title: VP

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

WM Pool—High Yield Fixed Interest Trust,
By: Loomis, Sayles & Company, L.P., its Investment
Manager

By: Loomis, Sayles & Company, Incorporated, its General
Partner

By: /s/ Mary McCarthy
Name: Mary McCarthy
Title: Vice President, Legal and Compliance Analyst

If a second signature is necessary:

By:
Name:
Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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ICG GLOBAL LOAN FUND 1 DESIGNATED ACTIVITY
COMPANY,

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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ICG US CLO 2014-1, Ltd.,

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

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REVOLVING CREDIT LENDERS:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

ICG US CLO 2014-2, Ltd.,

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

ICG US CLO 2014-3, Ltd.,

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

ICG US CLO 2015-1, Ltd.,

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

ICG US CLO 2015-2, Ltd.,

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

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ICG US CLO 2016-1, Ltd.,

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

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ICG US CLO 2017-1, Ltd.,

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

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ICG US CLO 2017-2, Ltd.,

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

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ICG US CLO 2018-1, Ltd.,

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

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[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

ICG US CLO 2018-2, Ltd.,

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

CONSENT

Reference is made to Amendment No. 3 (the "Amendment"), to that certain First Lien Credit Agreement, dated as of August 1, 2014, by and among Portillo's Holdings, LLC (the "Borrower"), PHD Intermediate LLC ("Holdings"), the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent") (as amended, restated, supplemented or otherwise modified from time to time prior to the date of the Amendment, the "Existing Credit Agreement" and, as amended by the Amendment, the "Credit Agreement"). Capitalized terms used herein but not defined herein have the meanings assigned to such terms in the Amendment, the Existing Credit Agreement or the Credit Agreement, as applicable. The undersigned hereby irrevocably (i) consents to the Amendment and (ii) authorizes and instructs the Administrative Agent to execute the Amendment on its behalf (and, if the undersigned is not a Lender immediately prior to the Amendment No. 3 Effective Date, agrees to become a Lender).

ICG US CLO 2019-1, Ltd.,

By: /s/ Seth Katzenstein

Name: Seth Katzenstein

Title: Authorized Signatory

If a second signature is necessary:

By:

Name:

Title:

TERM B/TERM B-2 LENDER CONVERSION OPTION:

The above Lender is a Term B Lender or a Term B-2 Lender and, in such capacity, agrees to (i) convert on the Amendment No. 3 Effective Date such Term B Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and (ii) be repaid on the Amendment No. 3 Effective Date the excess (if any) of the principal amount of the above Lender's Term B Loans or Term B-2 Loans, as the case may be, over such Lender's Allocated Amount of outstanding Term B Loans or Term B-2 Loans, as the case may be.

TERM B/TERM B-2 LENDER CONSENT AND CASH-OUT OPTION:

The above Lender is a Term B Lender or Term B-2 Lender and, in such capacity, will not convert its Term B Loans or Term B-2 Loans, as the case may be, into Term B-3 Loans and shall have the principal amount of its Term B Loans or Term B-2 Loans, as the case may be, repaid on the Amendment No. 3 Effective Date.

REVOLVING CREDIT LENDERS:

The above Person is a Revolving Credit Lender, or will be, on the Amendment No. 3 Effective Date, a Revolving Credit Lender, and consents to becoming a party to the Amendment and the Credit Agreement.

[Portillo's – Signature Page to Amendment No. 3 to First Lien Credit Agreement]

AMENDED CREDIT AGREEMENT

[See attached.]

FIRST LIEN CREDIT AGREEMENT

Dated as of August 1, ~~2014~~2014, as amended by
Amendment No. 1 dated as of October 25, 2016,
Amendment No. 2 dated as of May 18, 2018, and
Amendment No. 3 dated as of December 6, 2019

Among

PHD INTERMEDIATE LLC,
as Holdings,

PHD MERGER SUB LLC
(to be merged with and into PORTILLO'S HOLDINGS, LLC),
as the Borrower,

UBS AG, STAMFORD BRANCH,
as Administrative Agent,

UBS AG, STAMFORD BRANCH,
as L/C Issuer and Swing Line Lender,

and

THE OTHER LENDERS PARTY HERETO FROM TIME TO TIME

UBS SECURITIES LLC and
JEFFERIES FINANCE LLC,
as Joint Arrangers,

UBS SECURITIES LLC and
JEFFERIES FINANCE LLC,
as Joint Lead Bookrunners,

and

JEFFERIES FINANCE LLC,
as Syndication Agent

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FIRST LIEN CREDIT AGREEMENT

This FIRST LIEN CREDIT AGREEMENT is entered into as of August 1, 2014, among PHD INTERMEDIATE LLC, a Delaware limited liability company (“**Holdings**”), PHD MERGER SUB LLC, a Delaware limited liability company (“**Merger Sub**”), to be merged with and into PORTILLO’S HOLDINGS, LLC, a Delaware limited liability company (the “**Company**”), the other Guarantors party hereto from time to time, UBS AG, STAMFORD BRANCH, as Administrative Agent, each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”) and UBS AG, STAMFORD BRANCH, as L/C Issuer and Swing Line Lender.

PRELIMINARY STATEMENTS

Pursuant to the Agreement and Plan of Merger, dated as of June 27, 2014 (the “**Merger Agreement**”), by and among Holdings, Merger Sub, the Company, and RP & SP Holdings, Inc., a Delaware corporation, Merger Sub will, immediately following the initial funding hereunder, be merged with and into the Company with the Company surviving (the “**Merger**”).

The Borrower ~~has~~ requested that, substantially simultaneously with the consummation of (and in order to fund a portion of consideration for) the Merger, the Lenders extend credit to the Borrower in the form of (i) Term B Loans (as this and other capitalized terms used in these preliminary statements are defined in Section 1.01 below) on the Closing Date in an initial aggregate principal amount of \$335,000,000 and (ii) Initial Revolving Credit Commitments in an initial aggregate principal amount of \$30,000,000. The Initial Revolving Credit Commitments permit the issuance of one or more Letters of Credit from time to time and the making of one or more Swing Line Loans from time to time.

~~The proceeds of the Term B Loans, together with (i) the proceeds of the Second Lien Initial Term Loans, (ii) the proceeds of the Initial Revolving Borrowing, (iii) the proceeds from the issuance of the Superholdco Preferred Stock and (iv) the proceeds of the Equity Contribution, will be used by the Borrower to pay the Merger Consideration and Transaction Expenses and to refinance certain Indebtedness.~~

On the Amendment No. 1 Effective Date, the Borrower requested and the Lenders made \$71,000,000 in aggregate principal amount of Term B-2 Loans and other amendments to this Agreement were made on such date.

On the Amendment No. 2 Effective Date, the Maturity Date of the Initial Revolving Credit Commitments were extended on the terms set forth in Amendment No. 2.

On the Amendment No. 3 Effective Date, the Term B Loans and the Term B-2 Loans were either repaid or converted into Term B-3 Loans (and the aggregate principal amount of the Term B-3 Loans as of the Amendment No. 3 Effective Date was \$332,400,000), the Maturity Date of the Initial Revolving Credit Commitments was further extended, the Initial Revolving Credit Commitments were increased by \$5,000,000 to \$50,000,000 and other amendments to this Agreement set forth in Amendment No. 3 were effectuated.

The applicable Lenders have indicated their willingness to lend and the L/C Issuer has indicated its willingness to so issue Letters of Credit, in each case, on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

**ARTICLE I.
DEFINITIONS AND ACCOUNTING TERMS**

Section 1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

“**Acceptable Discount**” has the meaning set forth in Section 2.05(a)(v)(D)(2).

“**Acceptable Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Acceptance and Prepayment Notice**” means a notice of the Borrower’s acceptance of the Acceptable Discount in substantially the form of Exhibit E-3.

“**Acceptance Date**” has the meaning set forth in Section 2.05(a)(v)(D)(2).

“**Acquired Indebtedness**” means, with respect to any specified Person,

(a) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

(b) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“**Acquisition**” means the acquisition of the Company pursuant to the Merger Agreement.

“**Additional Lender**” means any Person that is not an existing Lender and has agreed to provide Incremental Commitments pursuant to Section 2.14 or Refinancing Commitments pursuant to Section 2.15.

“**Additional Term B-3 Commitment**” means the commitment of the Additional Term B-3 Lender to make a term loan on the Amendment No. 3 Effective Date in an aggregate amount equal to \$332,400,000 minus the sum of (A) the aggregate principal amount of the Converted Term B Loans and (B) the aggregate principal amount of Converted Term B-2 Loans of all Lenders (which aggregate amount of Additional Term B-3 Commitment is equal to \$309,109,624.64).

“ **Additional Term B-3 Lender**” means the Person identified as such in Amendment No. 3.

“ **Adjustment**” has the meaning specified in Section 3.03(c).

“**Administrative Agent**” means UBS, in its capacity as administrative agent and collateral agent under any of the Loan Documents, or any successor administrative agent and collateral agent.

“**Administrative Agent’s Office**” means the Administrative Agent’s address and account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. “**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Affiliated Lender**” means, at any time, any Lender that is the Sponsor or an Affiliate of the Sponsor, but in any event excluding (1) Holdings, the Borrower or any of their respective Subsidiaries and (2) any Debt Fund Affiliate.

“**Affiliated Lender Assignment and Assumption**” has the meaning set forth in Section 10.07(k)(i).

“**Affiliated Lender Cap**” has the meaning set forth in Section 10.07(k)(iv).

“**Agent Parties**” has the meaning specified in Section 10.02(b).

“**Agent-Related Distress Event**” means, with respect to the Administrative Agent or any Person that directly or indirectly Controls the Administrative Agent (each, a “**Distressed Agent-Related Person**”), a voluntary or involuntary case with respect to such Distressed Agent-Related Person under any Debtor Relief Law, or a custodian, conservator, receiver or similar official is appointed for such Distressed Agent-Related Person or any substantial part of such Distressed Agent-Related Person’s assets, or such Distressed Agent-Related Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Agent-Related Person to be, insolvent or bankrupt; *provided* that an Agent-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in the Administrative Agent or any Person that directly or indirectly Controls the Administrative Agent by a Governmental Authority or an instrumentality thereof.

“**Agent-Related Persons**” means the Agents, together with their respective Affiliates, officers, directors, employees, partners, agents, advisors and other representatives.

“**Agents**” means, collectively, the Administrative Agent, the Syndication Agent, the Arrangers and the Bookrunners.

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” means this First Lien Credit Agreement, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“**All-In Yield**” means, as to any Indebtedness, the yield thereof, whether in the form of interest rate, margin, OID, upfront fees, a Eurocurrency Rate or Base Rate floor, or otherwise, in each case, incurred or payable by the Borrower generally to all lenders of such Indebtedness; *provided* that OID and upfront fees shall be equated to interest rate assuming a four (4)-year life to maturity (e.g. 100 basis points of original issue discount equals 25 basis points of interest rate margin for a four (4) year average life to maturity); and *provided, further*, that “**All-In Yield**” shall not include amendment fees, arrangement fees, structuring fees, ticking fees, unused line fees, commitment fees, underwriting fees and similar fees or other fees not paid generally to all lenders in the primary syndication of such Indebtedness.

“**Allocated Amount**” has the meaning assigned to such term in Amendment No. 3.

“**Amendment No. 1**” means Amendment No. 1 to this Agreement, dated as of October 25, 2016, among the Borrower, Holdings, the other Loan Parties party thereto, the Administrative Agent and the Lenders party thereto.

“**Amendment No. 1 Effective Date**” shall mean the “Effective Date” under and as defined in Amendment No. 1.

“**Amendment No. 2**” means Amendment No. 2 to this Agreement, dated as of May 18, 2018, among the Borrower, Holdings, the other Loan Parties party thereto, the Administrative Agent and the Revolving Credit Lenders party thereto.

“**Amendment No. 2 Effective Date**” shall mean the “Amendment No. 2 Effective Date” under and as defined in Amendment No. 2.

“**Amendment No. 3**” means Amendment No. 3 to this Agreement, dated as of December 6, 2019, among the Borrower, Holdings, the other Loan Parties party thereto, the Administrative Agent, the Amendment No. 3 Additional Revolving Credit Commitment Lender, the Additional Term B-3 Lender and the other Persons party thereto.

“**Amendment No. 3 Additional Revolving Credit Commitment Lender**” has the meaning assigned to such term in Amendment No. 3.

“**Amendment No. 3 Effective Date**” shall mean the “Amendment No. 3 Effective Date” under and as defined in Amendment No. 3. For the avoidance of doubt, the Amendment No. 3 Effective Date is December 6, 2019.

“**Anti-Corruption Laws**” means all laws, rules, and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption applicable to Holdings or its Subsidiaries by virtue of such Person being organized or operating in such jurisdiction.

“**Applicable Discount**” has the meaning set forth in Section 2.05(a)(v)(C)(2).

“**Applicable ECF Percentage**” means, for any fiscal year, (a) 50% if the Secured Net Leverage Ratio as of the last day of such fiscal year is greater than 5.50 to 1.00, (b) 25% if the Secured Net Leverage Ratio as of the last day of such fiscal year is less than or equal to 5.50 to 1.00 and greater than 5.00 to 1.00 and (c) 0% if the Secured Net Leverage Ratio as of the last day of such fiscal year is less than or equal to 5.00 to 1.00.

“**Applicable Rate**” means a percentage per annum equal to with respect to: (a) Term B ~~and Term B-2-3~~ Loans, (A) for Eurocurrency Rate Loans, ~~4.50~~5.50%, (B) for Base Rate Loans, ~~3.50~~4.50 % and (b) Revolving Credit Loans (including Swing Line Loans), unused Revolving Credit Commitments and Letter of Credit fees, ~~(i) until delivery of financial statements for the first full fiscal quarter ending after the Closing Date pursuant to Section 6.01, (A) for Eurocurrency Rate Loans and Letter of Credit fees, 3.75%, (B) for Base Rate Loans, 2.75% and (C) for unused commitment fees, 0.50% and (ii) thereafter,~~ the following percentages per annum, based upon the Consolidated First Lien Net Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

Applicable Rate				
Pricing Level	Consolidated First Lien Net Leverage Ratio	Eurocurrency Rate <i>Revolving Credit Loans and Letters of Credit</i>	Base Rate <i>Revolving Credit Loans</i>	Commitment Fee Rate
1	>4.25:1.00	3.75%	2.75%	0.500%
2	£4.25:1.00 and >3.75:1.00	3.50%	2.50%	0.375%
3	£3.75:1.00	3.25%	2.25%	0.250%

Any increase or decrease in the Applicable Rate pursuant to clause (b) above resulting from a change in the Consolidated First Lien Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); *provided* that if notification is provided to the Borrower that the Administrative Agent or the Required Revolving Credit Lenders have so elected, with respect to Revolving Credit Loans, Swing Line Loans, and unused Revolving Credit Commitments and Letter of Credit Fees, “Pricing Level 1” (immediately above) shall apply (x) as of the first Business Day after the date on which a Compliance Certificate was required to have been delivered but was not delivered, and shall continue to so apply to and including the date on which such Compliance Certificate is so delivered (and thereafter the pricing level otherwise

determined in accordance with this definition shall apply) and (y) as of the first Business Day after an Event of Default under Section 8.01(a) shall have occurred and be continuing, and shall continue to so apply to but excluding the date on which such Event of Default is cured or waived (and thereafter the pricing level otherwise determined in accordance with this definition shall apply).

“**Appropriate Lender**” means, at any time, (a) with respect to Loans of any Class, the Lenders of such Class of Loans, (b) with respect to Letters of Credit, (i) the relevant L/C Issuers and (ii) the Revolving Credit Lenders and (c) with respect to Swing Line Loans, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Revolving Credit Lenders.

“**Approved Bank**” has the meaning set forth in clause (c) of the definition of “Cash Equivalents.”

“**Approved Fund**” means any Fund that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

“**Arrangers**” means each of UBS Securities LLC and Jefferies Finance LLC, each in its capacity as a joint lead arranger under this Agreement.

“**Assignees**” has the meaning set forth in Section 10.07(b)(i).

“**Assignment and Assumption**” means an Assignment and Assumption substantially in the form of Exhibit E-1 hereto.

“**Assignment Taxes**” has the meaning set forth in Section 3.01(b).

“**Attorney Costs**” means all reasonable and documented fees, expenses and disbursements of any law firm or other external legal counsel.

“**Attributable Indebtedness**” means, subject to the second paragraph of Section 1.03, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“**Auction Agent**” means (a) the Administrative Agent or (b) any other financial institution or advisor employed by the Borrower (whether or not an Affiliate of the Administrative Agent) with the consent of the Administrative Agent (not to be unreasonably withheld or delayed) to act as an arranger in connection with any Discounted Term Loan Prepayment pursuant to Section 2.05(a)(v); *provided* that the Borrower shall not designate the Administrative Agent as the Auction Agent without the prior written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Agent); *provided, further*, that neither the Borrower nor any of its Affiliates may act as the Auction Agent.

“**Audited Financial Statements**” has the meaning specified in the Merger Agreement (as in effect on the ~~date hereof~~[Closing Date](#)).

“**Auto-Extension Letter of Credit**” has the meaning set forth in Section 2.03(b)(iii).

“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“**Bail-In Legislation**” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“**Base Rate**” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as the Administrative Agent’s “prime rate” and (c) the Eurocurrency Rate plus 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day); *provided* that in no event shall the Base Rate with respect to Term B-3 Loans be less than 2.00% per annum. The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate made by the Administrative Agent shall take effect at the opening of business on the day of such change.

“**Base Rate Loan**” means a Loan that bears interest based on the Base Rate.

“**Beneficial Ownership Certification**” means a certification regarding individual beneficial ownership solely to the extent expressly required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**Big Boy Letter**” means a letter from a Lender (i) acknowledging that (1) an Affiliated Lender may have information regarding Holdings and its Subsidiaries that has not previously been disclosed to the Administrative Agent and the Lenders (“**Excluded Information**”), (2) the Excluded Information may not be available to such Lender, (3) such Lender has independently and without reliance on any other party made its own analysis and determined to assign Term Loans to an Affiliated Lender pursuant to Section 10.07(k) notwithstanding its lack of knowledge of the Excluded Information and (4) such Lender waives and releases any claims it may have against the Administrative Agent, such Affiliated Lender, Holdings and its Subsidiaries with respect to the nondisclosure of the Excluded Information; or (ii) otherwise in form and substance reasonably satisfactory to the Administrative Agent, such Affiliated Lender and the assigning Lender.

“**Board of Directors**” means, for any Person, the board of directors or managers, the managing member or other governing body of such Person or, if such Person does not have such governing body and is owned or managed by a single entity, the Board of Directors of such

entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, **“Board of Directors”** means the Board of Directors of the Borrower.

“Bookrunner” means each of UBS Securities LLC and Jefferies Finance LLC, each in its capacity as a joint bookrunner.

“Borrower” means (a) prior to the consummation of the Merger, Merger Sub and (b) upon and after the consummation of the Merger, the Company.

“Borrower Materials” has the meaning specified in Section 6.01.

“Borrower Offer of Specified Discount Prepayment” means the offer by any Company Party to make a voluntary prepayment of Term Loans at a Specified Discount to par pursuant to Section 2.05(a)(v)(B).

“Borrower Retained Prepayment Amounts” has the meaning specified in Section 2.05(b)(vii).

“Borrower Solicitation of Discount Range Prepayment Offers” means the solicitation by any Company Party of offers for, and the corresponding acceptance by a Lender of, a voluntary prepayment of Term Loans at a specified range of discounts to par pursuant to Section 2.05(a)(v)(C).

“Borrower Solicitation of Discounted Prepayment Offers” means the solicitation by any Company Party of offers for, and the subsequent acceptance, if any, by a Lender of, a voluntary prepayment of Term Loans at a discount to par pursuant to Section 2.05(a)(v)(D).

“Borrowing” means a Revolving Credit Borrowing, a Swing Line Borrowing, or a Term Borrowing, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, New York City, and if such day relates to any Eurocurrency Rate Loan, means any such day that is also a London Banking Day.

“Capital Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Leases) by the Borrower and its Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries.

“Capitalized Lease Obligation” means, subject to the second paragraph of Section 1.03, at the time any determination thereof is to be made, the amount of the liability in respect of a Capitalized Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

“**Capitalized Leases**” means, subject to the second paragraph of Section 1.03, all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; *provided* that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“**Capitalized Software Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and the Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries.

“**Captive Insurance Subsidiary**” means any Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

“**Cash Collateral**” has the meaning specified in Section 2.03(g).

“**Cash Collateral Account**” means a blocked account at the Administrative Agent (or another commercial bank selected by the Administrative Agent) in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

“**Cash Collateralize**” has the meaning specified in Section 2.03(g).

“**Cash Equivalents**” means to the extent owned by Holdings, the Borrower or any Restricted Subsidiary:

- (a) (1) Dollars, pound sterling, Canadian dollars, yen or euros or any national currency of any Participating Member State of the EMU; and
- (2) in the case of any Foreign Subsidiary that is a Restricted Subsidiary or any jurisdiction in which the Borrower and its Restricted Subsidiaries conducts business, such local currencies held by it from time to time in the ordinary course of business and not for speculation;
- (b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of the United States having average maturities of not more than twenty-four (24) months from the date of acquisition thereof; *provided* that the full faith and credit of the United States is pledged in support thereof;
- (c) time deposits or eurodollar time deposits with, insured certificates of deposit, bankers’ acceptances or overnight bank deposits of, or letters of credit issued by, any commercial bank that (i) is a Lender or (ii) (A) is organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for

Economic Cooperation and Development or is the principal banking Subsidiary of a bank holding company organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development and is a member of the Federal Reserve System, and (B) has combined capital and surplus of not less than \$250,000,000 in the case of U.S. domestic banks and \$100,000,000 (or the Dollar equivalent as of the date of determination) in the case of foreign banks (any such bank in the foregoing clause (i) or (ii) being an “**Approved Bank**”), in each case with maturities not exceeding twenty four (24) months from the date of acquisition thereof;

(d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation (other than structured investment vehicles and other than corporations used in structured financing transactions) rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody’s, in each case with average maturities of not more than twenty-four (24) months from the date of acquisition thereof;

(e) marketable short-term money market and similar funds having a rating of at least P-2 or A-2 from either Moody’s or S&P, respectively (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower);

(f) repurchase obligations for underlying securities of the types described in clauses (b), (c) and (e) above entered into with any Approved Bank;

(g) securities with average maturities of twenty-four (24) months or less from the date of acquisition issued or fully guaranteed (i) by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by (ii) any foreign government, in each case, having an investment grade rating from either S&P or Moody’s (or the equivalent thereof);

(h) Investments (other than in structured investment vehicles and structured financing transactions) with average maturities of twelve (12) months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody’s;

(i) securities with maturities of twelve (12) months or less from the date of acquisition backed by standby letters of credit issued by any Approved Bank;

(j) instruments equivalent to those referred to in clauses (a) through (i) above denominated in euros or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized in such jurisdiction;

(k) Investments, classified in accordance with GAAP as Current Assets of the Borrower or any Restricted Subsidiary, in money market investment programs which are registered under the Investment Company Act of 1940 or which are administered by

financial institutions having capital of not less than \$250,000,000 in the case of U.S. domestic banks and \$100,000,000 (or the Dollar equivalent as of the date of determination) in the case of foreign banks, and, in either case, the portfolios of which are limited such that substantially all of such Investments are of the character, quality and maturity described in clauses (a) through (i) of this definition; and

- (l) investment funds investing at least 90% of their assets in securities of the types described in clauses (a) through (k) above.

In the case of Investments by any Foreign Subsidiary that is a Restricted Subsidiary or Investments made in a country outside the United States, Cash Equivalents shall also include (i) investments of the type and maturity described in clauses (a) through (l) (other than clause (g)(ii) above) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries that are Restricted Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (a) through (l) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those specified in clause (a) above; *provided* that such amounts are converted into any currency listed in clause (a) above as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

“Cash Management Obligations” means obligations owed by the Borrower or any Restricted Subsidiary to any Lender, any Agent or any Affiliate of a Lender or an Agent and to any Person that was a Lender, an Agent or an Affiliate of a Lender or an Agent at the time of entering into any such services in respect of any overdraft and related liabilities arising from treasury, depository and cash management services or any automated clearing house transfers of funds.

“Casualty Event” means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or Real Property (including any improvements thereon) to replace or repair such equipment, fixed assets or Real Property.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“CFC Holdco” means any Domestic Subsidiary that has no material assets other than equity interests (or equity interests and indebtedness) of one or more Foreign Subsidiaries that are CFCs or any other Domestic Subsidiary that itself is a CFC Holdco.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or

directive (whether or not having the force of law) by any Governmental Authority. It is understood and agreed that (i) the Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173), all Laws relating thereto, all interpretations and applications thereof and any request, rule, guideline or directive relating thereto and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall, in each case, for the purposes of this Agreement, be deemed to be adopted and taking effect subsequent to the date of this Agreement; *provided* that a Lender shall be entitled to compensation with respect to any such adoption or taking effect, change, administration, interpretation or application, making or issuance, in each case, becoming effective after the date of this Agreement only if it is the applicable Lender’s general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

“**Change of Control**” shall be deemed to occur if:

(a) (i) at any time prior to a Qualified IPO, the Permitted Holders cease to own, in the aggregate, directly or indirectly, beneficially, Equity Interests representing at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings, or

(ii) at any time upon or after the consummation of a Qualified IPO (1) any person (other than a Permitted Holder) or (2) Persons (other than one or more Permitted Holders) constituting a “**group**” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended, but excluding any employee benefit plan of such person and its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), becomes the “**beneficial owner**” (as defined in Rules 13(d)-3 and 13(d)-5 under such Act), directly or indirectly, of Equity Interests representing more than 40% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of Holdings beneficially owned, directly or indirectly, in the aggregate by the Permitted Holders;

unless, in the case of either clause (a)(i) or (a)(ii) above, the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the Board of Directors of Holdings;

(b) a “**change of control**” (or similar event) shall occur in any document pertaining to the Second Lien Credit Agreement, any Incremental Equivalent Debt, any Refinancing Equivalent Debt, any Second Lien Incremental Equivalent Debt, any Second Lien Refinancing Equivalent Debt or, in each case, any Permitted Refinancing thereof and, in the case of any such Indebtedness which is unsecured or secured by a Lien on the Collateral which is junior to the Lien securing the Term B-3 Loans or the Initial Revolving Credit Commitments, such Indebtedness is in an aggregate outstanding principal amount in excess of the Threshold Amount; or

(c) Holdings shall cease to own 100% of the Equity Interests of the Borrower free of Liens (other than nonconsensual Liens permitted under Section 7.01 and Liens permitted under Sections 7.01(a), (bb) (solely to the extent the Obligations under the Term Loans and Revolving Credit Loans that are secured on a first lien basis shall be secured on a *pari passu* or senior basis with such Liens), (dd) and (gg)).

“Chicagoland” means the following counties (x) located in the State of Illinois: Cook (including the City of Chicago), Lake, McHenry, DeKalb, DuPage, Kane, Kendall, Grundy, Will and Kankakee and (y) located in the State of Indiana: Lake, Porter and LaPorte.

“Class” means (i) with respect to Commitments or Loans, those of such Commitments or Loans that have the same terms and conditions (without regard to differences in the Type of Loan, Interest Period, upfront fees, OID or similar fees paid or payable in connection with such Commitments or Loans, or differences in tax treatment (e.g., “fungibility”)); *provided* that such Commitments or Loans may be designated in writing by the Borrower and Lenders holding such Commitments or Loans as a separate Class from other Commitments or Loans that have the same terms and conditions and (ii) with respect to Lenders, those of such Lenders that have Commitments or Loans of a particular Class. For the avoidance of doubt, the Term B-3 Loans constitute a “Class” of Loans and the Initial Revolving Credit Commitments constitute a “Class” of Revolving Credit Commitments.

“Closing Date” means August 1, 2014.

~~“Closing Fee” has the meaning set forth in Section 2.09(c).~~

“Co-Investor” means (a) any Person (other than any Sponsor or Management Stockholder) who becomes a holder of Equity Interests in Holdings (or any of the direct or indirect parent companies of Holdings) on the Closing Date in connection with the Acquisition, (b) a Person, if any, that acquires, within sixty (60) days of the Closing Date, any Equity Interests in Holdings (or any of the direct or indirect parent companies of Holdings) held by any Sponsor as of the Closing Date, and (c) in each of clauses (a) and (b), an Affiliate of any such Person; *provided*, that, for purposes of the definition of “Permitted Holder”, Co-Investors shall only include for purposes of clauses (a) and (b) those Persons that have been disclosed in writing prior to the Closing Date to (and, solely in the case of clause (b) above, are reasonably acceptable to) the Arrangers.

“Code” means the U.S. Internal Revenue Code of 1986, and the United States Treasury Department regulations promulgated thereunder, as amended from time to time.

“Collateral” means the “Collateral” as defined in the Security Agreement and all the “Collateral” or “Pledged Assets” as defined in any other Collateral Document and any other assets pledged pursuant to any Collateral Document.

“**Collateral and Guarantee Requirement**” means, at any time, the requirement that:

(a) the Administrative Agent shall have received each Collateral Document required to be delivered (i) on the Closing Date, pursuant to Section 4.01(a)(iv) and (ii) at such time as may be designated therein, pursuant to the Collateral Documents, Section 6.11 or 6.13, subject, in each case, to the limitations and exceptions of this Agreement and the Collateral Documents, duly executed by each Loan Party thereto;

(b) all Obligations (other than, with respect to any Guarantor, any Excluded Swap Obligations of such Guarantor) shall have been unconditionally guaranteed by Holdings and each Restricted Subsidiary of the Borrower that is a wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) including those that are listed on Schedule I hereto (each, a “**Guarantor**”);

(c) the Obligations and the Guaranty shall have been secured by a first-priority security interest (subject to Liens permitted by Section 7.01) in (i) all the Equity Interests of the Borrower, (ii) all Equity Interests of each Restricted Subsidiary that is a Domestic Subsidiary (other than a Domestic Subsidiary described in the following clause (iii)(A) or (B)) that is directly owned by the Borrower or any Subsidiary Guarantor and (iii) 65% of the issued and outstanding Equity Interests directly owned by the Borrower or any Subsidiary Guarantor of (A) each Restricted Subsidiary that is a CFC Holdco, (B) each Restricted Subsidiary that is a Disregarded Domestic Person and (C) each Restricted Subsidiary that is a Foreign Subsidiary that is a CFC;

(d) except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 7.01, or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected first-priority security interest (to the extent such security interest may be perfected by delivering Mortgages, certificated securities or instruments, filing financing statements under the Uniform Commercial Code or making any necessary filings with the United States Patent and Trademark Office or United States Copyright Office or to the extent required in the Security Agreement) in substantially all tangible and intangible assets of the Borrower and each Guarantor (including accounts receivable, inventory, equipment, investment property, contract rights, applications and registrations of intellectual property filed in the United States, other general intangibles, Material Real Property, intercompany notes and proceeds of the foregoing), in each case, with the priority required by the Collateral Documents, in each case subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents; and

(e) the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Material Real Property required to be delivered pursuant to Section 6.11 and Section 6.13 (the “**Mortgaged Properties**”) duly executed and delivered by the applicable Loan Party, (ii) a title insurance policy or a marked-up commitment or signed pro forma thereof for such property available in each applicable jurisdiction (the “**Mortgage Policies**”) insuring the Lien of each such Mortgage as a valid first priority Lien on the property described therein, free of any other Liens except as expressly permitted by Section 7.01, together with such endorsements, coinsurance and reinsurance and in such amounts as the Administrative Agent may reasonably request and which are available at commercially reasonable rates in the jurisdiction where the Mortgaged Property is located, (iii) a completed Life-of-Loan Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each

Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and the applicable Loan Party if any improvements on any Mortgaged Property are located within an area designated a "special flood hazard area") and if any improvements on such Mortgaged Property are so located in a "special flood hazard area," copy of, or a certificate as to coverage under, and a copy of the flood insurance policy and a declaration page relating to, the insurance policies required by Section 6.07 and the applicable provisions of the Collateral Documents and shall be in form and substance reasonably satisfactory to the Administrative Agent, (iv) either ALTA surveys in form and substance reasonably acceptable to the Administrative Agent or such existing surveys together with no change affidavits sufficient for the title company to remove all standard survey exceptions from the Mortgage Policies and issue the endorsements required in (ii) above to the extent such coverage and endorsements are available in the applicable jurisdictions and at commercially reasonable rates, (v) copies of any existing abstracts and existing appraisals, (vi) opinions, addressed to the Administrative Agent and the Lenders, from local counsel in each jurisdiction (i) where a Mortgaged Property is located regarding the enforceability of the Mortgage and (ii) where the applicable Loan Party granting the Mortgage on said Mortgaged Property is organized, regarding the due authorization, execution and delivery of such Mortgage, and in each case, such other matters as may be in form and substance reasonably satisfactory to the Administrative Agent, (vii) evidence reasonably acceptable to the Administrative Agent of payment by Obligors of all Mortgage Policy premiums, search and examination charges, escrow charges and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgage and issuance of the Mortgage Policies referred to above and (viii) such other documents as the Administrative Agent may reasonably request with respect to any such Mortgaged Property;

provided, however, that the foregoing definition shall not require and the Loan Documents shall not contain any requirements as to the creation or perfection of pledges of, security interests in, Mortgages on, or the obtaining of title insurance, surveys, abstracts or appraisals or taking other actions with respect to any Excluded Assets.

The Administrative Agent may grant extensions of time for the perfection of security interests in, or the delivery of the Mortgages and the obtaining of title insurance and surveys with respect to, particular assets and the delivery of assets (including extensions beyond the Closing Date for the perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents. Notwithstanding any provision of any Loan Document to the contrary, if a mortgage tax or any similar tax or charge will be owed on the entire amount of the Obligations evidenced hereby, then the amount secured by the applicable Mortgage shall be limited to 100% of the fair market value of the Mortgaged Property at the time the Mortgage is entered into if such limitation results in such mortgage tax or similar tax or charge being calculated based upon such fair market value.

No actions in any non-U.S. jurisdiction or required by the Laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the U.S. or to perfect such security interests, including any intellectual property registered in any non-U.S. jurisdiction (it being understood that there shall be no security agreements or pledge agreements governed under the Laws of any non-U.S. jurisdiction). No actions shall be required with respect to Collateral requiring perfection through control agreements or perfection by “control” (as defined in the UCC) (including deposit accounts or other bank accounts or securities accounts) or possession, other than in respect of (i) certificated Equity Interests of the Borrower and wholly owned Restricted Subsidiaries that are Material Subsidiaries directly owned by the Borrower or by any Subsidiary Guarantor otherwise required to be pledged pursuant to the provisions of clause (c) of this definition of “Collateral and Guarantee Requirement” and not otherwise constituting an Excluded Asset ~~and~~, (ii) Pledged Debt (as defined in the Security Agreement) to the extent required to be delivered to the Administrative Agent pursuant to the terms of the Security Agreement and (iii) the Cash Collateral Account.

“**Collateral Documents**” means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Mortgages, collateral assignments, Security Agreement Supplements, security agreements, pledge agreements, intellectual property security agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 4.01(a)(iv), Section 6.11 or Section 6.13, the Intercreditor Agreements (if any) and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“**Commitment**” means a Revolving Credit Commitment or Term Commitment, as the context may require.

“**Committed Loan Notice**” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A hereto.

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**Company**” has the meaning specified in the introductory paragraph to this Agreement.

“**Company Parties**” means the collective reference to Holdings and its Subsidiaries, including the Borrower, and “**Company Party**” means any one of them.

“**Compensation Period**” has the meaning set forth in Section 2.12(c)(ii).

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit D-1 hereto.

“**Compliance Date**” means the last day of any Test Period (commencing with the first full fiscal quarter of the Borrower ending after the Closing Date) if on such day the aggregate Revolving Credit Exposure in respect of the Revolving Credit Commitments of the Revolving Credit Lenders exceeds 35% of the aggregate Revolving Credit Commitments, excluding, for purposes of calculating such Revolving Credit Exposure, (a) L/C Obligations in respect of Letters

of Credit that have been Cash Collateralized or backstopped in a manner reasonably acceptable to the L/C Issuer in an amount equal to 100% of the then-available face amount thereof, (b) L/C Obligations in respect of undrawn Letters of Credit that have not been Cash Collateralized or backstopped in an aggregate amount not exceeding \$5,000,000 and (c) for the first two (2) full fiscal quarters ending after the Closing Date, any Revolving Credit Loans borrowed on the Closing Date to finance a portion of the Transactions and/or the payment of any Transaction Expenses.

“Consent” has the meaning assigned to such term in Amendment No. 3.

“**Consolidated Cash Interest Coverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated EBITDA to (b) Consolidated Interest Expense.

“**Consolidated EBITDA**” means, for any period, the Consolidated Net Income for such period, plus:

(a) without duplication and, except with respect to clauses (viii), (x) and, to the extent consisting of “run rate” cost savings, (xiv) below, to the extent deducted (and not added back or excluded) in arriving at such Consolidated Net Income, the sum of the following amounts for such period with respect to the Borrower and its Restricted Subsidiaries:

(i) total interest expense determined in accordance with GAAP and, to the extent not reflected in such total interest expense, any expense or loss on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations, and costs of surety bonds in connection with financing activities (whether amortized or immediately expensed),

(ii) provision for taxes and Tax Distributions based on income, profits or capital gains of the Borrower and the Restricted Subsidiaries, including, without limitation, federal, state, local, franchise and similar taxes and foreign withholding taxes paid or accrued during such period including penalties and interest related to such taxes or arising from any tax examinations,

(iii) depreciation and amortization (including amortization of intangible assets, including Capitalized Software Expenditures),

(iv) (A) duplicative running costs, relocation costs or expenses, integration costs, site acquisition costs, transition costs, pre-opening, opening, closing and consolidation costs for facilities, signing, retention and completion bonuses, costs associated with preparations for and implementation of compliance with the requirements of the Sarbanes-Oxley Act of 2002 and other Public Company Costs, costs incurred in connection with any strategic initiatives, costs incurred in connection with acquisitions and non-recurring product and intellectual property development, other business optimization expenses (including costs and expenses relating to business optimization programs and new

systems design, retention charges, systems establishment costs (including information technology systems) and implementation costs), project start-up costs, severance and other restructuring charges representing cash items (including restructuring costs related to acquisitions and to closure of facilities, and excess pension charges), and litigation settlements or losses and related expenses,

(B) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses, compensation or otherwise) and adjustments thereof and purchase price adjustments, in each case in connection with acquisitions and

(C) Transaction Expenses,

(v) the amount of any expense or reduction of Consolidated Net Income consisting of Restricted Subsidiary income attributable to minority interests or non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary,

(vi) the amount of management, monitoring, consulting and advisory fees (including transaction and termination fees) and related expenses and indemnities paid or accrued to the Sponsor under the Sponsor Management Agreement,

(vii) any Equity Funded Employee Plan Costs,

(viii) (i) cost savings, operating expense reductions and synergies related to the Transactions that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within twenty-four (24) months after the Closing Date (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period) and (ii) cost savings, operating expense reductions and synergies related to mergers and other business combinations, acquisitions, divestitures, restructurings, cost savings initiatives and other similar initiatives and actions that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within twenty-four (24) months after a merger or other business combination, acquisition or divestiture is consummated or any other restructuring, cost savings initiative or other initiative or action (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period), net of the amount of actual benefits realized during such period from such

actions; *provided* that no cost savings, operating expense reductions and synergies shall be added back pursuant to this clause (viii) to the extent duplicative of any expenses or charges otherwise added back to Consolidated EBITDA, whether through a *pro forma* adjustment or otherwise, for such period,

(ix) any expense or net loss from asset retirement obligations, disposed, abandoned or discontinued operations (excluding held-for-sale discontinued operations until actually disposed of),

(x) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (b) below for any previous period and not added back,

(xi) non-cash expenses (including the excess of GAAP rent expense over actual cash rent paid, including the benefit of lease incentives, during such period), charges and losses (including reserves, impairment charges or asset write-offs, write-offs of deferred financing fees, losses from investments recorded using the equity method, stock-based awards compensation expense), in each case other than (A) any non-cash charge representing amortization of a prepaid cash item that was paid and not expensed in a prior period and (B) any non-cash charge relating to write-offs, write-downs or reserves with respect to accounts receivable in the normal course or inventory; *provided* that if any non-cash charges referred to in this clause (xi) represents an accrual or reserve for potential cash items in any future period, (1) the Borrower may elect not to add back such non-cash charge in the current period and (2) to the extent the Borrower elects to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA in such future period to such extent paid,

(xii) pre-opening, opening, consolidation and closing costs, losses and expenses, in each case, for restaurants and other facilities, start-up losses, charges and expenses for new restaurants and other new facilities and losses, charges and expenses for closed restaurants and other closed facilities,

(xiii) the amount of loss on sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Financing, and

(xiv) other adjustments and add-backs of the type identified in the Quality of Earnings Analysis dated June 25, 2014, ~~including without limitation, if greater than zero, an amount equal to the pro forma "run rate" Consolidated EBITDA attributable to any De Novo Store, which will be assumed to be (A)(1) the median Consolidated EBITDA margin before cash rent expense of comparable stores that have been operating for at least six consecutive fiscal quarters for such period multiplied by (2) the projected (in the good faith determination of the~~

~~Borrower) mature annual revenue of such De Novo Store, minus (b)(i) the annual cash rent expense of the relevant De Novo Store and (B) the actual Consolidated EBITDA generated by the relevant De Novo Store 2014;~~

~~less (b) without duplication and to the extent included in arriving at such Consolidated Net Income, (i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period or the amortization of income associated with a prior period cash receipt), (ii) any net gain from disposed, abandoned or discontinued operations (excluding held-for-sale discontinued operations until actually disposed of) and (iii) the amount of any minority interest income consisting of Restricted Subsidiary losses attributable to minority interests or non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary; provided that, for the avoidance of doubt, any gain representing the reversal of any non-cash charge referred to in clause (a)(xi)(B) above for a prior period shall be added (together with, without duplication, any amounts received in respect thereof to the extent not increasing Consolidated Net Income) to Consolidated EBITDA in any subsequent period to such extent so reversed (or received);~~

~~provided that:~~

~~(A) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA (x) currency translation or transaction gains and losses related to currency remeasurements of Indebtedness (including the net loss or gain (i) resulting from Swap Contracts for currency exchange risk and (ii) resulting from intercompany indebtedness) and (y) all other foreign currency translation or transaction gains or losses to the extent such gains or losses are non-cash items,~~

~~(B) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any adjustments resulting from the application of FASB Accounting Standards Codification 815 and International Accounting Standard No. 39 and their respective related pronouncements and interpretations,~~

~~(C) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any income (loss or expenses) for such period attributable to the early extinguishment of (i) Indebtedness, (ii) obligations under any Swap Contracts or (iii) other derivative instruments.~~

~~Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated EBITDA under this Agreement (A) for any period that includes any of the fiscal quarters ended June 30, 2014, March 31, 2014, December 31, 2013 and September 30, 2013, Consolidated EBITDA for such fiscal quarters shall be \$20,900,000, \$12,600,000, \$18,200,000 and \$18,100,000, respectively, in each case, as may be subject to addbacks and adjustments (without duplication) pursuant to clauses (a)(iv)(A) and (a)(viii) above and Section 1.09(c) for the applicable Test Period and (B) the Consolidated EBITDA derived from any De Novo Store for the four-fiscal quarter period then being measured shall be deemed to equal (X) if such De~~

Novo Store is located in Chicagoland, \$2,000,000 and (Y) if such De Novo Store is not located in Chicagoland, \$500,000; provided that (I) this clause (B) shall apply to the Consolidated EBITDA of such De Novo Store only for so long as such Store constitutes a De Novo Store and (II) no amounts shall be added to Consolidated EBITDA in respect of or that are attributable to a De Novo Store for so long as Store constitutes a De Novo Store other than the applicable amounts set forth in the immediately preceding clause (X) or (Y). For the avoidance of doubt but subject to the immediately preceding sentence, Consolidated EBITDA shall be calculated, including pro forma adjustments, in accordance with Section 1.09.

“Consolidated First Lien Net Debt” means, as of any date of determination, (1) any Indebtedness described in clause (a) of the definition of “Consolidated Total Net Debt” outstanding on such date that is secured by a Lien on Collateral but excluding any such Indebtedness in which the applicable Liens are expressly subordinated or junior to the Liens securing the Obligations under Term Loans and Revolving Credit Loans required to be secured on a first lien basis minus (2) the aggregate amount of Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01, Liens permitted by Section 7.01(a), Section 7.01(b), clauses (ii) and (iii) of Section 7.01(k), Section 7.01(m), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(v), Section 7.01(w), Section 7.01(aa), Section 7.01(bb), Section 7.01(cc), Section 7.01(dd) and Section 7.01(gg)); *provided* that Consolidated First Lien Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided further* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated First Lien Net Debt until three (3) Business Days after such amount is drawn, (ii) Unrestricted Subsidiaries and (iii) any Qualified Securitization Financing; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated First Lien Net Debt.

“Consolidated First Lien Net Leverage Ratio” means, with respect to any Test Period, the ratio of (a) Consolidated First Lien Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“Consolidated Interest Expense” means, for any period, the sum, without duplication, of

- (i) the cash interest expense (including that attributable to Capitalized Leases), net of cash interest income, of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, with respect to all outstanding Indebtedness of the Borrower and its Restricted Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net cash costs under Swap Contracts, and
- (ii) any cash payments made during such period in respect of obligations referred to in clause (b) below relating to Funded Debt that were amortized or accrued in a previous period;

provided that there shall be excluded from Consolidated Interest Expense for any period:

- (a) deferred financing costs, debt issuance costs, commissions, fees (including amendment and contract fees) and expenses and, in each case, the amortization thereof, and any other amounts of non-cash interest,
- (b) the accretion or accrual of discounted liabilities and any prepayment premium or penalty during such period,
- (c) non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations under Swap Contracts or other derivative instruments pursuant to FASB Accounting Standards Codification 815,
- (d) any cash costs associated with breakage in respect of hedging agreements for interest rates,
- (e) all non-recurring cash interest expense consisting of liquidated damages for failure to timely comply with registration rights obligations and financing fees, all as calculated on a consolidated basis in accordance with GAAP,
- (f) Transaction Expenses,
- (g) annual agency fees paid to the Administrative Agent and the Second Lien Administrative Agent,
- (h) costs associated with obtaining Swap Contracts,
- (i) any expense resulting from the discounting of any Indebtedness in connection with the application of recapitalization accounting or, if applicable, acquisition accounting in connection with the Transactions or any acquisition,
- (j) the cash interest expense (or income) of all Unrestricted Subsidiaries for such period to the extent otherwise included in Consolidated Interest Expense, and
- (k) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Qualified Securitization Financing.

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated Interest Expense (i) for any period ending prior to the first anniversary of the [Closing Amendment No. 3 Effective](#) Date, Consolidated Interest Expense shall be an amount equal to actual Consolidated Interest Expense from the [Closing Amendment No. 3 Effective](#) Date through the date of determination multiplied by a fraction the numerator of which is three hundred sixty-five (365) and the denominator of which is the number of days from the [Closing Amendment No. 3 Effective](#) Date through the date of determination and (ii) shall exclude the acquisition accounting effects described in the last sentence of the definition of Consolidated Net Income.

“**Consolidated Net Income**” means, for any period, the net income (loss) of the Borrower and the Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; *provided, however*, that, without duplication:

(a) any after-tax (including after Tax Distributions) effect of extraordinary, non-recurring or unusual items (including gains or losses and all fees and expenses relating thereto) for such period shall be excluded,

(b) the cumulative effect of a change in accounting principles during such period to the extent included in Consolidated Net Income shall be excluded,

(c) any fees and expenses incurred during such period (including, without limitation, any premiums, make-whole or penalty payments), or any amortization thereof for such period, in connection with any acquisition, investment, asset disposition, issuance or repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of any debt instrument (in each case, including any such transaction consummated on or prior to the Closing Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for the avoidance of doubt the effects of expensing all transaction related expenses in accordance with FASB Accounting Standards Codification 805 and gains or losses associated with FASB Accounting Standards Codification 460) shall be excluded,

(d) accruals and reserves that are established or adjusted within two (2) years after the Closing Date that are so required to be established as a result of the Transactions (or within two (2) years after the closing of any acquisition that are so required to be established as a result of such acquisition) in accordance with GAAP shall be excluded,

(e) any net after-tax (including after Tax Distributions) effect of gains or losses on disposed, abandoned or discontinued operations shall be excluded,

(f) any net after-tax (including after Tax Distributions) effect of gains or losses (less all fees, expenses and charges relating thereto) attributable to asset dispositions or abandonments or the sale or other disposition of any Equity Interests of any Person in each case other than in the ordinary course of business, as determined in good faith by the Borrower, shall be excluded,

(g) the net income (loss) for such period of any Person that is not a Subsidiary of the Borrower, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; *provided* that Consolidated Net Income of the Borrower shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent subsequently converted into cash or Cash Equivalents) to the Borrower or a Restricted Subsidiary thereof in respect of such period,

(h) any impairment charge or asset write-off or write-down, including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets, investments in debt and equity securities or as a result of a change in law or regulation, in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(i) any non-cash compensation charge or expense, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights or equity incentive programs or any other equity-based compensation shall be excluded, and any cash charges associated with the rollover, acceleration or payout of Equity Interests by management of the Borrower or any of its direct or indirect parents in connection with the Transactions, shall be excluded,

(j) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within three hundred sixty-five (365) days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such three hundred sixty-five (365) day period), shall be excluded,

(k) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is in fact reimbursed within three hundred sixty-five (365) days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such three hundred sixty-five (365) days), expenses, charges or losses with respect to liability or casualty events or business interruption shall be excluded,

(l) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of FASB Accounting Standards Codification 712 and 715, Statement on Financial Accounting Standards Nos. 87, 106 and 112, and any other items of a similar nature, shall be excluded,

(m) the income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary of Borrower or is merged into or consolidated with Borrower or any of its Subsidiaries or that Person's assets are acquired by Borrower or any of its Restricted Subsidiaries shall be excluded (except to the extent required for any calculation of Consolidated EBITDA on a Pro Forma Basis in accordance with Section 1.09),

(n) solely for the purpose of determining the Cumulative Credit pursuant to clause (a) of the definition thereof, the income of any Restricted Subsidiary of Borrower that is not a Guarantor to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary (which has not been waived) shall be excluded, except (solely to the extent permitted to be paid) to the extent of the amount of dividends or other distributions actually paid to Borrower or any of its Restricted Subsidiaries that are Guarantors by such Person during such period in accordance with such documents and regulations, and

(o) any gains or losses in connection with Sale Leaseback Transactions shall be excluded.

There shall be excluded from Consolidated Net Income for any period the acquisition accounting effects of adjustments in component amounts required or permitted by GAAP pursuant to FASB Accounting Standards Codification 805 (including, but not limited to, in the inventory, property and equipment, fair value of leased property, software, goodwill, intangible assets, in-process research and development, deferred revenue, deferred rent, contingent considerations and debt line items thereof) and related authoritative pronouncements (including the effects of such adjustments pushed down to the Borrower and the Restricted Subsidiaries), as a result of the Transactions, any acquisition constituting an Investment permitted under this Agreement consummated prior to or after the Closing Date, or the amortization or write-off of any amounts thereof. For the avoidance of doubt, Consolidated Net Income shall be calculated, including pro forma adjustments, in accordance with Section 1.09.

“Consolidated Secured Net Debt” means, as of any date of determination, (1) any Indebtedness described in clause (a) of the definition of “Consolidated Total Net Debt” outstanding on such date that is secured by a Lien on Collateral minus (2) the aggregate amount of Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01, Liens permitted by Section 7.01(a), Section 7.01(b), clauses (ii) and (iii) of Section 7.01(k), Section 7.01(m), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(v), Section 7.01(w), Section 7.01(aa), Section 7.01(bb), Section 7.01(cc), Section 7.01(dd) and Section 7.01(gg)); *provided* that Consolidated Secured Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided further* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Secured Net Debt until three (3) Business Days after such amount is drawn, (ii) Unrestricted Subsidiaries and (iii) any Qualified Securitization Financing; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated Secured Net Debt.

“Consolidated Total Net Debt” means, as of any date of determination, (a) the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of

Indebtedness resulting from the application of acquisition accounting in connection with the Transactions or any acquisition constituting an Investment permitted under this Agreement) consisting of Indebtedness for borrowed money, Attributable Indebtedness, and debt obligations evidenced by promissory notes or similar instruments and all Guarantees of Indebtedness of such type that is owed by a Person that is not the Borrower or a Restricted Subsidiary, minus (b) the aggregate amount of Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01, Liens permitted by Section 7.01(a), Section 7.01(b), clauses (ii) and (iii) of Section 7.01(k), Section 7.01(m), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(v), Section 7.01(w), Section 7.01(aa), Section 7.01(bb), Section 7.01(cc), Section 7.01(dd) and Section 7.01(gg)); *provided* that Consolidated Total Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided further* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Total Net Debt until three (3) Business Days after such amount is drawn, (ii) Unrestricted Subsidiaries and (iii) any Qualified Securitization Financing; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated Total Net Debt.

“**Consolidated Working Capital**” means, with respect to the Borrower and its Restricted Subsidiaries on a consolidated basis at any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; *provided* that increases or decreases in Consolidated Working Capital shall be calculated without regard to (i) any changes in Current Assets or Current Liabilities as a result of any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent and (ii) the application of acquisition accounting.

“**Contingent Obligations**” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (“**primary obligations**”) of any other Person (for purposes of this definition, the “**primary obligor**”) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent,

- (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;
- (b) to advance or supply funds
 - (i) for the purchase or payment of any such primary obligation, or
 - (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or
- (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“**Contract Consideration**” has the meaning set forth in the definition of “Excess Cash Flow.”

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“**Control**”, “**Controlled**” and “**Controlling**” have the meaning specified in the definition of “Affiliate.”

“**Converted Term B Loan**” means the Allocated Amount of each Term B Loan held by a Term B Converting Lender on the Amendment No. 3 Effective Date immediately prior to the effectiveness of Amendment No. 3. The aggregate principal amount of the Converted Term B-2 Loans and the Converted Term B Loans as of the Amendment No. 3 Effective Date is \$23,290,375.36.

“**Converted Term B-2 Loan**” means the Allocated Amount of each Term B-2 Loan held by a Term B-2 Converting Lender on the Amendment No. 3 Effective Date immediately prior to the effectiveness of Amendment No. 3. The aggregate principal amount of the Converted Term B-2 Loans and the Converted Term B Loans as of the Amendment No. 3 Effective Date is \$23,290,375.36.

“**Credit Extension**” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“**Cumulative Credit**” means, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

(a) (i) \$10,000,000, *plus* subject, at the time of the proposed use of such component of the Cumulative Credit, to compliance on a Pro Forma Basis with a Total Net Leverage Ratio as of the most recently ended Test Period that is no greater than 5.80:1.00, \$20,000,000 plus (ii) the Cumulative Retained Excess Cash Flow Amount at such time, plus

(b) (i) the cumulative amount of Cash Equivalent proceeds from the sale of Qualified Equity Interests of the Borrower or Equity Interests of any direct or indirect parent of the Borrower after the Closing Date and on or prior to such time (including upon exercise of warrants or options) (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of “Permitted Investments”, (x) designated as a Cure Amount, (y) used for Equity Funded Employee Plan Costs or (z) used to incur Indebtedness pursuant to Section 7.03(x)), which proceeds have been contributed as common equity to the capital of the Borrower and (ii) in the event that Qualified Equity Interests of the Borrower (or Equity Interests of any direct or indirect parent of Borrower) (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of “Permitted Investments”, (x) designated as a Cure Amount, (y) used for Equity Funded Employee Plan Costs or (z) used to incur Indebtedness pursuant to Section 7.03(x)) have been issued upon conversion of Indebtedness (other

than Indebtedness that is contractually subordinated to the Obligations) of the Borrower or any Restricted Subsidiary of the Borrower owed to a Person other than a Loan Party or a Restricted Subsidiary of a Loan Party in satisfaction of such Indebtedness, the aggregate principal amount of such Indebtedness, plus

(c) 100% of the aggregate amount of contributions to the common capital of the Borrower received in Cash Equivalents after the Closing Date (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of "Permitted Investments", (x) designated as a Cure Amount, (y) used for Equity Funded Employee Plan Costs or (z) used to incur Indebtedness pursuant to Section 7.03(x)), plus

(d) 100% of the aggregate amount received by the Borrower or any Restricted Subsidiary of the Borrower after the Closing Date in Cash Equivalents from:

(A) the sale (other than to the Borrower or any such Restricted Subsidiary) of the Equity Interests of an Unrestricted Subsidiary or any minority Investments, or

(B) any dividend or other distribution by an Unrestricted Subsidiary or received in respect of minority Investments, or

(C) any interest, returns of principal, repayments and similar payments by such Unrestricted Subsidiary or received in respect of any minority Investments;

provided that in the case of clauses (A), (B), and (C), in each case, to the extent that the Investment corresponding to the designation of such Subsidiary as an Unrestricted Subsidiary or any subsequent Investment in such Unrestricted Subsidiary or minority Investment, as applicable, was made pursuant to Section 7.06(g)(y), plus

(e) in the event any Unrestricted Subsidiary has been re-designated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary, the fair market value of the Investments of the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable) so long as such Investments were originally made pursuant to Sections 7.06(g)(y), plus

(f) an amount equal to any returns in Cash Equivalents (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received by the Borrower or any Restricted Subsidiary in respect of any Investments made pursuant to Section 7.06(g)(y), plus

(g) Borrower Retained Prepayment Amounts, plus

(h) the amount actually paid by the applicable Affiliated Lender or Debt Fund Affiliate in respect of Term Loans or Second Lien Term Loans contributed, assigned or transferred by such Affiliated Lender or any Debt Fund Affiliate, directly or indirectly, to

the Borrower and cancelled pursuant to the last paragraph of Section 10.07(k) (or pursuant to the last paragraph of Section 10.07(k) of the Second Lien Credit Agreement), minus

(i) any amount of the Cumulative Credit used to make Restricted Payments pursuant to Section 7.06(f)(A) or 7.06(g) after the Closing Date and prior to such time, minus

(j) any amount of the Cumulative Credit used to make payments or distributions in respect of Junior Financings pursuant to Section 7.13 after the Closing Date and prior to such time.

“**Cumulative Retained Excess Cash Flow Amount**” means, at any time, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to the aggregate cumulative sum of the Retained Percentage of Excess Cash Flow for all Excess Cash Flow Periods ending after the Closing Amendment No. 3 Effective Date and prior to such date.

“**Cure Amount**” has the meaning set forth in Section 8.04(a).

“**Cure Expiration Date**” has the meaning set forth in Section 8.04(a).

“**Current Assets**” means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all assets (other than cash and Cash Equivalents) that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current assets at such date of determination, other than amounts related to current or deferred Taxes based on income or profits, assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees and derivative financial instruments.

“**Current Liabilities**” means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current liabilities at such date of determination (including deferred revenue), other than (a) the current portion of any Funded Debt and derivative financial instruments, (b) the current portion of accrued interest, (c) liabilities relating to current or deferred Taxes based on income or profits, (d) accruals of any costs or expenses related to restructuring reserves or severance, (e) any other liabilities that are not Indebtedness and will not be settled in cash or Cash Equivalents during the next succeeding twelve (12) month period after such date, (f) any Revolving Credit Exposure, Revolving Credit Loans or any loans or letters of credit under any other revolving facility, (g) liabilities in respect of unpaid earn-outs, (h) accrued litigation settlement costs, (i) non-cash compensation costs and expenses and (j) the current portion of any other long-term liabilities.

“**De Novo Store**” means any ~~store~~Store that ~~has~~ been continuously operational for less than ~~six~~four consecutive fiscal quarters.

“Debt Fund Affiliate” means any Sponsor that is a bona fide debt fund or an investment vehicle that is engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of business, in each case with respect to which the persons making investment decisions for such applicable affiliate are not primarily engaged in the making, acquiring or holding of equity investments in Holdings or any of its Subsidiaries.

“Debtor Relief Laws” means the Bankruptcy Code of the United States and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Declined Proceeds” has the meaning specified in Section 2.05(b)(vii).

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate, if any, applicable to Base Rate Loans plus (c) 2.0% per annum; *provided* that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2.0% per annum, in each case, to the fullest extent permitted by applicable Laws.

“Defaulting Lender” means, subject to Section 2.17(b), any Lender that, as reasonably determined by the Administrative Agent (a) has refused (which refusal may be given verbally or in writing and has not been retracted) or failed to perform any of its funding obligations hereunder, including in respect of its Loans or participations in respect of L/C Obligations or Swing Line Loans, which refusal or failure is not cured within one (1) Business Day after the date of such refusal or failure, (b) has notified the Borrower or Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, after the date of this Agreement, (i) become the subject of a proceeding under any Debtor Relief Law or a Bail-In Action, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject,

repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17(b)) upon delivery of written notice of such determination to the Borrower, the Issuing Bank, the Swing Line Lender and each Lender.

“**Deferred Loan Party**” has the meaning set forth in Section 4.01(a).

“**Discount Prepayment Accepting Lender**” has the meaning set forth in Section 2.05(a)(v)(B)(2).

“**Discount Range**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Discount Range Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Discount Range Prepayment Notice**” means a written notice of a Borrower Solicitation of Discount Range Prepayment Offers made pursuant to Section 2.05(a)(v)(C) substantially in the form of Exhibit E-4.

“**Discount Range Prepayment Offer**” means the irrevocable written offer by a Lender, substantially in the form of Exhibit E-5, submitted in response to an invitation to submit offers following the Auction Agent’s receipt of a Discount Range Prepayment Notice.

“**Discount Range Prepayment Response Date**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Discount Range Proration**” has the meaning set forth in Section 2.05(a)(v)(C)(3).

“**Discounted Prepayment Determination Date**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Discounted Prepayment Effective Date**” means in the case of a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offer or Borrower Solicitation of Discounted Prepayment Offer, five (5) Business Days following the Specified Discount Prepayment Response Date, the Discount Range Prepayment Response Date or the Solicited Discounted Prepayment Response Date, as applicable, in accordance with Section 2.05(a)(v)(B)(1), Section 2.05(a)(v)(C)(1) or Section 2.05(a)(v)(D)(1), respectively, unless a shorter period is agreed to between the Borrower and the Auction Agent.

“**Discounted Term Loan Prepayment**” has the meaning set forth in Section 2.05(a)(v)(A).

“**Disposition**” or “**Dispose**” means the sale, transfer, license, lease or other disposition (including any Sale Leaseback and any sale or issuance of Equity Interests in a Restricted Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims

associated therewith, whether in a single transaction or a series of related transactions; provided that “Disposition” and “Dispose” shall not include any issuance by Holdings of any of its Equity Interests to another Person.

“**Disqualified Equity Interests**” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements) that are accrued and payable and the termination of the Commitments and the termination of all outstanding Letters of Credit (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized, back-stopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer)), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests and other than as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements) that are accrued and payable and the termination of the Commitments and the termination of all outstanding Letters of Credit (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized, back-stopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer)), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Latest Maturity Date at the time of issuance of such Equity Interests; *provided*, that if such Equity Interests are issued pursuant to a plan for the benefit of future, current or former employees, directors, officers, members of management or consultants of Holdings (or any direct or indirect parent thereof), the Borrower or the Restricted Subsidiaries or by any such plan to such employees, directors, officers, members of management or consultants, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be permitted to be repurchased by the Borrower or its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s, director’s, officer’s, management member’s or consultant’s termination of employment or service, as applicable, death or disability.

“**Disqualified Institutions**” means those Persons (the list of all such Persons, the “**Disqualified Institutions List**”) that are (i) identified in writing by the Borrower to the Administrative Agent prior to the initial allocation of the loans to be funded or converted on the ~~Closing~~ Closing Amendment No. 3 Effective Date, (ii) competitors of the Borrower and its Subsidiaries (other than bona fide fixed income investors or debt funds) that are identified in writing by the

Borrower from time to time or (iii) Affiliates of such Persons set forth in clauses (i) and (ii) above (in the case of Affiliates of such Persons set forth in clause (ii) above, other than bona fide fixed income investors or debt funds) that are either (a) identified in writing by the Borrower or the Sponsor from time to time or (b) reasonably identifiable as an Affiliate thereof; *provided, that*, to the extent Persons are identified as Disqualified Institutions in writing by the Borrower to the Administrative Agent after the ~~Closing~~Amendment No. 3 Effective Date pursuant to clauses (ii) or (iii)(a), the inclusion of such Persons as Disqualified Institutions shall not retroactively apply to prior assignments or participations in respect of any Loan under this Agreement. Until the disclosure of the identity of a Disqualified Institution to the Lenders generally by the Administrative Agent, such Person shall not constitute a Disqualified Institution for purposes of a sale of a participation in a Loan (as opposed to an assignment of a Loan) by a Lender; *provided*, that no disclosure of the Disqualified Institutions List (or the identity of any Person that constitutes a Disqualified Institution) to the Lenders shall be made by the Administrative Agent without the prior written consent of the Borrower. Notwithstanding the foregoing, the Borrower, by written notice to the Administrative Agent, may from time to time in its sole discretion remove any entity from the Disqualified Institutions List (or otherwise modify such list to exclude any particular entity), and such entity removed or excluded from the Disqualified Institutions List shall no longer be a Disqualified Institution for any purpose under this Agreement or any other Loan Document.

“**Disqualified Institutions List**” has the meaning set forth in the definition of Disqualified Institutions.

“**Disregarded Domestic Person**” means any Domestic Subsidiary that is a “disregarded entity” for federal income tax purposes substantially all of whose assets consists of Equity Interests in one or more Foreign Subsidiaries that ~~is a CFC~~are CFCs.

“**Dollar**” and “**\$**” mean lawful money of the United States.

“**Domestic Subsidiary**” means any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“**Duly Authorized Documents**” has the meaning set forth in Section 4.01(a).

“**EEA Financial Institution**” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“**EEA Member Country**” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“**EEA Resolution Authority**” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“**Eligible Assignee**” has the meaning set forth in Section 10.07(a)(i). For the avoidance of doubt, “Eligible Assignee” shall not include any Disqualified Institution.

“**EMU**” means the economic and monetary union as contemplated in the Treaty on European Union.

“**Environment**” means indoor air, ambient air, surface water, groundwater, drinking water, land surface, subsurface strata, and natural resources such as wetlands, flora and fauna.

“**Environmental Laws**” means any applicable Law relating to the prevention of pollution or the protection of the Environment and natural resources, and the protection of human health and safety as it relates to Hazardous Materials.

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of investigation and remediation, fines, penalties or indemnities), of the Loan Parties or any Restricted Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage or treatment of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**Environmental Permit**” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“**Equity Contribution**” means, collectively, the direct or indirect contribution on the Closing Date by the Sponsor, Co-Investors and Management Stockholders to the Borrower of an aggregate amount of cash and rollover equity (which, in respect of any equity of the Borrower other than common equity, shall be on terms reasonably acceptable to the Arrangers) that represents not less than 30% of the sum of (1) the aggregate gross proceeds of Term B Loans, excluding the aggregate gross proceeds of any increase in the Term B Loans to fund OID or upfront fees, (2) the aggregate gross proceeds received from the Initial Revolving Borrowing to the extent funding the Transactions or fees and expenses related to the Transactions (excluding OID or upfront fees resulting from the exercise of “Market Flex” by the Arrangers as set forth in the Fee Letter), (3) the aggregate gross proceeds of the Second Lien Initial Term Loans, excluding any increase in the gross proceeds of the Second Lien Initial Term Loans to fund OID or upfront fees and (4) the amount of such cash and rollover equity contributed, in each case on the Closing Date (such sum, the “**Funded Capitalization**”).

“**Equity Funded Employee Plan Costs**” means cash costs or expenses, incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent funded with cash proceeds contributed to the capital of the Borrower or net cash proceeds of an issuance of Qualified Equity Interests of the Borrower or Equity Interests of any direct or indirect parent of the Borrower (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of “Permitted Investments”, (x) designated as a Cure Amount, (y) used to make Investments, Restricted Payments or prepayments, redemptions, purchase, defeasance or other payments of Junior Financings in reliance on clause (b) or (c) of the definition of “Cumulative Credit” or (z) used to incur Indebtedness pursuant to Section 7.03(x)).

“Equity Interests” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is under common control with a Loan Party within the meaning of Section 414(b) or (c) of the Code or Section 4001 of ERISA (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by a Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by a Loan Party or any ERISA Affiliate from a Multiemployer Plan or written notification that a Multiemployer Plan is in reorganization (within the meaning of Section 4241 of ERISA) or insolvent (within the meaning of Section 4245 of ERISA) or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) a written determination that any Pension Plan is in “at risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (e) the filing of a notice of intent to terminate, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for, and that could reasonably be expected to result in, the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) with respect to a Pension Plan, the failure to satisfy the minimum funding standard of Section 412 of the Code, whether or not waived; (h) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to a Loan Party; or (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon a Loan Party or any ERISA Affiliate.

“Eurocurrency Rate” means:

(a) for any Interest Period with respect to a Eurocurrency Rate Loan, the rate per annum equal to (i) the ICE Benchmark Administration LIBOR Rate or such other rate per annum as is widely recognized as the successor thereto if the ICE Benchmark Administration is no longer making a LIBOR Rate available (“**LIBOR**”), as published by Bloomberg (or such other commercially available source providing quotations of LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (ii) if such published rate is not available at such time for any reason, then the “Eurocurrency Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the Eurocurrency Rate Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by the Administrative Agent’s London Branch to major banks in the London interbank Eurodollar market at their request at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to (i) LIBOR, at approximately 11:00 a.m., London time determined two (2) London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one (1) month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in Same Day Funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one (1) month would be offered by the Administrative Agent’s London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination;

provided that in the case of clause (a), the Eurocurrency Rate with respect to Term B-3 Loans shall not be less than 1.00% per annum and the Eurocurrency Rate with respect to Revolving Credit Loans (including Swing Line Loans) and unused Revolving Credit Commitments shall not be less than 0.00% per annum.

“Eurocurrency Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurocurrency Rate.”

“Event of Default” has the meaning specified in Section 8.01.

“Excess Cash Flow” means, for any period, an amount equal to:

- (a) the sum, without duplication, of
 - (i) Consolidated Net Income for such period,
 - (ii) an amount equal to the amount of all non-cash charges (including depreciation and amortization) to the extent deducted in arriving at such Consolidated Net Income, but excluding any such non-cash charges representing an accrual or reserve for potential cash items in any future period,

- (iii) decreases in Consolidated Working Capital for such period (other than any such decreases arising from acquisitions or Dispositions by the Borrower and its Restricted Subsidiaries completed during such period or the application of acquisition accounting),
 - (iv) an amount equal to the aggregate net non-cash loss on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income,
 - (v) an amount equal to all cash received for such period on account of any net non-cash gain or income from Investments deducted in a previous period pursuant to clause (b)(iv)(B) of this definition,
 - (vi) an amount deducted as tax expense in determining Consolidated Net Income to the extent in excess of cash taxes paid in such period,
 - (vii) cash payments received in respect of Swap Contracts during such period to the extent not included in arriving at such Consolidated Net Income, and
 - (viii) the aggregate net non-cash loss or expense on Dispositions in connection with Sale Leaseback Transactions, minus
- (b) the sum, without duplication, of
- (i) an amount equal to (x) the amount of all non-cash credits (including, to the extent constituting non-cash credits, without limitation, amortization of deferred revenue acquired as a result of any Permitted Acquisition) included in arriving at such Consolidated Net Income (but excluding any non-cash credit to the extent representing the reversal of an accrual or reserve described in clause (a)(ii) above) and (y) cash charges, losses or expenses excluded in arriving at such Consolidated Net Income by virtue of clauses (a) through (m) of the definition of Consolidated Net Income,
 - (ii) without duplication of amounts deducted pursuant to clause (xi) below in prior periods, the amount of Capital Expenditures or acquisitions of intellectual property to the extent not expensed and Capitalized Software Expenditures accrued or made in cash during such period, to the extent financed with Internally Generated Cash,
 - (iii) the aggregate amount of all principal payments and repayments of Indebtedness of the Borrower and its Restricted Subsidiaries to the extent financed with Internally Generated Cash, but in any event excluding principal

payments and repayments of (A) Revolving Credit Loans, Swing Line Loans and Letters of Credit ~~(unless there is a corresponding reduction in the aggregate Revolving Credit Commitments)~~, (B) Indebtedness in respect of any other revolving credit facility ~~(unless there is a corresponding reduction in commitments thereunder)~~, (C) Term Loans pursuant to Section 2.05(b) (other than pursuant to Section 2.05(b)(ii) to the extent required due to a Disposition or Casualty Event that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase), (D) Indebtedness to the extent otherwise deducted from the Applicable ECF Percentage of Excess Cash Flow pursuant to Section 2.05(b)(i)(B) and (E) any Junior Financing ~~to the extent not permitted to be made pursuant to Section 7.13(a)~~,

(iv) an amount equal to the sum of (A) the aggregate net non-cash gain on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income, (B) the aggregate net non-cash gain or income from Investments (other than Investments made in the ordinary course of business) to the extent included in arriving at Consolidated Net Income and (C) the aggregate net non-cash gain or income on Dispositions in connection with Sale Leaseback Transactions,

(v) increases in Consolidated Working Capital for such period (other than any such increases arising from acquisitions or Dispositions by the Borrower and its Restricted Subsidiaries completed during such period or the application of acquisition accounting),

(vi) cash payments by the Borrower and its Restricted Subsidiaries during such period in respect of long-term liabilities (including pension, deferred compensation and other post-retirement obligations) of the Borrower and its Restricted Subsidiaries other than Indebtedness to the extent such payments are not expensed during such period or are not deducted (or were excluded) in calculating Consolidated Net Income and to the extent financed with Internally Generated Cash,

(vii) without duplication of amounts deducted pursuant to clause (xi) below in prior periods, the amount of Investments made pursuant to clauses ~~(3), (13)~~; (15), (16), (19) (to the extent not deducted in arriving at such Consolidated Net Income), (24) and (25) (other than with respect to Restricted Payments pursuant to Section 7.06(g)) of the definition of "Permitted Investment" to the extent such Investments were financed with Internally Generated Cash,

(viii) the amount of Restricted Payments paid during such period pursuant to Sections 7.06(f), ~~(g)(*)~~, (h), ~~(i), (j)~~(i) and (k) to the extent such Restricted Payments were financed with Internally Generated Cash,

(ix) the aggregate amount of expenditures actually made by the Borrower and its Restricted Subsidiaries from Internally Generated Cash of the Borrower and its Restricted Subsidiaries during such period (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such period or are not deducted (or were excluded) in calculating Consolidated Net Income,

(x) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and its Restricted Subsidiaries during such period that are required to be made in connection with any prepayment of Indebtedness,

(xi) without duplication of amounts deducted from Excess Cash Flow in prior periods and, at the option of the Borrower, the aggregate consideration required to be paid in cash by the Borrower and its Restricted Subsidiaries pursuant to binding contracts (the “**Contract Consideration**”) entered into prior to or during such period relating to Permitted Acquisitions, Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property to the extent expected to be consummated or made, in each case during the period of four consecutive fiscal quarters of the Borrower following the end of such period provided that to the extent the aggregate amount of Internally Generated Cash actually utilized to finance such Permitted Acquisitions, Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property during such period of four consecutive fiscal quarters is less than the Contract Consideration, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive fiscal quarters,

(xii) the amount of cash taxes and Tax Distributions paid in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(xiii) cash expenditures in respect of Swap Contracts during such period to the extent not deducted in arriving at such Consolidated Net Income, and

(xiv) any payment of cash to be amortized or expensed over a future period and recorded as a long-term asset.

Notwithstanding anything in the definition of any term used in the definition of Excess Cash Flow to the contrary, all components of Excess Cash Flow shall be computed for the Borrower and its Restricted Subsidiaries on a consolidated basis. [For the avoidance of doubt, any prepayment or conversion of any Loans hereunder or any loans under the Second Lien Credit Agreement on the Amendment No. 3 Effective Date shall not operate to reduce Excess Cash Flow.](#)

“**Excess Cash Flow Period**” means (i) each fiscal year of the Borrower commencing with and including the fiscal year ending December 31, 2015 but in all cases for purposes of calculating the Cumulative Retained Excess Cash Flow Amount shall only include such fiscal years for which financial statements and a Compliance Certificate have been delivered in accordance with Sections 6.01(a) and 6.02(a) and for which any prepayments required by Section

2.05(b)(i) (if any) have been made (it being understood that the Retained Percentage of Excess Cash Flow for any Excess Cash Flow Period [ending after the Amendment No. 3 Effective Date](#) shall be included in the Cumulative Retained Excess Cash Flow Amount regardless of whether a prepayment is required by Section 2.05(b)(i)).

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Excluded Assets**” means (i) any fee owned Real Property (other than Material Real Properties) and any leasehold rights and interests in Real Property (including landlord waivers, estoppels and collateral access letters), (ii) motor vehicles, aircraft and other assets subject to certificates of title, except to the extent a security interest therein can be perfected by the filing of a UCC financing statement, (iii) commercial tort claims where the amount of damages claimed by the applicable Loan Party is less than \$2,500,000, (iv) governmental licenses or state or local franchises, charters and authorizations and any other property and assets to the extent that the Administrative Agent may not validly possess a security interest therein under applicable Laws (including, without limitation, rules and regulations of any Governmental Authority or agency) or the pledge or creation of a security interest in which would require governmental consent, approval, license or authorization, other than to the extent such prohibition or limitation is rendered ineffective under the UCC or other applicable Law notwithstanding such prohibition, (v) any particular asset or right under contract, if the pledge thereof or the security interest therein is prohibited or restricted by applicable Law (including, without limitation, rules and regulations of any Governmental Authority or agency) or any third party (so long as any agreement with such third party that provides for such prohibition or restriction was not entered into in contemplation of the acquisition of such assets or entering into of such contract or for the purpose of creating such prohibition or restriction), other than to the extent such prohibition or restriction is rendered ineffective under the UCC or other applicable Law, notwithstanding such prohibition, (vi) any written agreement, license or lease or any property subject to a purchase money security interest, capital lease obligations or similar arrangement permitted hereunder, in each case, to the extent the grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money or similar arrangement or would give rise to a termination right in favor of any other party thereto (other than Holdings or any of its Subsidiaries) after giving effect to the applicable anti-assignment provisions of the UCC or other applicable Laws, in each case, only to the extent that such limitation on such pledge or security interest is otherwise permitted under Section 7.09, other than proceeds and receivable thereof, the assignment of which is expressly deemed effective under the UCC or other applicable Laws, notwithstanding such prohibition, (vii) (A) Margin Stock, (B) Equity Interests in any Unrestricted Subsidiaries and (C) Equity Interests in any non-wholly owned Subsidiaries and any entities which do not constitute Subsidiaries, but only to the extent that (x) the Organizational Documents or other agreements with equity holders of such non-wholly owned Restricted Subsidiaries or other entities do not permit or restrict the pledge of such Equity Interests, or (y) the pledge of such Equity Interests (including any exercise of remedies) would result in a change of control, repurchase obligation or other adverse consequence to any of the Loan Parties or such non-wholly owned Restricted Subsidiary or other entity, (viii) any property or assets for which the creation or perfection of pledges of, or security interests in, pursuant to the Collateral Documents would result in material adverse tax consequences to Holdings, the Borrower or any of its Subsidiaries, as reasonably determined by the Borrower in consultation with the Administrative Agent, (ix) letter of credit rights, except as to which perfection of the security interest is accomplished by the filing of a

UCC financing statement (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a UCC financing statement), (x) (A) payroll and other employee wage and benefit accounts, (B) tax accounts, including, without limitation, sales tax accounts, (C) escrow accounts, and (D) fiduciary or trust accounts and, in the case of clauses (A) through (D), the funds or other property held in or maintained in any such account (as long as the accounts described in clauses (A) through (D) are used solely for such purposes), (xi) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law and (xii) assets in circumstances where the cost of obtaining a security interest in such assets, including, without limitation, the cost of title insurance, surveys or flood insurance (if necessary) would be excessive in light of the practical benefit to the Lenders afforded thereby as reasonably determined by the Borrower and the Administrative Agent; *provided, however*, that Excluded Assets shall not include any Proceeds, substitutions or replacements of any Excluded Assets referred to in clause (i) through (xii) (unless such Proceeds, substitutions or replacements would independently constitute Excluded Assets referred to in clauses (i) through (xii)).

"Excluded Subsidiary" means (a) any Subsidiary that is not a wholly owned Subsidiary of the Borrower or a Guarantor, (b) any Subsidiary that is prohibited by applicable Law or by Contractual Obligations existing on the Closing Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from guaranteeing the Obligations or if guaranteeing the Obligation would require governmental (including regulatory) consent, approval, license or authorization, (c) any Subsidiary where the Administrative Agent and the Borrower agree that the cost of obtaining a Guarantee by such Subsidiary would be excessive in light of the practical benefit to the Lenders afforded thereby, (d) any Foreign Subsidiary, (e) any non-for-profit Subsidiaries, (f) any Unrestricted Subsidiaries, (g) any special purpose securitization vehicle (or similar entity), including any Securitization Subsidiary or special purpose vehicle used to effectuate a Sale Leaseback Transaction, (h) any CFC Holdco, (i) any Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC, (j) any Disregarded Domestic Person, (k) any Subsidiary which holds no material assets other than the Sale Leaseback Properties that are the subject of any Sale Leaseback Transaction, (l) any Subsidiary, the obtaining of a Guarantee with respect to which would result in material adverse tax consequences as reasonably determined by the Borrower in consultation with the Administrative Agent and (m) any Captive Insurance Subsidiary.

"Excluded Swap Obligation" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, as applicable, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (a) by virtue of such Guarantor's failure to constitute an "eligible contract participant," as defined in the Commodity Exchange Act and the regulations thereunder, at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation or (b) in the case of a Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Guarantor is a "financial entity," as defined in section

2(h)(7)(C) of the Commodity Exchange Act, at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such guarantee or security interest is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof).

“**Existing L/C Issuer**” means Wintrust Bank (f/k/a North Shore Community Bank & Trust Company) and each other bank which issued Existing Letters of Credit.

“**Existing Letters of Credit**” means any letters of credit outstanding on the Closing Date described in Schedule 1.01F.

“**Existing Revolver Tranche**” has the meaning provided in Section 2.16(b).

“**Existing Term Loan Tranche**” has the meaning provided in Section 2.16(a).

“**Expiring Credit Commitment**” has the meaning provided in Section 2.04(g).

“**Extended Revolving Credit Commitments**” has the meaning provided in Section 2.16(b).

“**Extended Term Loans**” has the meaning provided in Section 2.16(a).

“**Extending Revolving Credit Lender**” has the meaning provided in Section 2.16(c).

“**Extending Term Lender**” has the meaning provided in Section 2.16(c).

“**Extension**” means the establishment of an Extension Series by amending a Loan pursuant to Section 2.16 and the applicable Extension Amendment.

“**Extension Amendment**” has the meaning provided in Section 2.16(d).

“**Extension Election**” has the meaning provided in Section 2.16(c).

“**Extension Minimum Condition**” means a condition to consummating any Extension that a minimum amount (to be determined and specified in the relevant Extension Request, in the Borrower’s sole discretion) of any or all applicable Classes be submitted for Extension.

“**Extension Request**” means any Term Loan Extension Request or a Revolver Extension Request, as the case may be.

“**Extension Series**” means any Term Loan Extension Series or a Revolver Extension Series, as the case may be.

“**Facility**” means a given Class of Term Loans or Revolving Credit Commitments, as the context may require.

“**fair market value**” means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Borrower in good faith.

“**FATCA**” means current Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version thereof that is substantively comparable) ~~or~~, any Treasury regulations or other administrative guidance promulgated thereunder, any agreement entered into pursuant to Section 1471(b) of the Code as of the date of this Agreement (or any amended or successor version described above) and any intergovernmental or foreign financial institution agreement (and any related legislation or official administrative guidance) implementing the foregoing.

“**Federal Funds Rate**” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“**Fee Letter**” means the Amended and Restated Fee Letter, dated as of July 23, 2014, among Merger Sub, UBS AG, Stamford Branch, UBS Securities LLC, and Jefferies Finance LLC.

“**Financial Covenant**” has the meaning specified in Section 7.11.

“**First Lien Intercreditor Agreement**” means an intercreditor agreement substantially in the form of Exhibit J hereto (which agreement in such form, or with immaterial changes thereto, the Administrative Agent is authorized to enter into) together with any material changes thereto which are reasonably acceptable to the Administrative Agent and which material changes shall be posted to the Lenders not less than five (5) Business Days before execution thereof and, if the Required Lenders shall not have objected to such changes within five (5) Business Days after posting, then the Required Lenders shall be deemed to have agreed that the Administrative Agent’s entry into such intercreditor agreement (with such changes) is reasonable and to have consented to such intercreditor agreement (with such changes) and to the Administrative Agent’s execution thereof.

“**Flood Insurance Laws**” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“**Foreign Casualty Event**” has the meaning specified in Section 2.05(b)(viii).

“**Foreign Disposition**” has the meaning set forth in Section 2.05(b)(viii).

“**Foreign Subsidiary**” means any direct or indirect Restricted Subsidiary of the Borrower which is not a Domestic Subsidiary.

“**Fronting Exposure**” means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, such Defaulting Lender’s Pro Rata Share or other applicable share provided under this Agreement of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender’s Pro Rata Share or other applicable share provided under this Agreement of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“**Fund**” means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

“**Funded Debt**” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one (1) year from the date of its creation or matures within one (1) year from such date that is renewable or extendable, at the option of such Person, to a date more than one (1) year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one (1) year from such date, including Indebtedness in respect of the Loans.

“**GAAP**” means generally accepted accounting principles in the United States of America, as in effect from time to time; *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof (including through conforming changes made consistent with IFRS) on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof (including through conforming changes made consistent with IFRS), then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Granting Lender**” has the meaning specified in Section 10.07(h).

“**Guarantee**” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“**Guaranteed Obligations**” has the meaning specified in Section 11.01.

“**Guarantors**” has the meaning set forth in the definition of “Collateral and Guarantee Requirement” and shall include each Restricted Subsidiary that shall have become a Guarantor pursuant to Section 6.11. For avoidance of doubt, the Borrower in its sole discretion may cause any Restricted Subsidiary that is not a Guarantor to Guarantee the Obligations by causing such Restricted Subsidiary to execute a joinder to this Agreement in form and substance reasonably satisfactory to the Administrative Agent, and any such Restricted Subsidiary shall be a Guarantor, Loan Party and Subsidiary Guarantor hereunder for all purposes. In addition, the Borrower shall be a Guarantor in respect of Secured Hedge Agreements and Treasury Services Agreements to which the Borrower is not party.

“**Guaranty**” means, collectively, the guaranty of the Obligations by the Guarantors pursuant to this Agreement.

“Hazardous Materials” means all materials, pollutants, contaminants, chemicals, compounds, constituents, substances or wastes, in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, mold, electromagnetic radio frequency or microwave emissions that are regulated pursuant to, or which could give rise to liability under, applicable Environmental Law.

“Hedge Bank” means any Person which is a party to a Secured Hedge Agreement or a Treasury Services Agreement and that is a Lender, an Agent or an Affiliate of a Lender or an Agent on the Closing Date or at the time it enters into such Secured Hedge Agreement or a Treasury Services Agreement, as applicable, in its capacity as a party thereto and that, in the case of a Secured Hedge Agreement is designated a “Hedge Bank” with respect to such Secured Hedge Agreement in a writing from the Borrower to the Administrative Agent, and (other than a Person already party hereto as a Lender) that delivers to the Administrative Agent a letter agreement reasonably satisfactory to it (i) appointing the Administrative Agent as its agent under the applicable Loan Documents and (ii) agreeing to be bound by Sections 10.05, 10.15 and 10.16 and Article IX as if it were a Lender.

“Holdings” has the meaning specified in the introductory paragraph to this Agreement.

“Honor Date” has the meaning set forth in Section 2.03(c)(i).

“Identified Participating Lenders” has the meaning set forth in Section 2.05(a)(v)(C)(3).

“Identified Qualifying Lenders” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“IFRS” means international accounting standards as promulgated by the International Accounting Standards Board.

“Incremental Amendment” has the meaning set forth in Section 2.14(f).

“Incremental Amendment Date” has the meaning set forth in Section 2.14(d).

“Incremental Commitments” has the meaning set forth in Section 2.14(a).

“Incremental Equivalent Debt” has the meaning specified in Section 2.14(h).

“Incremental Facility Closing Date” has the meaning set forth in Section 2.14(b).

“Incremental Lenders” has the meaning set forth in Section 2.14(c).

“Incremental Loan” has the meaning set forth in Section 2.14(b).

“Incremental Loan Request” has the meaning set forth in Section 2.14(a).

“Incremental Revolving Credit Commitments” has the meaning set forth in Section 2.14(a).

“**Incremental Revolving Credit Lender**” has the meaning set forth in Section 2.14(c).

“**Incremental Revolving Loan**” has the meaning set forth in Section 2.14(b).

“**Incremental Term Commitments**” has the meaning set forth in Section 2.14(a).

“**Incremental Term Lender**” has the meaning set forth in Section 2.14(c).

“**Incremental Term Loan**” has the meaning set forth in Section 2.14(b).

“**Indebtedness**” means, as to any Person at a particular time, without duplication, all of the following:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all outstanding letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) any earn-out or similar obligation, unless such obligation has not been paid within thirty (30) days after becoming due and payable and becomes a liability on the balance sheet of such Person in accordance with GAAP and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Equity Interests; if and to the extent that the foregoing would constitute indebtedness or a liability in accordance with GAAP; and

(h) to the extent not otherwise included above, all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (A) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Net Debt and (B) in the case of the Borrower and its Subsidiaries, exclude all intercompany Indebtedness having a term not exceeding three hundred sixty-four (364) days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby.

"Indemnified Liabilities" has the meaning set forth in Section 10.05.

"Indemnified Taxes" means, with respect to any Agent or any Lender, all Taxes imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document, other than (i) any Taxes imposed on or measured by its income, however denominated, and franchise (and similar) Taxes imposed on it in lieu of net income Taxes, imposed, in each case, by a jurisdiction as a result of such recipient being organized in or having its principal office or applicable lending office in such jurisdiction, or as a result of any other connection between such Lender or Agent and such jurisdiction other than any connections arising solely from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, receiving payments under, receiving or perfecting a security interest under, engaging in any other transaction pursuant to, and/or enforcing, any Loan Document, (ii) any Taxes (other than Taxes described in clause (i) above) imposed by a jurisdiction as a result of such recipient being organized in or having its principal office or applicable lending office in such jurisdiction, or as a result of any other connection between such Lender or Agent and such jurisdiction other than any connections arising from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, receiving payments under, receiving or perfecting a security interest under, engaging in any other transaction pursuant to, and/or enforcing, any Loan Document, (iii) any Taxes attributable to the failure by such Agent or Lender to comply with Section 3.01(d), (iv) any branch profits Taxes imposed by the United States under Section 884(a) of the Code or any similar Tax imposed by any other jurisdiction described in (i), (v) in the case of a Lender (other than an assignee pursuant to a request by Borrower under Section 3.07(a)), any U.S. federal Tax required to be withheld imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date (which, for the avoidance of doubt, is no earlier than the date hereof) on which such Lender (a) acquires such interest in the applicable Commitment or, if such Lender did not fund the applicable Loan pursuant to a prior Commitment, on the date such Lender acquires its interest in such Loan or (b) or designates a new Lending Office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender immediately before it designated a new Lending Office, (vi) any Taxes imposed under FATCA and (vii) for the avoidance of doubt, interest, penalties, and additions to tax on the amounts described in clauses (i) through (vi) hereof.

“**Indemnitees**” has the meaning set forth in Section 10.05.

“**Independent Financial Advisor**” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Borrower, qualified to perform the task for which it has been engaged and that is independent of the Borrower and its Affiliates.

“**Information**” has the meaning set forth in Section 10.08.

“**Initial Revolving Borrowing**” means one or more borrowings of Revolving Credit Loans on the Closing Date in an amount not to exceed the aggregate amounts specified or referred to in the definition of the term “Permitted Initial Revolving Credit Borrowing Purposes”; *provided*, that, without limitation, Letters of Credit may be issued on the Closing Date to backstop or replace letters of credit, guarantees and performance or similar bonds outstanding on the Closing Date (including deemed issuances of Letters of Credit under this Agreement resulting from an Existing L/C Issuer agreeing to become an L/C Issuer under this Agreement).

“**Initial Revolving Credit Commitment**” means, as to each Revolving Credit Lender, its Revolving Credit Commitment as of the Closing Date, as may be increased from time to time pursuant to a Revolving Commitment Increase. The aggregate amount of Initial Revolving Credit Commitments ~~is \$30,000,000~~ as of the Amendment No. 3 Effective Date is \$50,000,000.

“**Intellectual Property Security Agreement**” has the meaning set forth in the Security Agreement.

“**Intercompany Note**” means a promissory note substantially in the form of Exhibit G.

“**Intercreditor Agreements**” means the First Lien Intercreditor Agreement, the Second Lien Intercreditor Agreement and the Subordination Agreement, collectively, in each case to the extent in effect.

“**Interest Payment Date**” means, (a) as to any Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; *provided* that if any Interest Period for a Eurocurrency Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates and (b) as to any Base Rate Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made.

“**Interest Period**” means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two, three or six (6) months thereafter or, to the extent agreed by each Lender of such Eurocurrency Rate Loan, twelve (12) months or less than one (1) month thereafter, as selected by the Borrower in its Committed Loan Notice; *provided* that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period (other than an Interest Period having a duration of less than one (1) month) that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the applicable Maturity Date.

“Internally Generated Cash” means, with respect to any Person, funds of such Person and its Restricted Subsidiaries not constituting (x) proceeds of the issuance of (or contributions in respect of) Equity Interests of or a capital contribution to such Person, (y) proceeds of the incurrence of Indebtedness (other than the incurrence of Revolving Credit Loans or extensions of credit under any other revolving credit or similar facility) by such Person or any of its Restricted Subsidiaries or (z) proceeds of Dispositions and Casualty Events.

“Investment” means, as to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, manufacturers and consultants, in each case made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person (excluding, in the case of the Borrower and its Subsidiaries, intercompany loans, advances or Indebtedness having a term not exceeding three hundred sixty-four (364) days (inclusive of any roll over or extensions of terms) and made in the ordinary course of business). For purposes of the definition of “Unrestricted Subsidiary” and the covenants described under Sections 6.14 and 7.06:

(1) “Investments” shall include the portion (proportionate to the Borrower’s Equity Interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Borrower at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Borrower shall be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Borrower’s “Investment” in such Subsidiary at the time of such redesignation; less

(b) the portion (proportionate to the Borrower’s Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Borrower or a Restricted Subsidiary in respect of such Investment.

“**IP Rights**” has the meaning set forth in Section 5.15.

“**ISP**” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“**Junior Financing**” has the meaning set forth in Section 7.13(a).

“**Junior Financing Documentation**” means any documentation governing any Junior Financing.

“**Latest Maturity Date**” means, at any date of determination and with respect to the specified Loans or Commitments (or in the absence of any such specification, all outstanding Loans and Commitments hereunder), the latest Maturity Date applicable to any such Loans or Commitments hereunder at such time, including the latest maturity date of any Extended Term Loan, any Extended Revolving Credit Commitment, any Incremental Term Loans, any Incremental Revolving Credit Commitments, any Refinancing Term Loans or any Refinancing Revolving Credit Commitments, in each case as extended in accordance with this Agreement from time to time.

“**Laws**” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“**L/C Advance**” means, with respect to each Revolving Credit Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Pro Rata Share or other applicable share provided for under this Agreement.

“**L/C Borrowing**” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

“**L/C Credit Extension**” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

“**L/C Issuer**” means UBS AG, Stamford Branch, the Existing L/C Issuer, and any other Lender that becomes an L/C Issuer in accordance with Section 2.03(k) or 10.07(j), in each case, in its capacity as an issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“**L/C Obligations**” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“**Lender**” has the meaning specified in the introductory paragraph to this Agreement and, as the context requires, includes an L/C Issuer and the Swing Line Lender, and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender.”

“**Lending Office**” means, as to any Lender, such office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“**Letter of Credit**” means any letter of credit issued hereunder, including, for the avoidance of doubt, all Existing Letters of Credit. A Letter of Credit may be a commercial letter of credit or a standby letter of credit; *provided, however*, that any commercial letter of credit issued hereunder shall provide solely for cash payment upon presentation of a sight draft.

“**Letter of Credit Application**” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the relevant L/C Issuer.

“**Letter of Credit Expiration Date**” means the day that is five (5) Business Days prior to the scheduled Latest Maturity Date then in effect for the Participating Revolving Credit Commitments (taking into account the Maturity Date of any conditional Participating Revolving Credit Commitment that will automatically go into effect on or prior to such Maturity Date (or, if such day is not a Business Day, the next preceding Business Day)).

“**Letter of Credit Sublimit**” means an amount equal to the lesser of (a) \$7,500,000 (as may be adjusted pursuant to Section 2.14(e)(ii)(D)) and (b) the aggregate amount of the Participating Revolving Credit Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the Participating Revolving Credit Commitments.

“**LIBOR**” has the meaning set forth in clause (a) of the definition of “Eurocurrency Rate”.

“**LIBOR Screen Rate**” means the LIBOR quote on the applicable screen page the Administrative Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

“**LIBOR Successor Rate**” has the meaning specified in Section 3.03(c).

“**LIBOR Successor Rate Conforming Changes**” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period,

timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters as may be appropriate, in the discretion of the Administrative Agent and the Borrower, to reflect the adoption and implementation of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent and the Borrower determine is reasonably necessary in connection with the administration of this Agreement).

“**Lien**” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing); provided that in no event shall an operating lease in and of itself be deemed a Lien.

“**Limited Condition Transaction**” means (i) any Permitted Acquisition whose consummation is not conditioned on the availability of, or on obtaining, third party financing and (ii) any redemption or repayment of Indebtedness requiring irrevocable notice in advance of such redemption or repayment.

“**Limited Originator Recourse**” means a letter of credit, cash collateral account or other such credit enhancement issued in connection with the incurrence of Indebtedness by a Securitization Subsidiary under a Qualified Securitization Financing.

“**Loan**” means an extension of credit under Article II by a Lender (x) to the Borrower in the form of a Term Loan, and (y) to the Borrower in the form of a Revolving Credit Loan or a Swing Line Loan.

“**Loan Documents**” means, collectively, (i) this Agreement, (ii) the Notes, (iii) the Collateral Documents, (iv) any Refinancing Amendment, Incremental Amendment or Extension Amendment, (v) each Letter of Credit Application and (vi) any Intercreditor Agreement.

“**Loan Parties**” means, collectively, the Borrower and each Guarantor.

“**London Banking Day**” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“**Management Stockholders**” means the members of management of Holdings, the Borrower or any of its Subsidiaries who are investors in Holdings or any direct or indirect parent thereof.

“**Margin Stock**” shall have the meaning assigned to such term in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“**Master Agreement**” has the meaning specified in the definition of “Swap Contract.”

“Material Adverse Effect” means (a) material adverse effect on the business, operations, assets or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole; (b) material adverse effect on the ability of the Loan Parties (taken as a whole) to fully and timely perform any of their payment obligations under any Loan Document to which the Borrower or any of the Loan Parties is a party; or (c) material adverse effect on the rights and remedies available to the Lenders or the Administrative Agent under any Loan Document.

“Material Domestic Subsidiary” means, at any date of determination, each of the Borrower’s Domestic Subsidiaries (a) whose total assets (when combined with the assets of such Subsidiary’s Subsidiaries after eliminating intercompany obligations) at the last day of the most recent Test Period were equal to or greater than 2.5% of Total Assets at such date or (b) whose gross revenues (when combined with the revenues of such Subsidiary’s Subsidiaries, after eliminating intercompany obligations) for such Test Period were equal to or greater than 2.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; provided that if, at any time and from time to time after the Closing Date, Domestic Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in clause (a) or (b) comprise in the aggregate more than 5% of Total Assets as of the end of the most recently ended fiscal quarter of the Borrower for which financial statements have been delivered pursuant to Section 6.01 or more than 5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such quarter are required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Domestic Subsidiaries as “Material Domestic Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 applicable to such Subsidiary.

“Material Foreign Subsidiary” means, at any date of determination, each of the Borrower’s Foreign Subsidiaries (a) whose total assets (when combined with the assets of such Subsidiary’s Subsidiaries after eliminating intercompany obligations) at the last day of the most recent Test Period were equal to or greater than 2.5% of Total Assets at such date or (b) whose gross revenues (when combined with the revenues of such Subsidiary’s Subsidiaries, after eliminating intercompany obligations) for such Test Period were equal to or greater than 2.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; *provided* that if, at any time and from time to time after the Closing Date, Foreign Subsidiaries not meeting the thresholds set forth in clause (a) or (b) comprise in the aggregate more than 5% of Total Assets as of the end of the most recently ended fiscal quarter of the Borrower for which financial statements have been delivered pursuant to Section 6.01 or more than 5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such quarter are required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Foreign Subsidiaries as “Material Foreign Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of the definition of “Collateral and Guarantee Requirement.”

“Material Real Property” means any fee-owned Real Property (other than any Sale Leaseback Properties) located in the United States that is owned by any Loan Party and that has a fair market value in excess of \$5,000,000 (at the Closing Date or, with respect to fee-owned Real Property located in the United States acquired after the Closing Date, at the time of acquisition).

“Material Subsidiary” means any Material Domestic Subsidiary or any Material Foreign Subsidiary.

“Maturity Date” means (i) with respect to the Term B ~~Loans and Term B-2-3~~ Loans, ~~the seventh anniversary of the Closing Date~~ September 6, 2024; (ii) with respect to the Initial Revolving Credit Commitments, ~~the fifth anniversary of the Closing Date~~ June 6, 2024; (iii) with respect to any Class of Extended Term Loans or Extended Revolving Credit Commitments, the final maturity date as specified in the applicable Extension Request accepted by the respective Lender or Lenders, (iv) with respect to any Refinancing Term Loans or Refinancing Revolving Credit Commitments, the final maturity date as specified in the applicable Refinancing Amendment and (v) with respect to any Incremental Loans or Incremental Revolving Credit Commitments, the final maturity date as specified in the applicable Incremental Amendment; *provided* that, in each case, if such day is not a Business Day, the Maturity Date shall be the Business Day immediately succeeding such day.

“Maximum Rate” has the meaning specified in Section 10.10.

“Merger” has the meaning specified in the preliminary statements to this Agreement.

“Merger Agreement” has the meaning specified in the preliminary statements to this Agreement.

“Merger Consideration” means the total funds required to consummate the Acquisition.

“Merger Sub” has the meaning specified in the preliminary statements to this Agreement.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage Policies” has the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“Mortgaged Properties” has the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“Mortgages” means, collectively, the deeds of trust, trust deeds, hypothecs and mortgages made by the Loan Parties in favor or for the benefit of the Administrative Agent on behalf of the Secured Parties creating and evidencing a Lien on a Mortgaged Property in form and substance reasonably satisfactory to the Administrative Agent (taking account of relevant local Law matters), and any other mortgages executed and delivered pursuant to Section 6.11, in each case, as the same may from time to time be amended, restated, supplemented or otherwise modified.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which a Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding six (6) plan years, has made or been obligated to make contributions.

“Net Proceeds” means:

(a) 100% of the cash proceeds actually received by the Borrower or any of the Restricted Subsidiaries (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation awards, but in each case only as and when received) from any Disposition or Casualty Event, net of (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith, (ii) the principal amount of any Indebtedness that is secured by a Lien (other than a Lien that ranks *pari passu* with or is subordinated to the Liens securing the Obligations) on the asset subject to such Disposition or Casualty Event and that is required to be repaid in connection with such Disposition or Casualty Event (other than Indebtedness under the Loan Documents), together with any applicable premium, penalty, interest and breakage costs, (iii) in the case of any Disposition or Casualty Event by a non-wholly owned Restricted Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (iii)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Restricted Subsidiary as a result thereof, (iv) taxes and Tax Distributions paid or reasonably estimated to be payable, directly or indirectly, as a result thereof (including taxes that are or would be imposed on the distribution or repatriation of any such Net Proceeds), and (v) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of the Restricted Subsidiaries including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (*provided, however*, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition or Casualty Event occurring on the date of such reduction); *provided* that, at the option of the Borrower, the Borrower may use all or any portion of such proceeds to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Borrower or its Restricted Subsidiaries or to make Permitted Acquisitions (or any subsequent Investment made in a Person, division or line of business previously acquired), in each case within twelve (12) months of such receipt, and such proceeds shall not constitute Net Proceeds except to the extent not, within twelve (12) months of such receipt, so used or contractually committed to be so used (it being understood that if any portion of such proceeds are not so used within such twelve (12) month period but within such twelve (12) month period are contractually committed to be used, then upon the termination of such contract or if such Net Proceeds are not so used within such twelve

(12) month period or, if later, one hundred eighty (180) days from the entry into such contractual commitment, then such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso); *provided, further*, that no proceeds realized in a single transaction or series of related transactions shall constitute Net Proceeds unless (x) such proceeds shall exceed \$10,000,000 or (y) the aggregate net proceeds exceed \$20,000,000 in any fiscal year (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (a)), and

(b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any of the Restricted Subsidiaries of any Indebtedness, net of all taxes and Tax Distributions paid or reasonably estimated to be payable, directly or indirectly, as a result thereof and fees (including investment banking fees, underwriting fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to the Borrower shall be disregarded.

“**Non-Consenting Lender**” has the meaning set forth in Section 3.07.

“**Non-Defaulting Lender**” means, at any time, a Lender that is not a Defaulting Lender.

“**non-Expiring Credit Commitment**” has the meaning provided in Section 2.04(g).

“**Non-extension Notice Date**” has the meaning specified in Section 2.03(b)(iii).

“**Non-Loan Party**” means any Restricted Subsidiary of the Borrower that is not a Loan Party.

“**Note**” means a Term Note, a Revolving Credit Note or a Swing Line Note, as the context may require.

“**Obligations**” means all (x) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party and its Restricted Subsidiaries arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or Restricted Subsidiary of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding and (y) obligations of any Loan Party arising under any Secured Hedge Agreement or any Treasury Services Agreement. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and of their Restricted Subsidiaries to the extent they have obligations under the Loan Documents) include (a) the obligation (including guarantee obligations) to pay principal, interest, Letter of Credit fees, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

“**Offered Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Offered Discount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**OID**” means original issue discount.

“**Organization Documents**” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Other Applicable Indebtedness**” has the meaning specified in Section 2.05(b)(ii).

“**Other Taxes**” has the meaning specified in Section 3.01(b).

“**Outstanding Amount**” means (a) with respect to the Term Loans, Revolving Credit Loans and Swing Line Loans on any date, the outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans, Revolving Credit Loans (including any refinancing of outstanding Unreimbursed Amounts under Letters of Credit or L/C Credit Extensions as a Revolving Credit Borrowing) and Swing Line Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the outstanding amount thereof on such date after giving effect to any related L/C Credit Extension occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding Unreimbursed Amounts under related Letters of Credit (including any refinancing of outstanding Unreimbursed Amounts under related Letters of Credit or related L/C Credit Extensions as a Revolving Credit Borrowing) or any reductions in the maximum amount available for drawing under related Letters of Credit taking effect on such date.

“**Overnight Rate**” means, for any day, the greater of the Federal Funds Rate and an overnight rate determined by the Administrative Agent, an L/C Issuer, or the Swing Line Lender, as applicable, in accordance with banking industry rules on interbank compensation.

“**Participant**” has the meaning specified in Section 10.07(e).

“**Participant Register**” has the meaning specified in Section 10.07(e).

“**Participating Lender**” has the meaning set forth in Section 2.05(a)(v)(C)(2).

“Participating Revolving Credit Commitments” means (1) the Initial Revolving Credit Commitments (including any Extended Revolving Credit Commitments in respect thereof) and (2) those additional Revolving Credit Commitments (and both (x) Revolving Commitment Increases to such Class and (y) Extended Revolving Credit Commitments in respect thereof) established pursuant to an Incremental Amendment or Refinancing Amendment for which an election has been made to include such Commitments for purposes of the issuance of Letters of Credit or the making of Swing Line Loans; *provided, that*, with respect to clause (2), the effectiveness of such election may be made conditional upon the maturity of one or more other Participating Revolving Credit Commitments. At any time at which there is more than one Class of Participating Revolving Credit Commitments outstanding, the mechanics and arrangements with respect to the allocation of Letters of Credit and Swing Line Loans among such Classes will be subject to procedures agreed to by the Borrower and the Administrative Agent.

“Participating Revolving Credit Lender” means any Lender holding a Participating Revolving Credit Commitment.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA or Section 412 of the Code and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five (5) plan years.

“Perfection Certificate” means a certificate in the form of Exhibit II to the Security Agreement or any other form reasonably approved by the Administrative Agent, as the same shall be supplemented from time to time.

“Permitted Acquisition” means any Investment of the type described in clause (3) of the definition of “Permitted Investments” and any Investment or other acquisition by Borrower or a Restricted Subsidiary of assets constituting a business unit, line of business or division of, or all or substantially all of the Equity Interests of, another Person.

“Permitted Holder” means the Sponsor, any Management Stockholders and any of the Co-Investors; *provided* that if Management Stockholders own beneficially or of record more than 20% of the outstanding voting stock of Holdings in the aggregate, they shall be treated as Permitted Holders of only 20% of the outstanding voting stock of Holdings at such time.

“Permitted Holdings Debt” means unsecured Indebtedness of Holdings (A) that is not subject to any Guarantee by any Subsidiary of Holdings, (B) that will not mature until after the Latest Maturity Date in effect on the date of issuance or incurrence thereof, (C) that is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligation (other than customary offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) prior to the Latest Maturity Date (it being understood that such Indebtedness may have mandatory prepayment, repurchase or redemption provisions satisfying the requirements of clause (D) below prior to

such date), (D) that does not require any payments in cash of interest or other amounts in respect of the principal thereof prior to the earlier to occur of (1) a date that is four (4) years from the date of the issuance or incurrence thereof and (2) a date that is after the Latest Maturity Date in effect on the date of such issuance or incurrence, and (E) that has covenant, default and remedy provisions no more restrictive (taken as a whole) than those set forth in this Agreement (taken as a whole) (except in a manner customary for holding company debt securities, including senior discount notes), as reasonably determined by the Borrower.

“Permitted Initial Revolving Credit Borrowing Purposes” means (a) one or more Borrowings of Revolving Credit Loans that do not, in the aggregate, exceed \$10,000,000 to finance (i) the Transactions and (ii) fees and expenses related to the Transactions (including OID and upfront fees, but excluding OID and upfront fees contemplated by clause (c) below), (b) one or more Borrowings of Revolving Credit Loans to fund working capital adjustments under the Merger Agreement and (c) one or more Borrowings of Revolving Credit Loans to fund any or all OID or upfront fees resulting from the exercise of “Market Flex” by the Arrangers as set forth in the Fee Letter.

“Permitted Investments” means:

(1) any Investment in the Borrower or any of its Restricted Subsidiaries; *provided* that, other than with respect to Investments in the form of cash or Cash Equivalents, the aggregate fair market value of Investments resulting from Dispositions by a Loan Party to a Non-Loan Party (including by way of merger or consolidation or otherwise) pursuant to clause (a), (c) or (e) of Section 7.04 or Section 7.05(d) shall not exceed an aggregate amount outstanding from time to time equal to the greater of (x) \$25,000,000 and (y) 2.20% of Total Assets (with the amount of each Investment and Total Assets being measured at the time of each such Disposition and without giving effect to subsequent changes in value of the resulting Investment, but subject to adjustment as set forth in the definition of Investment);

(2) any Investment in Cash Equivalents;

(3) any Investment by the Borrower or any of its Restricted Subsidiaries in a Person (including, to the extent constituting an Investment, in assets of a Person that represent substantially all of its assets or a division, business unit or product line, including research and development and related assets in respect of any product) that is engaged in a business permitted pursuant to Section 7.07 if as a result of such Investment:

(i) such Person becomes a Restricted Subsidiary; or

(ii) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets (or such division, business unit or product line) to, or is liquidated into, the Borrower or a Restricted Subsidiary;

and, in each case, any Investment held by such Person; *provided*, that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation

consolidation or transfer; provided further that the total consideration (in cash or otherwise) paid by Persons that are Loan Parties (x) for the Equity Interests of any Person that does not become a Loan Party (other than Holdings) or is not a Loan Party (other than Holdings) and (y) in the case of an asset acquisition, for assets that are not acquired by Borrower or a Subsidiary Guarantor, when taken together with the total consideration for all such Persons and assets so acquired after the Amendment No. 3 Effective Date in reliance on this clause (3) shall not exceed \$25,000,000 in the aggregate for all such consideration; provided further the limitation described in the immediately preceding proviso shall not apply to any acquisition to the extent (X) any such consideration is financed with the proceeds of sales of the Qualified Equity Interests of Holdings, or common equity capital contributions (from Persons other than the Borrower or a Restricted Subsidiary) to the Borrower or any Restricted Subsidiary, other than, in any circumstance under this clause (X), any Cure Amount or any amount has been used (or later will be used) incur Indebtedness pursuant to Section 7.03(x) and it is understood and agreed that any consideration used to increase capacity under this clause (X) shall in no event be part of the Cumulative Credit, (Y) the Person so acquired (or the Person owning the assets so acquired) becomes a Subsidiary Guarantor even though such Person is not otherwise required to become a Subsidiary Guarantor (provided that if such Person is a Foreign Subsidiary, such Person may only become a Subsidiary Guarantor if the jurisdiction of incorporation of such Person is reasonably satisfactory to the Administrative Agent in light of legal permissibility of guarantees and collateral in such jurisdiction and the policies and procedures of the Administrative Agent and the Lenders for similarly situated companies (as reasonably determined by the Administrative Agent) and, notwithstanding anything to the contrary contained in any Loan Document, collateral and security provisions relating to such Person (including without limitation the delivery of customary opinions of local counsel (at the expense of Borrower)) that are reasonably acceptable to the Administrative Agent are instituted with respect to such Person pursuant to such amendments to the Loan Documents as are reasonably acceptable to the Borrower and the Administrative Agent) and/or (Z) at least 75.0% of the Consolidated EBITDA of the Person(s) acquired in such acquisition (or the Persons owning the assets so acquired) (for this purpose and for the component definitions used in the definition of "Consolidated EBITDA", determined on a consolidated basis for such Person(s) and their respective Restricted Subsidiaries) is generated by Person(s) that will become Subsidiary Guarantors;

(4) any Investment in securities or other assets not constituting Cash Equivalents and received in connection with a Disposition made pursuant to Section 7.05 hereof or any other disposition of assets not constituting a Disposition;

(5) any Investment existing on the Closing Date or made pursuant to binding commitments in effect on the Closing Date, in each case as listed on Schedule II, or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any such Investment or binding commitment existing on the Closing Date; *provided*, that the amount of any such Investment or binding commitment may be increased (a) as required by the terms of such Investment or binding commitment as in existence on the Closing Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted under this Agreement;

(6) any Investment acquired by the Borrower or any of its Restricted Subsidiaries:

(i) consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business; or

(ii) in exchange for any other Investment, accounts receivable or endorsements for collection or deposit held by the Borrower or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts of the issuer of such other Investment or accounts receivable (including any trade creditor or customer); or

(iii) in satisfaction of judgments against other Persons; or

(iv) as a result of a foreclosure by the Borrower or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(7) Swap Contracts permitted under Section 7.03(f) hereof;

(8) distributions or payments of Securitization Fees;

(9) Investments the payment for which consists of Equity Interests (other than Disqualified Equity Interests) of the Borrower or any of its direct or indirect parent companies; *provided*, that such Equity Interests will not increase the Cumulative Credit;

(10) guarantees of Indebtedness permitted under Section 7.03, performance guarantees and Contingent Obligations incurred in the ordinary course of business (as long as the primary obligor with respect to such Contingent Obligation is the Borrower or any Restricted Subsidiary) and the creation of Liens on the assets of the Borrower or any Restricted Subsidiary in compliance with Section 7.01;

(11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 7.08 (except transactions described in clauses (f), (g), (l), (n), (q) and (r) of such Section);

(12) Investments consisting of purchases or other acquisitions of inventory, supplies, services, material or equipment or the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(13) Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding, not to exceed the greater of (i) \$40,000,000 and (ii) 4.50% of Total Assets (with the amount of each Investment and Total Assets being measured at the time such Investment is made and without giving effect to subsequent changes in value but subject to adjustment as set forth in the definition of Investment);

- (14) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Borrower are necessary or advisable to effect any Qualified Securitization Financing or any repurchase obligation in connection therewith;
- (15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants and members of management not in excess of \$5,000,000 outstanding at any one time, in the aggregate (excluding, for the avoidance of doubt, loans and advances described in clause (16) of this definition);
- (16) loans and advances to employees, directors, officers, managers and consultants (i) for business-related travel expenses, entertainment expenses, moving expenses and other similar expenses or payroll advances, in each case incurred in the ordinary course of business or consistent with past practices or (ii) to fund such Person's purchase of Equity Interests of the Borrower or any direct or indirect parent company thereof;
- (17) advances, loans or extensions of trade credit in the ordinary course of business by the Borrower or any of its Restricted Subsidiaries;
- (18) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business;
- (19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business;
- (20) [Reserved];
- (21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business;
- (22) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;
- (23) Investments consisting of promissory notes issued by the Borrower or any Guarantor to future, present or former officers, directors and employees, members of management, or consultants of the Borrower or any of its Subsidiaries or their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower or any direct or indirect parent thereof, to the extent the applicable Restricted Payment is permitted by Section 7.06 hereof;
- (24) any Investment by any Captive Insurance Subsidiary in connection with its provision of insurance to the Borrower or any of its Subsidiaries, which Investment is made in the ordinary course of business of such Captive Insurance Subsidiary, or by

reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable; and

(25) loans and advances to any direct or indirect parent of the Borrower not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made to such parent in accordance with Sections 7.06(f), (g) or (h), such Investment being treated for purposes of the applicable clause of Section 7.06, including any limitations, as a Restricted Payment made pursuant to such clause.

For purposes of determining whether an Investment is a Permitted Investment or is otherwise a Restricted Investment permitted to be made pursuant to Section 7.06, in the event that an Investment (or any portion thereof) at any time, whether at the time of making of such Investment or upon or subsequently, meets the criteria of more than one of the categories of Permitted Investments described in clauses (1) through (25) above or any other provision of Section 7.06, the Borrower, in its sole discretion, will classify and may subsequently reclassify such Investment (or any portion thereof) in any one or more of the types of Investments described in clauses (1) through (25) above or any other applicable clause in Section 7.06 and will only be required to include the amount and type of such Investment in such of the above clauses or clauses in Section 7.06 as determined by the Borrower at such time.

“**Permitted Junior Secured Refinancing Debt**” has the meaning set forth in Section 2.15(h)(i).

“**Permitted Pari Passu Secured Refinancing Debt**” has the meaning set forth in Section 2.15(h)(i).

“**Permitted Ratio Debt**” means Indebtedness (including Acquired Indebtedness) incurred or assumed by the Borrower and any Restricted Subsidiary if and to the extent the ~~Consolidated Cash Interest Coverage~~Total Net Leverage Ratio of the Borrower for the Borrower’s most recently ended Test Period preceding the date on which such Indebtedness is incurred or assumed would have been equal to or ~~greater~~less than ~~2.04.20~~ to 1.0, determined on a Pro Forma Basis giving effect to such assumption or incurrence and the use of proceeds thereof; *provided*, that (i) immediately after the incurrence or assumption of such Indebtedness and the use of proceeds thereof, no Event of Default shall be continuing or result therefrom, (ii) such Indebtedness that is incurred (but not assumed) to finance any Permitted Acquisition and any Permitted Refinancing thereof does not mature or have scheduled amortization or payments of principal (other than customary “AHYDO catch-up payments”, customary offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) prior to the Maturity Date of the Term B-3 Loans at the time such Indebtedness is incurred or issued and (iii) Non-Loan Parties may not incur Indebtedness pursuant to this definition if, after giving Pro Forma Effect to such incurrence, the aggregate amount of Indebtedness of Non-Loan Parties incurred pursuant to this paragraph then outstanding would exceed the greater of (x) \$20,000,000 and (y) 2.00% of Total Assets, in each case determined at the such time of incurrence; *provided* that a certificate of the Borrower as to the satisfaction of the ~~Consolidated Cash Interest Coverage~~Total Net Leverage Ratio condition described above

delivered prior to, on or after the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy such ~~Consolidated Cash Interest Coverage~~ Total Net Leverage Ratio condition, shall be conclusive unless the Administrative Agent notifies the Borrower within five (5) Business Days of receipt of such certificate that it disagrees with such determination (including a description of the basis upon which it disagrees).

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Indebtedness of such Person; *provided* that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced or extended except by an amount equal to unpaid accrued interest and premium thereon plus other amounts owing or paid related to such Indebtedness, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, replacement or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e), such modification, refinancing, refunding, renewal, replacement or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e) or (f), at the time thereof, no Event of Default shall have occurred and be continuing, (d) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is Junior Financing, to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, as reasonably determined by the Borrower, (e) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is secured by the Collateral and/or subject to intercreditor arrangements for the benefit of the Lenders, such modification, refinancing, refunding, renewal, replacement or extension is either (1) unsecured or (2) secured and, if secured, subject to intercreditor arrangements on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, as reasonably determined by the Borrower, and such modification, refinancing, refunding, renewal, replacement or extension is incurred by one or more Persons who is an obligor of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (f) any such modification, refinancing, renewal, replacement or extension has the same primary obligor and the same (or fewer) guarantors as the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended and (g) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is unsecured, such modification, refinancing, refunding, renewal, replacement or extension is either unsecured or subject to Liens only to the extent permitted by Section 7.01(bb) or (cc). Any reference to a Permitted Refinancing in this Agreement or any other Loan Document shall be interpreted to

mean (a) a Permitted Refinancing of the subject Indebtedness and (b) any further refinancings constituting a Permitted Refinancing of the Indebtedness resulting from a prior Permitted Refinancing.

“**Permitted Unsecured Refinancing Debt**” has the meaning set forth in Section 2.15(h)(i).

“**Person**” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“**Plan**” means any material “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established or maintained by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

“**Platform**” has the meaning set forth in Section 6.01.

“**Pledged Debt**” has the meaning set forth in the Security Agreement.

“**Pledged Equity**” has the meaning set forth in the Security Agreement.

“**Preferred Equity Interest**” of any Person means any Equity Interest of such Person that have preference as to dividends, distributions or upon liquidation or otherwise over any other Equity Interest of such Person.

“**Portillo Restaurant Group**” means, collectively, Portillo’s Hot Dogs, Inc., Golden Dogs, Inc., Portillo’s Food Service, Inc. and C&O Chicago, L.L.C.

“**Proceeding**” has the meaning set forth in Section 10.05.

“**Proceeds**” has the meaning set forth in the Security Agreement.

“**Pro Forma Basis**” and “**Pro Forma Effect**” means, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.09.

“**Pro Rata Share**” means, with respect to each Lender, at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments and, if applicable and without duplication, Term Loans of such Lender under the applicable Facility or Facilities at such time and the denominator of which is the amount of the Aggregate Commitments under the applicable Facility or Facilities and, if applicable and without duplication, Term Loans under the applicable Facility or Facilities at such time; *provided* that, in the case of the Revolving Credit Commitments of any Class, if such Commitments have been terminated, then the Pro Rata Share of each Lender shall be determined based on the Pro Rata Share of such Lender immediately prior to such termination and after giving effect to any subsequent assignments made pursuant to the terms hereof.

“**Projections**” has the meaning set forth in Section 6.01(c).

“Public Company Costs” means costs relating to compliance with the provisions of the Securities Act and the Exchange Act, in each case as applicable to companies with equity or debt securities held by the public, the rules of national securities exchange companies with listed equity or debt securities, directors’ compensation, fees and expense reimbursement, costs relating to investor relations, shareholder meetings and reports to shareholders or debtholders, directors’ and officers’ insurance, listing fees and all executive, legal and professional fees related to the foregoing.

“Public Lender” has the meaning set forth in Section 6.01.

“Qualified ECP Guarantor” means in respect of any Swap Obligation, each Loan Party that, at the time the relevant guarantee (or grant of the relevant security interest, as applicable) becomes or would become effective with respect to such Swap Obligation, has total assets exceeding \$10,000,000 or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and which may cause another person to qualify as an “eligible contract participant” with respect to such Swap Obligation at such time by entering into a keepwell pursuant to section 1a(18)(A)(v)(II) of the Commodity Exchange Act (or any successor provision thereto).

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

“Qualified IPO” means the issuance by Borrower or any direct or indirect parent of Borrower of its common Equity Interests in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the U.S. Securities and Exchange Commission in accordance with the Securities Act (whether alone or in connection with a secondary public offering).

“Qualified Securitization Financing” means any Securitization Financing of a Securitization Subsidiary that meets the following conditions: (a) all sales and/or contributions of Securitization Assets and related assets to the Securitization Subsidiary are made at fair market value and (b) the financing terms, covenants, termination events and other provisions thereof, including any Standard Securitization Undertakings, shall be on market terms, as reasonably determined by the Borrower. The grant of a security interest in any Securitization Assets of the Borrower or any of the Restricted Subsidiaries (other than a Securitization Subsidiary) to secure Indebtedness under this Agreement prior to engaging in any Securitization Financing shall not be deemed a Qualified Securitization Financing.

“Qualifying Lender” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“Real Property” means, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned or leased by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“**Refinanced Debt**” has the meaning set forth in Section 2.15(a).

“**Refinanced Term Loans**” has the meaning set forth in Section 2.15(h)(i).

“**Refinancing**” means the prepayment in full of all indebtedness under the Credit Agreement, dated as of December 16, 2010, among the Borrower, Barney’s Bar-B-Q, Inc., the several lenders from time to time party thereto and North Shore Community Bank & Trust, as administrative agent, as amended, restated, modified or supplemented from time to time, and the termination and release of all commitments, security interests and guaranties in connection therewith.

“**Refinancing Amendment**” has the meaning set forth in Section 2.15(f).

“**Refinancing Commitments**” has the meaning set forth in Section 2.15(a).

“**Refinancing Equivalent Debt**” has the meaning specified in Section 2.15(h)(i).

“**Refinancing Facility Closing Date**” has the meaning set forth in Section 2.15(d).

“**Refinancing Lender**” has the meaning set forth in Section 2.15(c).

“**Refinancing Loan**” has the meaning set forth in Section 2.15(b).

“**Refinancing Loan Request**” has the meaning set forth in Section 2.15(a).

“**Refinancing Revolving Credit Commitments**” has the meaning set forth in Section 2.15(a).

“**Refinancing Revolving Credit Lender**” has the meaning set forth in Section 2.15(c).

“**Refinancing Revolving Loan**” has the meaning set forth in Section 2.15(b).

“**Refinancing Term Commitments**” has the meaning set forth in Section 2.15(a).

“**Refinancing Term Lender**” has the meaning set forth in Section 2.15(c).

“**Refinancing Term Loan**” has the meaning set forth in Section 2.15(b).

“**Register**” has the meaning set forth in Section 10.07(d).

“**Registered Equivalent Notes**” means, with respect to any notes originally issued in an offering pursuant to Rule 144A under the Securities Act or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“**Rejection Notice**” has the meaning specified in Section 2.05(b)(vii).

“Related Indemnified Person” of an Agent, Lender, Arranger or Bookrunner means (1) any controlling Person or controlled Affiliate of such Person, (2) the respective directors, officers, or employees of such Person or any of its controlling Persons or controlled Affiliates and (3) the respective agents or representatives of such Person or any of its controlling Persons or controlled Affiliates, in the case of this clause (3), acting on behalf of or at the instructions of such Person, controlling person or such controlled Affiliate; *provided* that each reference to a controlled Affiliate, director, officer or employee in this definition pertains to a controlled Affiliate, director, officer or employee involved in the negotiation or syndication of this Agreement and the Facilities.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

“Release” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing or migrating in, into, onto or through the Environment.

“Relevant Governmental Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York for the purpose of recommending a benchmark rate to replace LIBOR in loan agreements similar to this Agreement.

“Replaced Term Loans” has the meaning specified in Section 10.01.

“Replacement Term Loans” has the meaning specified in Section 10.01.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the otherwise applicable notice period has been waived by regulation or otherwise by the PBGC.

“Repricing Transaction” means (a) any prepayment or repayment of Term B-3 Loans with the proceeds of, or any conversion of Term B-3 Loans into, any new or replacement tranche of secured term loans the primary purpose of which is to reduce the All-in Yield applicable to such Term B-3 Loans or (b) any amendment, amendment and restatement or other modification to this Agreement, the primary purpose of which is to reduce the All-in Yield applicable to Term B-3 Loans; *provided* that any refinancing or repricing of Term B-3 Loans in connection with a Qualified IPO, any Permitted Acquisition or in connection with a transaction that would result in a Change of Control shall not constitute a Repricing Transaction.

“Request for Credit Extension” means (a) with respect to a Borrowing, continuation or conversion of Term Loans or Revolving Credit Loans, a Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Required Class Lenders” means, as of any date of determination, with respect to one or more Facilities, Lenders having more than 50% of the sum of (a) the Total Outstandings under

such Facility or Facilities (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans, as applicable, under such Facility or Facilities being deemed "held" by such Lender for purposes of this definition) and (b) the aggregate unused Commitments under such Facility or Facilities; *provided* that the unused Commitments of, and the portion of the Total Outstandings under such Facility or Facilities held, or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of the Required Class Lenders; *provided, further*, that, the Loans of any Affiliated Lender shall be excluded for purposes of making a determination of Required Class Lenders as set forth in Section 10.07(m).

"Required Lenders" means, as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Lender for purposes of this definition), (b) aggregate unused Term Commitments and (c) aggregate unused Revolving Credit Commitments; *provided* that the unused Term Commitment and unused Revolving Credit Commitment of, and the portion of the Total Outstandings held, or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; *provided, further*, that, the Loans of any Affiliated Lender shall be excluded for purposes of making a determination of Required Lenders as set forth in Section 10.07(m).

"Required Revolving Credit Lenders" means, as of any date of determination, Revolving Credit Lenders under the Initial Revolving Credit Commitments (including, for purposes of this definition of "Required Revolving Credit Lenders" (x) any Extended Revolving Credit Commitments in respect thereof and (y) any Refinancing Revolving Credit Commitments in respect thereof) having more than 50% of the sum of the (a) Outstanding Amount of all Revolving Credit Loans, Swing Line Loans and all L/C Obligations (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Lender for purposes of this definition) under the Initial Revolving Credit Commitments and (b) aggregate unused Initial Revolving Credit Commitments; *provided* that unused Revolving Credit Commitments of, and the portion of the Outstanding Amount of all Revolving Credit Loans, Swing Line Loans and all L/C Obligations held, or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Credit Lenders.

"Responsible Officer" means the chief executive officer, president, vice president, chief financial officer, chief operating officer, chief administrative officer, secretary or assistant secretary, treasurer or assistant treasurer or other similar officer or Person performing similar functions of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Cash" means cash and Cash Equivalents which are listed as "Restricted" on the consolidated balance sheet of the Borrower and its Restricted Subsidiaries.

"Restricted Investment" means an Investment other than a Permitted Investment.

“Restricted Payment” means (i) any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the Borrower’s or a Restricted Subsidiary’s stockholders, partners or members (or the equivalent Persons thereof) and (ii) any Restricted Investment.

“Restricted Subsidiary” means any Subsidiary of the Borrower other than an Unrestricted Subsidiary.

“Retained Percentage” means, with respect to any Excess Cash Flow Period ending after the Amendment No. 3 Effective Date, (a) 100% minus (b) the Applicable ECF Percentage with respect to such Excess Cash Flow Period.

“Revolver Extension Request” has the meaning provided in Section 2.16(b).

“Revolver Extension Series” has the meaning provided in Section 2.16(b).

“Revolving Commitment Increase” has the meaning set forth in Section 2.14(a).

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period, made by each of the Revolving Credit Lenders pursuant to Section 2.01(b).

“Revolving Credit Commitment” means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrower, (b) purchase participations in L/C Obligations in respect of Letters of Credit and (c) purchase participations in Swing Line Loans, as such commitment may be (1) reduced from time to time pursuant to Section 2.06 and (2) reduced or increased from time to time pursuant to (i) assignments by or to such Revolving Credit Lender pursuant to an Assignment and Assumption, (ii) an Incremental Amendment, (iii) a Refinancing Amendment or (iv) an Extension. The amount of each Revolving Credit Lender’s Commitment as of the Amendment No. 3 Effective Date is set forth ~~in~~on Schedule II to Amendment No. ~~3~~3 opposite the name of such Revolving Credit Lender or in the Assignment and Assumption, in each case, as may be amended pursuant to any Incremental Amendment, Extension Amendment or Refinancing Amendment pursuant to which such Lender shall have assumed, increased or decreased its Revolving Credit Commitment, as the case may be, and in each case which amount is subject to increase or decrease following the Amendment No. 3 Effective Date in accordance with the terms of this Agreement. For the avoidance of doubt, the Revolving Credit Commitments as of the Amendment No. 3 are constituted of the Initial Revolving Credit Commitments and are in an aggregate amount of \$50,000,000.

“Revolving Credit Exposure” means, as to each Revolving Credit Lender, the sum of the amount of the Outstanding Amount of such Revolving Credit Lender’s Revolving Credit Loans and its Pro Rata Share or other applicable share provided for under this Agreement of the amount of the L/C Obligations and the Swing Line Obligations at such time.

“Revolving Credit Lender” means, at any time, any Lender that has a Revolving Credit Commitment at such time or, if Revolving Credit Commitments have terminated, Revolving Credit Exposure.

“Revolving Credit Loans” means any loan made pursuant to the Initial Revolving Credit Commitments, Incremental Revolving Loan, Refinancing Revolving Loan or any loan under any Extended Revolving Credit Commitments, as the context may require.

“Revolving Credit Note” means a promissory note of the Borrower payable to any Revolving Credit Lender or its registered assigns, in substantially the form of Exhibit C-2 hereto, evidencing the aggregate Indebtedness of the Borrower to such Revolving Credit Lender resulting from the Revolving Credit Loans made by such Revolving Credit Lender to the Borrower.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“Sale Leaseback” means any transaction or series of related transactions pursuant to which the Borrower or any of the Restricted Subsidiaries (a) sells, transfers or otherwise Disposes of any property, real or personal, whether now owned or hereafter acquired, and (b) as part of such transaction, thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or otherwise Disposed.

“Sale Leaseback Properties” means any fee owned Real Property set forth on Schedule 1.01G.

“Sale Leaseback Transaction” has the meaning provided in Section 7.05(t).

“Same Day Funds” means immediately available funds.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“**OFAC**”) or the U.S. Department of State, or (b) the European Union or Her Majesty’s Treasury of the United Kingdom.

“Sanctioned Country” means, at any time, a country or territory which is the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the European Union or Her Majesty’s Treasury of the United Kingdom and (b) any other Person organized in a Sanctioned Country or controlled (as determined by applicable law) by any Person that is a Sanctioned Person.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“**Second Lien Administrative Agent**” means UBS AG, Stamford Branch, in its capacity as administrative agent and collateral agent under the Second Lien Loan Documents, or any successor administrative agent and collateral agent under the Second Lien Loan Documents.

“**Second Lien Credit Agreement**” means the Second Lien Credit Agreement dated as of the Closing Date by and among Holdings, the Borrower, the other Guarantors party thereto from time to time, the lenders party thereto in their capacities as lenders thereunder, the Second Lien Administrative Agent, as agent and the other agents party thereto, as the same may be amended, restated, amended and restated, modified, supplemented, extended, renewed, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, guarantors, institutional investors or agents), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof, in each case as and to the extent not prohibited by this Agreement and the Second Lien Intercreditor Agreement.

“**Second Lien Credit Agreement Amendment No. 12**” means that certain Amendment No. ~~12~~ to Second Lien Credit Agreement, dated as of ~~October 10, 2016~~, December 6, 2019, by and among Holdings, the Borrower, the other Guarantors party thereto, the lenders party thereto in their capacities as lenders and the Second Lien Administrative Agent.

“**Second Lien Incremental Equivalent Debt**” has the meaning assigned to the term “Incremental Equivalent Debt” in the Second Lien Credit Agreement.

“**Second Lien Incremental Usage Amount**” means, at any time, the sum of (x) the aggregate principal amount of “Incremental Commitments” (as defined in the Second Lien Credit Agreement) established at or before such time pursuant to Section 2.14(d)(iii)(B) of the Second Lien Credit Agreement (as in effect as of the ~~date hereof but~~ Amendment No. 3 Effective Date after giving effect to Second Lien Credit Agreement Amendment No. ~~12~~) and (y) the aggregate principal amount of “Incremental Equivalent Debt” (as defined in the Second Lien Credit Agreement) incurred at or before such time pursuant to Section 2.14(h)(i)(B) of the Second Lien Credit Agreement (as in effect as of the ~~date hereof but~~ Amendment No. 3 Effective Date after giving effect to Second Lien Credit Agreement Amendment No. ~~12~~).

“**Second Lien Initial Term Loans**” has the meaning assigned to the term “Initial Loans” in the Second Lien Credit Agreement.

“**Second Lien Intercreditor Agreement**” means an intercreditor agreement substantially in the form of Exhibit I hereto, dated as of the Closing Date, among the Administrative Agent, the Second Lien Administrative Agent, as “Second Priority Representative” (as defined therein) for the “Second Lien Credit Agreement Secured Parties” (as defined therein) and each additional representative party thereto from time to time, as amended from time to time.

“**Second Lien Loan Documents**” means the Second Lien Credit Agreement, the Second Lien Intercreditor Agreement and the other “Loan Documents” (as defined in the Second Lien Credit Agreement).

“**Second Lien Refinancing Equivalent Debt**” has the meaning assigned to the term “Refinancing Equivalent Debt” in the Second Lien Credit Agreement.

“**Second Lien Term Loans**” has the meaning assigned to the term “Loans” in the Second Lien Credit Agreement.

“**Secured Hedge Agreement**” means any Swap Contract permitted under Article VII that is entered into by and between the Borrower or any Subsidiary and any Hedge Bank.

“**Secured Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Secured Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“**Secured Parties**” means, collectively, the Administrative Agent, the Lenders, the Hedge Banks and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Securitization Assets**” means (a) the accounts receivable, royalty or other revenue streams and other rights to payment subject to a Qualified Securitization Financing and the proceeds thereof and (b) contract rights, lockbox accounts and records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in a securitization financing.

“**Securitization Fees**” means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with any Qualified Securitization Financing.

“**Securitization Financing**” means any transaction or series of transactions that may be entered into by the Borrower or any of its Subsidiaries pursuant to which the Borrower or any of its Subsidiaries may sell, convey or otherwise transfer to (a) a Securitization Subsidiary (in the case of a transfer by the Borrower or any of its Subsidiaries) or (b) any other Person (in the case of a transfer by a Securitization Subsidiary), or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries, and any assets related thereto, including all collateral securing such Securitization Assets, all contracts and all guarantees or other obligations in respect of such Securitization Assets, proceeds of such Securitization Assets and other assets that are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving Securitization Assets.

“**Securitization Subsidiary**” means a wholly owned Subsidiary of the Borrower (or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Borrower or any Subsidiary of the Borrower makes an Investment and to which the Borrower or any Subsidiary of the Borrower transfers Securitization Assets and related assets) that engages in no activities other than in connection with the financing of Securitization Assets of the Borrower or its Subsidiaries, all proceeds thereof and all rights (contingent and other),

collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Borrower or such other Person (as provided below) as a Securitization Subsidiary and (a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings or Limited Originator Recourse), (ii) is recourse to or obligates Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, in any way other than pursuant to Standard Securitization Undertakings or Limited Originator Recourse or (iii) subjects any property or asset of Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings or Limited Originator Recourse, (b) with which none of Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, has any material contract, agreement, arrangement or understanding other than on terms which the Borrower reasonably believes to be no less favorable to Holdings, the Borrower or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower and (c) to which none of Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results. Any such designation by the Board of Directors of the Borrower or such other Person shall be evidenced to the Administrative Agent by delivery to the Administrative Agent of a certified copy of the resolution of the Board of Directors of the Borrower or such other Person giving effect to such designation and a certificate executed by a Responsible Officer certifying that such designation complied with the foregoing conditions.

"Security Agreement" means a Security Agreement substantially in the form of [Exhibit E](#).

"Security Agreement Supplement" has the meaning specified in the Security Agreement.

"Senior Representative" means, with respect to any series of Permitted Pari Passu Secured Refinancing Debt, Permitted Junior Secured Refinancing Debt, Incremental Equivalent Debt or subordinated Permitted Unsecured Refinancing Debt, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

"SOFR" with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York's website (or any successor source) and, in each case, that has been selected or recommended by the Relevant Governmental Body.

"SOFR-Based Rate" means SOFR or Term SOFR.

“**Solicited Discount Proration**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Solicited Discounted Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Solicited Discounted Prepayment Notice**” means a written notice of the Borrower of Solicited Discounted Prepayment Offers made pursuant to Section 2.05(a)(v)(D) substantially in the form of Exhibit E-6.

“**Solicited Discounted Prepayment Offer**” means the irrevocable written offer by each Lender, substantially in the form of Exhibit E-7, submitted following the Administrative Agent’s receipt of a Solicited Discounted Prepayment Notice.

“**Solicited Discounted Prepayment Response Date**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Solvent**” and “**Solvency**” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the assets of such Person exceeds, on a consolidated basis, its debts and liabilities, subordinated, contingent or otherwise, (b) the present fair saleable value of the property of such Person is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) such Person is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and (d) such Person is not engaged in, and is not about to engage in, business for which it has unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

“**SPC**” has the meaning specified in Section 10.07(h).

“**Special Distribution**” shall mean the “Special Distribution” under and as defined in Amendment No. 1.

“**Specified Discount**” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“**Specified Discount Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“**Specified Discount Prepayment Notice**” means a written notice of the Borrower Offer of Specified Discount Prepayment made pursuant to Section 2.05(a)(v)(B) substantially in the form of Exhibit E-8.

“**Specified Discount Prepayment Response**” means the irrevocable written response by each Lender, substantially in the form of Exhibit E-9, to a Specified Discount Prepayment Notice.

“**Specified Discount Prepayment Response Date**” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“**Specified Discount Proration**” has the meaning set forth in Section 2.05(a)(v)(B)(3).

“**Specified Junior Financing Obligations**” means any obligations in respect of any Junior Financing in respect of which any Loan Party is an obligor in a principal amount in excess of the Threshold Amount.

“**Specified Merger Agreement Representations**” means such of the representations and warranties made by or on behalf of the Borrower and its Subsidiaries in the Merger Agreement as are material to the interests of the Lenders, but only to the extent that Merger Sub (or its applicable Affiliate) has the right to terminate its obligation to consummate the Merger under the Merger Agreement (or the right not to consummate the Merger pursuant to the Merger Agreement) as a result of a breach of such representations and warranties.

“**Specified Representations**” means those representations and warranties made by the Borrower in Sections 5.01(a) (only with respect to organizational existence of the Loan Parties), 5.01(b)(ii), 5.02(a), 5.02(b)(i), 5.02(b)(iii), 5.04, 5.12, 5.16, 5.18(a)(ii) (only with respect to the use of proceeds of the Loans made on the Closing Date) and 5.19 (subject to the proviso at the end of Section 4.01(a)).

“**Specified Transaction**” means (t) the Transactions, (u) any Investment that results in a Person becoming a Restricted Subsidiary, (v) any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary, (w) a Sale Leaseback, (x) any Permitted Acquisition, (y) any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower and any Disposition of a business unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise or (z) any incurrence or repayment of Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit), Restricted Payment, Incremental Revolving Credit Commitment, Incremental Revolving Loan or Incremental Term Loan, in each case, that by the terms of this Agreement requires a financial ratio or test to be calculated on a “Pro Forma Basis” or after giving “Pro Forma Effect.”

“**Sponsor**” means Berkshire Partners LLC and any of its Affiliates and funds or partnerships managed or advised by it or any of its Affiliates but not including, however, any portfolio company of any of the foregoing.

“**Sponsor Management Agreement**” means one or more management, consulting, expense reimbursement or similar agreements among the Sponsor or other holders of Equity Interests and their Affiliates and Holdings, the Borrower (and/or any of its indirect parent companies) (including the Management Agreement, dated as of August 1, 2014, by and among PHD Group Holdings LLC, a Delaware limited liability company, Holdings, the Company and the Sponsor, as the same may be amended, amended and restated, modified, supplemented, replaced or otherwise modified from time to time in accordance with their terms, but only to the extent that such agreements and any such amendment, amendment and restatement, modification, supplement, replacement or other modification thereto does not, directly or indirectly, result in or increase the obligations of Holdings, the Borrower or any of its Restricted Subsidiaries to make any payments thereunder in excess of (x) with respect to any management, monitoring, oversight consulting or advisory fees, \$3,000,000 per fiscal year, (y) with respect to any transaction fees,

1% of the gross transaction value and (z) customary termination fees, indemnities and expenses of the Sponsor (plus, in each case, any unpaid and accrued fees, indemnities and expenses permitted pursuant to clauses (x), (y) and (z) plus interest thereon).

“**Standard Securitization Undertakings**” means representations, warranties, covenants and indemnities entered into by the Borrower or any Subsidiary of the Borrower that are customary in a Securitization Financing.

“**Store**” means a restaurant operated by Borrower or a Restricted Subsidiary, to the extent the results of operations of such restaurant is included in Borrower’s consolidated results of operations in accordance with GAAP.

“**Submitted Amount**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Submitted Discount**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Subordination Agreement**” means a subordination agreement among the Administrative Agent and one or more Senior Representatives for the holders of Indebtedness subordinated to the Obligations, in form and substance reasonably acceptable to the Administrative Agent and the Borrower. Wherever in this Agreement a Senior Representative is required to become party to the Subordination Agreement, if the related Indebtedness is the initial Indebtedness incurred by the Borrower or any Restricted Subsidiary to be subordinated to the Obligations, then the Borrower, Holdings, the Subsidiary Guarantors, the Administrative Agent and the Senior Representative for such Indebtedness shall execute and deliver the Subordination Agreement and the Administrative Agent shall be authorized to execute and deliver the Subordination Agreement.

“**Subsequent Transaction**” has the meaning set forth in Section 1.09(e).

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (excluding, for the avoidance of doubt, any charitable organizations and any other Person that meets the requirements of Section 501(c)(3) of the Code) (i) of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned by such Person or (ii) the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, by such Person, to the extent such entity’s financial results are required to be included in such Person’s consolidated financial statements under GAAP. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantor**” means any Guarantor other than Holdings.

“**Successor Company**” has the meaning specified in Section 7.04(d).

“**Superholdco Preferred Stock**” means the \$100,000,000 in initial liquidation preference of preferred units issued by PHD Group Holdings, LLC, a Delaware limited liability company and a direct or indirect parent of Holdings.

“**Swap**” means any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“**Swap Contract**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

“**Swap Obligation**” means, with respect to any person, any obligation to pay or perform under any Swap.

“**Swap Termination Value**” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“**Swing Line Borrowing**” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“**Swing Line Lender**” means UBS AG, Stamford Branch, in its capacity as provider of Swing Line Loans or any successor swing line lender hereunder.

“**Swing Line Loan**” has the meaning specified in Section 2.04(a).

“**Swing Line Loan Notice**” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B hereto.

“**Swing Line Note**” means a promissory note of the Borrower payable to the Swing Line Lender or its registered assigns, in substantially the form of Exhibit C-3 hereto, evidencing the aggregate Indebtedness of the Borrower to the Swing Line Lender resulting from the Swing Line Loans.

“**Swing Line Obligations**” means, as at any date of determination, the aggregate Outstanding Amount of all Swing Line Loans.

“**Swing Line Sublimit**” means an amount equal to the lesser of (a) \$7,500,000 (as may be adjusted pursuant to Section 2.14(e)(ii)) and (b) the aggregate amount of the Participating Revolving Credit Commitments. The Swing Line Sublimit is part of, and not in addition to, the Participating Revolving Credit Commitments.

“**Syndication Agent**” means Jefferies Finance LLC, in its capacity as a syndication agent under this Agreement.

“**Tax Distribution**” has the meaning specified in Section 7.06(h)(iii).

“**Taxes**” means all present or future taxes, duties, levies, imposts, assessments or withholdings imposed by any Governmental Authority including interest, penalties and additions to tax.

~~“**Term B Commitment**” means, as to each Term Lender, its obligation to make a Term B Loan to the Borrower pursuant to Section 2.01(a) in an aggregate amount not to exceed the amount set forth opposite such Lender’s name in Schedule 1.01A under the caption “Term B Commitment” or in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including Section 2.14). The initial aggregate amount of the Term B Commitments is \$335,000,000.~~

“**Commitment**” means, as to each Term Lender, its obligation to make Term Loans to the Borrower hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.06 and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Term Lender pursuant to an Assignment and Assumption, (ii) an Incremental Amendment, (iii) a Refinancing Amendment or (iv) an Extension. The amount of each Term Lender’s Commitment as of the Closing Date is set forth in Schedule 1.01A under the caption “Term B Commitment” or in the Assignment and Assumption, Incremental Amendment, Extension Amendment or Refinancing Amendment pursuant to which such Lender shall have assumed, increased or decreased its Term Commitment, as the case may be.

~~“**Term B Loans**” means the term loans made by the Lenders on the Closing Date to the Borrower pursuant to Section 2.01(a).~~

“**Term B Converting Lender**” means each Term B Lender that, in accordance with Amendment No. 3, provided the Administrative Agent with a Consent to Amendment No. 3 executed by such Lender with the box “Term B/Term B-2 Lender Conversion Option” checked.

“**Term B-2 Converting Lender**” means each Term B-2 Lender that, in accordance with Amendment No. 3, provided the Administrative Agent with a Consent to Amendment No. 3 executed by such Lender with the box “Term B/Term B-2 Lender Conversion Option” checked.

“**Term B Lender**” means any Person that holds a Term B Loan immediately prior to giving effect to Amendment No. 3.

~~“Term B-2 Loan Commitment” means, as to any Lender, its obligation to make a Term B-2 Loan to the Borrower pursuant to Amendment No. 1 in an aggregate amount not to exceed the amount set forth opposite such Lender’s name on Schedule I to Amendment No. 1 or in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including Section 2.14). The aggregate amount of the Lenders’ Term B-2 Loan Commitments on the Amendment No. 1 Effective Date (immediately prior to the incurrence of the Term B-2 Loans on such date) is \$71,000,000. Lender” means any person that holds a Term B-2 Loan.~~

“Term B-3 Lender” means a Lender holding a Term B-3 Loan, in such Lender’s capacity as such, and, for the avoidance of doubt, shall include the Additional Term B-3 Lender.

“Term B Loan” means each “Term B Loan” under and as defined in this Agreement immediately prior to giving effect to Amendment No. 3.

~~“Term B-2 Loan” means the term loans made by the Term B-2 Lenders to the Borrower pursuant to Section 2.14 on the Amendment No. 1 Effective Date; each “Term B-2 Loan” under and as defined in this Agreement immediately prior to giving effect to Amendment No. 3.~~

~~“Term B-2 Lenders” means any Lender with a Term B-2 Loan Commitment or an outstanding Term B-2 Loan. 3 Loan” has the meaning specified in Section 2.01(a).~~

“Term Borrowing” means a borrowing consisting of Term Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01(a).

~~“Term Commitment” means, as to each Term Lender, its obligation to make Term Loans to the Borrower hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.06 and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Term Lender pursuant to an Assignment and Assumption, (ii) an Incremental Amendment, (iii) a Refinancing Amendment or (iv) an Extension. The amount of each Term Lender’s Commitment is set forth in Schedule 1.01A under the caption “Term B Commitment” or in the Assignment and Assumption, Incremental Amendment, Extension Amendment or Refinancing Amendment pursuant to which such Lender shall have assumed, increased or decreased its Term Commitment, as the case may be.~~

“Term Lender” means, at any time, any Lender that has ~~a Term Commitment or~~ a Term Loan at such time.

“Term Loan” means any Term B ~~Loan, Term B-2-3~~ Loan, Incremental Term Loan, Refinancing Term Loan or Extended Term Loan, as the context may require.

“Term Loan Extension Request” has the meaning provided in Section 2.16(a).

“Term Loan Extension Series” has the meaning provided in Section 2.16(a).

“Term Loan Increase” has the meaning set forth in Section 2.14(a).

“**Term Note**” means a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit C-1 hereto, evidencing the aggregate Indebtedness of the Borrower to such Term Lender resulting from the Term Loans made by such Term Lender.

“**Term SOFR**” means the forward-looking term rate for any period that is approximately (as determined by the Administrative Agent) as long as any of the Interest Period options set forth in the definition of “Interest Period” and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion.

“**Test Period**” means, for any date of determination under this Agreement, the four consecutive fiscal quarters of the Borrower most recently ended as of such date of determination.

“**Threshold Amount**” means \$20,000,000.

“**Total Assets**” means the total assets of the Borrower and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP, as shown on the most recent balance sheet of the Borrower delivered pursuant to Section 6.01(a) or (b) (and, in the case of any determination relating to any incurrence of Indebtedness or any Investment or other acquisition, on a Pro Forma Basis including any property or assets being acquired in connection therewith) or for the period prior to the time any such statements are so delivered pursuant to Section 6.01(a) or (b), the Quality of Earnings Analysis dated June 25, 2014.

“**Total Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Total Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“**Transaction Expenses**” means any fees or expenses incurred or paid by the Sponsor, any direct or indirect parent of the Borrower, the Borrower or any of its (or their) Subsidiaries in connection with the Transactions (including expenses in connection with close-out fees in connection with the termination of hedging transactions, if any, and payments to officers, employees and directors as change of control payments, severance payments, special or retention bonuses and charges for repurchase or rollover of, or modifications to, stock options and/or restricted stock), this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

“**Transactions**” means, collectively, (a) the Acquisition and other related transactions contemplated by the Merger Agreement, (b) the Equity Contribution, (c) the funding of the Second Lien Initial Term Loans and the execution and delivery of the Second Lien Loan Documents to be entered into on the Closing Date, (d) the funding of the Term B Loans and the Initial Revolving Borrowing on the Closing Date and the execution and delivery of Loan Documents to be entered into on the Closing Date, (e) the issuance of the Superholdco Preferred Stock, (f) the Refinancing and (g) the payment of Transaction Expenses.

“**Transferred Guarantor**” has the meaning specified in Section 11.09.

“**Treasury Services Agreement**” means any agreement between the Borrower or any Subsidiary and any Hedge Bank relating to treasury, depository, credit card, debit card and cash management services or automated clearinghouse transfer of funds or any similar services.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

“**UBS**” means UBS AG, Stamford Branch, acting in its individual capacity, and its successors and assigns.

“**Unaudited Financial Statements**” has the meaning assigned to such term in the Merger Agreement (as in effect on the ~~date hereof~~ [Closing Date](#)).

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“**United States**” and “**U.S.**” mean the United States of America.

“**United States Tax Compliance Certificate**” has the meaning set forth in Section 3.01(d)(ii)(C) and is in substantially the form of [Exhibit H](#) hereto.

“**Unreimbursed Amount**” has the meaning set forth in Section 2.03(c)(i).

“**Unrestricted Subsidiary**” means any Subsidiary of the Borrower designated by the Board of Directors of the Borrower as an Unrestricted Subsidiary pursuant to Section 6.14 subsequent to the Closing Date and each Securitization Subsidiary.

[“Upfront Fee” has the meaning assigned to such tem in Section 2.09\(c\).](#)

“**USA Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness; *provided* that the effects of any prepayments made on such Indebtedness shall be disregarded in making such calculation.

“**wholly owned**” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

“**Write-Down and Conversion Powers**” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (b) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.
- (c) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.
- (d) The term “including” (and its correlatives) means by way of example and not as a limitation.
- (e) The word “or” is not exclusive.
- (f) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.
- (g) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”
- (h) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.
- (i) For purposes of determining compliance with any Section of Article VII at any time, in the event that any Lien, Investment, Indebtedness (whether at the time of incurrence or upon application of all or a portion of the proceeds thereof), Disposition, Restricted Payment,

Affiliate transaction, Contractual Obligation or prepayment of Indebtedness meets the criteria of one or more than one of the categories of transactions permitted pursuant to any clause of such Sections, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by the Borrower in its sole discretion at such time.

Section 1.03 Accounting Terms.

All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein.

Notwithstanding any changes in GAAP after the Closing Date, any lease of the Loan Parties and their Subsidiaries that would be characterized as an operating lease under GAAP in effect on the Closing Date (whether such lease is entered into before or after the Closing Date) shall not constitute Indebtedness, Attributable Indebtedness or a Capitalized Lease Obligation under this Agreement or any other Loan Document as a result of such changes in GAAP.

Section 1.04 Rounding.

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding up if there is no nearest number).

Section 1.05 References to Agreements, Laws, Etc.

Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by the Loan Documents; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day.

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.07 Timing of Payment of Performance.

When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

Section 1.08 Cumulative Credit Transactions.

If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount of the Cumulative Credit immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously.

Section 1.09 Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Total Net Leverage Ratio, the Secured Net Leverage Ratio, the Consolidated First Lien Net Leverage Ratio, the Consolidated Cash Interest Coverage Ratio and compliance with covenants determined by reference to Consolidated EBITDA or Total Assets, shall be calculated in the manner prescribed by this Section 1.09; *provided* that notwithstanding anything to the contrary in clauses (b), (c), (d) or (e) of this Section 1.09, (A) when calculating any such ratio or test for purposes of (i) the definition of “Applicable Rate,” (ii) the definition of “Applicable ECF Percentage” and (iii) Section 7.11, the events described in this Section 1.09 that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect and (B) when calculating any such ratio or test for purposes of the incurrence of any Indebtedness, cash and Cash Equivalents resulting from the incurrence of any such Indebtedness shall be excluded from the *pro forma* calculation of any applicable ratio or test. In addition, whenever a financial ratio or test is to be calculated on a *pro forma* basis, the reference to the “Test Period” for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower). For the avoidance of doubt, the provisions of the foregoing sentence shall not apply for purposes of calculating any financial ratio or test for purposes of (i) the definition of “Applicable Rate,” (ii) the definition of “Applicable ECF Percentage” and (iii) Section 7.11, each of which shall be based on the financial statements delivered pursuant to Section 6.01(a) or (b), as applicable, for the relevant Test Period.

(b) For purposes of calculating any financial ratio or test or compliance with any covenant determined by reference to Consolidated EBITDA or Total Assets, Specified Transactions (with any incurrence or repayment of any Indebtedness in connection therewith to be subject to clause (d) of this Section 1.09) that have been made (i) during the applicable Test Period or (ii) if applicable as described in clause (a) above, subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA, Total Assets and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period (or, in the case of Total Assets, on the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.09, then such financial ratio or test (or Total Assets) shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.09.

(c) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Borrower and may include, for the avoidance of doubt, the amount of “run-rate” cost savings, operating expense reductions and synergies resulting from or relating to any Specified Transaction (including the Transactions) which is being given *pro forma* effect that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period and “run-rate” means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a public target’s Public Company Costs) net of the amount of actual benefits realized during such period from such actions, and any such adjustments shall be included in the initial *pro forma* calculations of any financial ratios or tests (and in respect of any subsequent *pro forma* calculations in which such Specified Transaction is given *pro forma* effect) and during any applicable subsequent Test Period in which the effects thereof are expected to be realized) relating to such Specified Transaction; *provided* that (A) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Borrower, (B) such actions are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than twenty four (24) months after the date of such Specified Transaction, and (C) no amounts shall be added pursuant to this clause (c) to the extent duplicative of any amounts that are otherwise added back in computing Consolidated EBITDA (or any other components thereof), whether through a *pro forma* adjustment or otherwise, with respect to such period.

(d) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility unless such Indebtedness has been permanently repaid and not replaced), (i) during the applicable Test Period or (ii) subject to paragraph (a), subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period (except in the case of the Consolidated Cash Interest Coverage Ratio (or similar ratio), in which case such incurrence, assumption, guarantee, redemption, repayment, retirement or extinguishment of Indebtedness will be given effect as if the same had occurred on the first day of the applicable Test Period).

(e) In connection with any action being taken solely in connection with a Limited Condition Transaction, for purposes of:

(i) determining compliance with any provision of this Agreement (other than the Financial Covenant) which requires the calculation of any financial ratio or test, including the Consolidated First Lien Net Leverage Ratio, Secured Net Leverage Ratio, Total Net Leverage Ratio and Consolidated Cash Interest Coverage Ratio (and, for the avoidance of doubt, any financial ratio set forth in Section 2.14(d)(iii)); or

(ii) testing availability under baskets set forth in this Agreement (including baskets measured as a percentage of Total Assets);

in each case, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "**LCT Election**"), the date of determination of whether any such action is permitted hereunder shall be deemed to be the date the definitive agreements for such Limited Condition Transaction are entered into (the "**LCT Test Date**"), and if, after giving Pro Forma Effect to the Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) as if they had occurred at the beginning of the most recent Test Period ending prior to the LCT Test Date, the Borrower would have been permitted to take such action on the relevant LCT Test Date in compliance with such ratio, test or basket, such ratio, test or basket shall be deemed to have been complied with. For the avoidance of doubt, if the Borrower has made an LCT Election and any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date are exceeded as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in Consolidated EBITDA or Total Assets of the Borrower or the Person subject to such Limited Condition Transaction, at or prior to the consummation of the relevant transaction or action, such baskets, tests or ratios will not be deemed to have been exceeded as a result of such fluctuations. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any calculation of any ratio, test or basket availability with respect to the incurrence of Indebtedness or Liens, the making of Restricted Payments, the making of any Permitted Investment, mergers, the conveyance, lease or other transfer of all or substantially all of the assets of the Borrower, the prepayment, redemption, purchase, defeasance or other satisfaction of Indebtedness, or the designation of an Unrestricted Subsidiary (a "**Subsequent Transaction**") following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement or irrevocable notice for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, for purposes of determining whether such Subsequent Transaction is permitted under this Agreement, any such ratio, test or basket shall be required to be satisfied on a Pro Forma Basis (i) assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated and (ii) assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have not been consummated.

(f) If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Consolidated Cash Interest Coverage Ratio is made had been the applicable rate for the entire period (taking into account any interest hedging arrangements applicable to such Indebtedness); *provided*, in the case of repayment of any

Indebtedness, to the extent actual interest related thereto was included during all or any portion of the applicable Test Period, the actual interest may be used for the applicable portion of such Test Period. Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or Restricted Subsidiary may designate.

Section 1.10 Currency Generally.

For purposes of determining compliance with Sections 7.01, 7.03 and 7.06 and the definition of Permitted Investments with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred, made or acquired, was permitted hereunder).

For purposes of determining the Secured Net Leverage Ratio, the Consolidated First Lien Net Leverage Ratio, the Total Net Leverage Ratio or any other leverage-based ratio or test under this Agreement, the amount of Indebtedness shall reflect the currency translation effects, determined in accordance with GAAP, of Swap Contracts permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

Section 1.11 Divisions.

For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable even under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized or formed on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.12 Interest Rates.

The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Eurocurrency Rate" or with respect to any rate that is an alternative or replacement for or successor to any of such rate (including, without limitation, any LIBOR Successor Rate) or the effect of any of the foregoing, or of any LIBOR Successor Rate Conforming Changes.

ARTICLE II.
THE COMMITMENTS AND CREDIT EXTENSIONS

Section 2.01 The Loans.

(a) *The Term Borrowings.* (i) ~~Subject to the terms and conditions set forth herein, each~~ (A) The Additional Term B-3 Lender ~~severally~~ agrees to make a term loan (in an aggregate principal amount equal to the Additional Term B-3 Commitment) to the Borrower on the ~~Closing Date one or more loans denominated in Dollars in an aggregate amount not to exceed the amount of such Term Lender's Term B Commitment;~~ Amendment No. 3 Effective Date in a single advance in Dollars (together with each Converted Term B Loan converted into a Term B-3 Loan and each Converted Term B-2 Loan converted into a Term B-3 Loan as contemplated by clauses (B) and (C) of this Section 2.01(a)(i), the "Term B-3 Loans"), (B) each Converted Term B Loan of each Term B Converting Lender shall be converted into a Term B-3 Loan of such Lender effective as of the Amendment No. 3 Effective Date in a principal amount equal to the principal amount of such Term B Lender's Converted Term B Loan immediately prior to such conversion and (C) each Converted Term B-2 Loan of each Term B-2 Converting Lender shall be converted into a Term B-3 Loan of such Lender effective as of the Amendment No. 3 Effective Date in a principal amount equal to the principal amount of such Term B-2 Lender's Converted Term B Loan immediately prior to such conversion and (ii) subject to the terms and conditions set forth in any Incremental Amendment or Refinancing Amendment providing for, as applicable, the making, exchange, renewal, replacement or refinancing of Term Loans, each Term Lender party thereto severally agrees to, as applicable, make, exchange, renew, replace or refinance Term Loans on the date specified therein in an aggregate amount not to exceed the amount of such Term Lender's Term Commitment as set forth therein. Amounts borrowed, exchanged, renewed, replaced or refinanced under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

(b) *The Revolving Credit Borrowings.* Subject to the terms and conditions set forth herein, each Revolving Credit Lender with any Revolving Credit Commitment severally agrees to make Revolving Credit Loans denominated in Dollars pursuant to Section 2.02 from its applicable Lending Office to the Borrower from time to time, on any Business Day during the period from and including the Closing Date until the Maturity Date of such Revolving Credit Commitment, in an aggregate principal amount not to exceed at any time outstanding the amount of such Revolving Credit Commitment; *provided* that after giving effect to any Revolving Credit Borrowing, the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, plus such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all L/C Obligations, plus such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all Swing Line Loans, shall not exceed such Revolving Credit Commitment. Within the limits of each Revolving Credit Lender's Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(b), prepay under Section 2.05, and reborrow under this Section 2.01(b). Revolving Credit Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

(a) Each Term Borrowing, each Revolving Credit Borrowing, each conversion of Term Loans or Revolving Credit Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower's irrevocable notice, on behalf of the Borrower, to the Administrative Agent (*provided* that the notices in respect of the initial Credit Extensions may be conditioned on the closing of the Merger), which may be given by telephone. Each such notice must be received by the Administrative Agent not later than (1) 1:00 p.m. (New York, New York time) three (3) Business Days prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans or any conversion of Base Rate Loans to Eurocurrency Rate Loans, and (2) 12:00 noon on the requested date of any Borrowing of Base Rate Loans; *provided* that the notice referred to in subclause (1) above may be delivered no later than one (1) Business Day prior to the Closing Date in the case of initial Credit Extensions. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Except as provided in Section ~~2.14~~2.14 or with respect to a Borrowing of Term B-3 Loans on the Amendment No. 3 Effective Date, each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a minimum principal amount of \$1,000,000, or a whole multiple of \$100,000 in excess thereof. Except as provided in Section 2.03(c), 2.04(b) or 2.14, each Borrowing of or conversion to Base Rate Loans shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the requesting Borrower is requesting a Term Borrowing, a Revolving Credit Borrowing, a conversion of Term Loans or Revolving Credit Loans from one Type to the other or a continuation of Eurocurrency Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Term Loans or Revolving Credit Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto and (vi) wire instructions of the account(s) to which funds are to be disbursed (it being understood, for the avoidance of doubt, that the amount to be disbursed to any particular account may be less than the minimum or multiple limitations set forth above so long as the aggregate amount to be disbursed to all such accounts pursuant to such Borrowing meets such minimums and multiples). If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or fails to give a timely notice requesting a conversion or continuation, then the applicable Term Loans or Revolving Credit Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation

described in Section 2.02(a). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than the later of (i) in the case of Eurocurrency Rate Loans, 12:00 noon (New York, New York) on the Business Day specified in the applicable Committed Loan Notice and (ii) in the case of Base Rate Loans, one hour (or in the case of Borrowing of Base Rate Loans after the Closing Date where the Committed Loan Notice has been delivered on the date of the requested Borrowing, two hours) after written notice of such Borrowing is delivered by the Administrative Agent to such Lender; *provided, that*, on the Closing Date (or with respect to any Incremental Facilities, on the relevant Incremental Amendment Date), such funds may be made available at such earlier time as may be agreed among the relevant Lenders, the Borrower and the Administrative Agent for the purpose of consummating the Transactions (or, in the case of any Incremental Facilities, the relevant transactions). The Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account(s) of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided by the Borrower to (and reasonably acceptable to) the Administrative Agent; *provided that* if, on the date the Committed Loan Notice with respect to a Borrowing under any Class of Revolving Credit Commitments is given by the Borrower, there are Swing Line Loans or L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such L/C Borrowing, second, to the payment in full of any such Swing Line Loans, and third, to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. During the occurrence and continuation of an Event of Default, the Administrative Agent or the Required Lenders may require by notice to the Borrower that no Loans may be converted to or continued as Eurocurrency Rate Loans.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. The determination of the Eurocurrency Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Administrative Agent's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Term Borrowings, all Revolving Credit Borrowings, all conversions of Term Loans or Revolving Credit Loans from one Type to the other, and all continuations of Term Loans or Revolving Credit Loans as the same Type, there shall not be more than fifteen (15) Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent; *provided that* after the establishment of any new Class of Loans pursuant to an Incremental Amendment, Refinancing Amendment or Extension Amendment, the number of Interest Periods otherwise permitted by this Section 2.02(e) shall increase by three (3) Interest Periods for each applicable Class so established.

(f) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(g) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share or other applicable share provided for under this Agreement available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (b) above, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the Overnight Rate plus any administrative, processing, or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(g) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.03 Letters of Credit.

(a) *The Letter of Credit Commitment.* (i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer (except the Existing L/C Issuer) agrees, in reliance upon the agreements of the other Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from and including the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit at sight denominated in Dollars for the account of the Borrower (*provided* that any Letter of Credit may be for the benefit of any Subsidiary of the Borrower and may be issued for the joint and several account of the Borrower and a Restricted Subsidiary to the extent otherwise permitted by this Agreement) and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drafts under the Letters of Credit and (B) the Participating Revolving Credit Lenders severally agree to participate in Letters of Credit issued pursuant to this Section 2.03; *provided* that no L/C Issuer shall be obligated to make any L/C Credit Extension with respect to any Letter of Credit, and no Lender shall be obligated to participate in any Letter of Credit if as of the date of such L/C Credit Extension, (x) the Revolving Credit Exposure of any Participating Revolving

Credit Lender would exceed such Lender's Participating Revolving Credit Commitment or (y) the Outstanding Amount of the L/C Obligations would exceed the Letter of Credit Sublimit. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to be issued hereunder and shall constitute Letters of Credit subject to the terms hereof. Notwithstanding the foregoing, the Existing L/C Issuer will be the L/C Issuer only with respect to the Existing Letters of Credit referred to in the prior sentence.

(ii) An L/C Issuer shall be under no obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or direct that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date (for which such L/C Issuer is not otherwise compensated hereunder);

(B) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last renewal, unless (1) each Appropriate Lender has approved of such expiration date or (2) the Outstanding Amount of L/C Obligations in respect of such requested Letter of Credit has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to such L/C Issuer;

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless (1) each Appropriate Lender has approved such expiry date or (2) the Outstanding Amount of L/C Obligations in respect of such requested Letter of Credit has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to such L/C Issuer and the Administrative Agent;

(D) the issuance of such Letter of Credit would violate any policies of the L/C Issuer applicable to letters of credit generally; and

(E) any Participating Revolving Credit Lender is at that time a Defaulting Lender, unless such L/C Issuer has entered into arrangements reasonably satisfactory to it and the Borrower to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.17(a)(iv)) with respect to the participation in Letters of Credit by such Defaulting Lender, including by cash collateralizing such Defaulting Lender's Pro Rata Share of the L/C Obligations.

(iii) An L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit. Notwithstanding anything herein to the contrary, the expiry date of any Letter of Credit denominated in a currency other than Dollars must be approved by the relevant L/C Issuer in its sole discretion even if it is less than twelve (12) months after the date of issuance or last renewal and any Auto-Extension Letter of Credit denominated in a currency other than Dollars shall be issued only at the relevant L/C Issuer's sole discretion.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to an L/C Issuer (except the Existing L/C Issuer) (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the relevant L/C Issuer and the Administrative Agent not later than 12:30 p.m. at least three (3) Business Days prior to the proposed issuance date or date of amendment, as the case may be; or, in each case, such later date and time as the relevant L/C Issuer may agree in a particular instance in its sole discretion. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer: (a) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (b) the amount thereof; (c) the expiry date thereof; (d) the name and address of the beneficiary thereof; (e) the documents to be presented by such beneficiary in case of any drawing thereunder; (f) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (g) such other matters as the relevant L/C Issuer may reasonably request. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the relevant L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the relevant L/C Issuer may reasonably request.

(ii) Promptly after receipt of any Letter of Credit Application, the relevant L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Upon receipt by the relevant L/C Issuer of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower (and, if applicable, its applicable Subsidiary) or enter into the applicable amendment, as the case may be. Immediately upon the issuance of each Letter of Credit, each Participating Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the relevant L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Pro Rata Share or other applicable share provided for under this Agreement times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the relevant L/C Issuer shall agree to issue a Letter of Credit that has automatic extension provisions (each, an “**Auto-Extension Letter of Credit**”); *provided* that any such Auto-Extension Letter of Credit must permit the relevant L/C Issuer to prevent any such extension at least once in each twelve (12) month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “**Non-extension Notice Date**”) in each such twelve (12) month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the relevant L/C Issuer, the Borrower shall not be required to make a specific request to the relevant L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the relevant L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date that is, unless the Outstanding Amount of L/C Obligations in respect of such requested Letter of Credit has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the relevant L/C Issuer, not later than the Letter of Credit Expiration Date; *provided* that the relevant L/C Issuer shall not permit any such extension if (A) the relevant L/C Issuer has determined that it would have no obligation at such time to issue such Letter of Credit in its extended form under the terms hereof (by reason of the provisions of Section 2.03(a)(ii) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-extension Notice Date from the Administrative Agent, any Participating Revolving Credit Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied.

(iv) Promptly after issuance of any Letter of Credit or any amendment to a Letter of Credit, the relevant L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) *Drawings and Reimbursements; Funding of Participations.* (i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the relevant L/C Issuer shall notify promptly the Borrower and the Administrative Agent thereof. Not later than 12:00 noon on the second Business Day following any payment by an L/C Issuer under a Letter of Credit with notice to the Borrower (each such date, an “**Honor Date**”), the Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing; *provided* that if such reimbursement is not made on the date of drawing, the Borrower shall pay interest to the relevant L/C Issuer on such amount at the rate applicable to Base Rate Loans under the applicable Participating Revolving Credit Commitments (without duplication of interest payable on L/C Borrowings). If the Borrower fails to so reimburse such L/C Issuer by such time, the Administrative Agent shall promptly notify each Appropriate Lender of the Honor Date, the amount of the unreimbursed drawing (the “**Unreimbursed Amount**”), and the amount of such Appropriate Lender’s Pro Rata Share or other applicable share provided for under this Agreement thereof. In such event, the Borrower shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans under the Participating Revolving Credit Commitments to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans but subject to the amount of the unutilized portion of the Participating Revolving Credit Commitments of the Appropriate Lenders and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan

Notice). Any notice given by an L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Appropriate Lender (including any Lender acting as an L/C Issuer) shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Administrative Agent for the account of the relevant L/C Issuer in Dollars at the Administrative Agent's Office for payments in an amount equal to its Pro Rata Share or other applicable share provided for under this Agreement of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Appropriate Lender that so makes funds available shall be deemed to have made a Base Rate Loan under the Participating Revolving Credit Commitments to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the relevant L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the relevant L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Appropriate Lender's payment to the Administrative Agent for the account of the relevant L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Appropriate Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the relevant L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such amount shall be solely for the account of the relevant L/C Issuer.

(v) Each Participating Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse an L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the relevant L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Article IV; (C) any adverse change in the condition (financial or otherwise) of the Loan Parties; (D) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other L/C Issuer; or (E) any other circumstance, occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that each Participating Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the

obligation of the Borrower to reimburse the relevant L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Participating Revolving Credit Lender fails to make available to the Administrative Agent for the account of the relevant L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), such L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect. A certificate of the relevant L/C Issuer submitted to any Participating Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent manifest error.

(d) *Repayment of Participations.*

(i) If, at any time after an L/C Issuer has made a payment under any Letter of Credit and has received from any Participating Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Pro Rata Share or other applicable share provided for under this Agreement thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the amount received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of an L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Appropriate Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Pro Rata Share or other applicable share provided for under this Agreement thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect.

(e) *Obligations Absolute.* The obligation of the Borrower to reimburse the relevant L/C Issuer for each drawing under each Letter of Credit issued by it and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Loan Party may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the

relevant L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the relevant L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the relevant L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any exchange, release or non-perfection of any Collateral, or any release or amendment or waiver of or consent to departure from the Guaranty or any other guarantee, for all or any of the Obligations of any Loan Party in respect of such Letter of Credit; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Loan Party;

provided that the foregoing shall not excuse any L/C Issuer from liability to Borrower to the extent of any direct damages (as opposed to consequential, punitive, special or exemplary damages, claims in respect of which are waived by the Borrower to the extent permitted by applicable Law) suffered by the Borrower that are caused by such L/C Issuer's gross negligence or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof.

(f) *Role of L/C Issuers.* Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the relevant L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, any Agent-Related Person nor any of the respective correspondents, participants or assignees of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Lenders holding a majority of the Participating Revolving Credit Commitments, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The Borrower hereby assumes all risks of the acts or

omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided* that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of any L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (vi) of Section 2.03(e); *provided* that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against an L/C Issuer, and such L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential, punitive or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful or grossly negligent failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit, in each case as determined in a final and non-appealable judgment by a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, each L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and no L/C Issuer shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) *Cash Collateral.* (i) If, as of any Letter of Credit Expiration Date, any applicable Letter of Credit for any reason remains outstanding and partially or wholly undrawn, (ii) if any Event of Default occurs and is continuing and the Administrative Agent or the Lenders holding a majority of the Participating Revolving Credit Commitments, as applicable, require the Borrower to Cash Collateralize the L/C Obligations pursuant to Section 8.02 or (iii) if an Event of Default set forth under Section 8.01(f) occurs and is continuing, the Borrower shall Cash Collateralize the then Outstanding Amount of all of its (or, in the case of clause (i), the applicable) L/C Obligations (in an amount equal to such Outstanding Amount determined as of the date of such Event of Default or the applicable Letter of Credit Expiration Date, as the case may be), and shall do so not later than 2:00 p.m., New York City time, on (x) in the case of the immediately preceding clauses (i) or (ii), (1) the Business Day that the Borrower receives notice thereof, if such notice is received on such day prior to 12:00 noon, New York City time, or (2) if clause (1) above does not apply, the Business Day immediately following the day that the Borrower receives such notice and (y) in the case of the immediately preceding clause (iii), the Business Day on which an Event of Default set forth under Section 8.01(f) occurs or, if such day is not a Business Day, the Business Day immediately succeeding such day. At any time that there shall exist a Defaulting Lender, immediately upon the request of the Administrative Agent, the L/C Issuer or the Swing Line Lender, the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.17(a)(iv) and any Cash Collateral provided by the Defaulting Lender). For purposes hereof, "**Cash Collateralize**" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the relevant L/C Issuer and the Appropriate Lenders, as collateral for the relevant L/C Obligations, cash or deposit account balances ("**Cash Collateral**") pursuant to documentation in form, amount and substance reasonably satisfactory to the Administrative Agent and the relevant L/C Issuer (which documents are hereby consented to by the Appropriate

Lenders). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the L/C Issuers and the Participating Revolving Credit Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked accounts at the Administrative Agent and may be invested in readily available Cash Equivalents. If at any time the Administrative Agent determines that any funds held as Cash Collateral are expressly subject to any right or claim of any Person other than the Administrative Agent (on behalf of the Secured Parties) or that the total amount of such funds is less than the aggregate Outstanding Amount of all relevant L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in the deposit accounts at the Administrative Agent as aforesaid, an amount equal to the excess of (a) such aggregate Outstanding Amount over (b) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent reasonably determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Law, to reimburse the relevant L/C Issuer. To the extent the amount of any Cash Collateral exceeds the then Outstanding Amount of such L/C Obligations and so long as no Event of Default has occurred and is continuing, the excess shall be refunded to the Borrower. To the extent any Event of Default giving rise to the requirement to Cash Collateralize any Letter of Credit pursuant to this Section 2.03(g) is cured or otherwise waived, then so long as no other Event of Default has occurred and is continuing, all Cash Collateral pledged to Cash Collateralize such Letter of Credit shall be refunded to the Borrower. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Borrower or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. In addition, the Administrative Agent may request at any time and from time to time after the initial deposit of Cash Collateral that additional Cash Collateral be provided by the Borrower in order to protect against the results of exchange rate fluctuations with respect to Letters of Credit denominated in currencies other than Dollars.

(h) *Letter of Credit Fees.* The Borrower shall pay to the Administrative Agent for the account of each Participating Revolving Credit Lender in accordance with its Pro Rata Share or other applicable share provided for under this Agreement a Letter of Credit fee for each Letter of Credit issued pursuant to this Agreement equal to the Applicable Rate times the daily maximum amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit); *provided, however,* any Letter of Credit fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the L/C Issuer pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by applicable Law, to the other Lenders in accordance with the upward adjustments in their respective Pro Rata Shares allocable to such Letter of Credit pursuant to Section 2.17(a)(iv), with the balance of such fee, if any, payable to the L/C Issuer for its own account. Such Letter of Credit fees shall be computed on a quarterly basis in arrears. Such Letter of Credit fees shall be due and payable in Dollars on the first Business Day after the end of each March, June,

September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the applicable Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(i) *Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers.* The Borrower shall pay directly to each L/C Issuer for its own account a fronting fee with respect to each Letter of Credit issued by it equal to 0.125% per annum of the maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit). Such fronting fees shall be computed on a quarterly basis in arrears. Such fronting fees shall be due and payable in Dollars on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. In addition, the Borrower shall pay directly to each L/C Issuer for its own account with respect to each Letter of Credit the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable within ten (10) Business Days of demand and are nonrefundable.

(j) *Conflict with Letter of Credit Application.* Notwithstanding anything else to the contrary in this Agreement or any Letter of Credit Application, in the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

(k) *Addition of an L/C Issuer.* A Revolving Credit Lender reasonably acceptable to the Borrower and the Administrative Agent may become an additional L/C Issuer hereunder pursuant to a written agreement among the Borrower, the Administrative Agent and such Revolving Credit Lender. The Administrative Agent shall notify the Participating Revolving Credit Lenders of any such additional L/C Issuer.

(l) *Existing Letters of Credit.* The parties hereto agree that the Existing Letters of Credit shall be deemed Letters of Credit for all purposes under this Agreement, without any further action by the Borrower.

(m) *Provisions Related to Extended Revolving Credit Commitments.* If the Maturity Date in respect of any Participating Revolving Credit Commitments occurs prior to the expiry date of any Letter of Credit, then (i) if one or more other Participating Revolving Credit Commitments are then in effect (or will automatically be in effect upon such maturity), such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Participating Revolving Credit Lenders to purchase participations therein and to make Revolving Credit Loans and payments in respect thereof pursuant to Sections 2.03(c) and (d)) under (and ratably participated in by Participating Revolving Credit Lenders pursuant to) the non-terminating Participating Revolving Credit Commitments up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Participating Revolving Credit Commitments continuing at such time (it being understood that no partial face amount of

any Letter of Credit may be so reallocated) and (ii) to the extent not reallocated pursuant to immediately preceding clause (i) and unless provisions reasonably satisfactory to the applicable L/C Issuer for the treatment of such Letter of Credit as a letter of credit under a successor credit facility have been agreed upon, the Borrower shall, on or prior to the applicable Maturity Date, cause all such Letters of Credit to be replaced and returned to the applicable L/C Issuer undrawn and marked "cancelled" or to the extent that the Borrower is unable to so replace and return any Letter(s) of Credit, such Letter(s) of Credit shall be secured by a "back to back" letter of credit reasonably satisfactory to the applicable L/C Issuer or the Borrower shall Cash Collateralize any such Letter of Credit in accordance with Section 2.03(g). Commencing with the Maturity Date of any Class of Revolving Credit Commitments, the Letter of Credit Sublimit shall be in an amount agreed solely with the L/C Issuer.

(n) *Letter of Credit Reports.* For so long as any Letter of Credit issued by an L/C Issuer is outstanding, such L/C Issuer shall deliver to the Administrative Agent on the last Business Day of each calendar month, and on each date that an L/C Credit Extension occurs with respect to any such Letter of Credit, a report in the form of Exhibit L, appropriately completed with the information for every outstanding Letter of Credit issued by such L/C Issuer.

(o) *Letters of Credit Issued for Subsidiaries.* Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse the applicable L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

Section 2.04 Swing Line Loans.

(a) *The Swing Line.* Subject to the terms and conditions set forth herein, the Swing Line Lender agrees to make loans in Dollars to the Borrower (each such loan, a "**Swing Line Loan**"), from time to time on any Business Day during the period beginning on the Business Day after the Closing Date until the date which is one (1) Business Day prior to the Maturity Date of the Participating Revolving Credit Commitments (taking into account the Maturity Date of any Participating Revolving Credit Commitment that will automatically come into effect on such Maturity Date) in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of Revolving Credit Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of the Swing Line Lender's Revolving Credit Commitment; *provided* that, after giving effect to any Swing Line Loan (i) the Revolving Credit Exposure under such Participating Revolving Credit Commitments shall not exceed the aggregate Participating Revolving Credit Commitments, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender (other than the Swing Line Lender), plus such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all L/C Obligations, plus such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Participating Revolving Credit Commitment then in effect;

provided, further, that the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a Swing Line Loan, each Participating Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Pro Rata Share or other applicable share provided for under this Agreement times the amount of such Swing Line Loan.

(b) *Borrowing Procedures.* Each Swing Line Borrowing shall be made upon the Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000 (and any amount in excess of \$100,000 shall be an integral multiple of \$50,000) and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Promptly after receipt by the Swing Line Lender of any Swing Line Loan Notice (by telephone or in writing), the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 4:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower. Notwithstanding anything to the contrary contained in this Section 2.04 or elsewhere in this Agreement, the Swing Line Lender shall not be obligated to make any Swing Line Loan at a time when a Participating Revolving Credit Lender is a Defaulting Lender unless the Swing Line Lender has entered into arrangements reasonably satisfactory to it and the Borrower to eliminate the Swing Line Lender's Fronting Exposure (after giving effect to Section 2.17(a)(iv)) with respect to the Defaulting Lender's or Defaulting Lenders' participation in such Swing Line Loans, including by Cash Collateralizing, or obtaining a backstop letter of credit from an issuer reasonably satisfactory to the Swing Line Lender to support, such Defaulting Lender's or Defaulting Lenders' Pro Rata Share of the outstanding Swing Line Loans. The Borrower shall repay to the Swing Line Lender each Defaulting Lender's portion (after giving effect to Section 2.17(a)(iv)) of each Swing Line Loan promptly following demand by the Swing Line Lender.

(c) *Refinancing of Swing Line Loans.*

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender

to so request on its behalf), that each Participating Revolving Credit Lender make a Base Rate Loan in an amount equal to such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the amount of Swing Line Loans of the Borrower then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the aggregate Participating Revolving Credit Commitments and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Participating Revolving Credit Lender shall make an amount equal to its Pro Rata Share or other applicable share provided for under this Agreement of the amount specified in such Committed Loan Notice available to the Administrative Agent in Same Day Funds for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Participating Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan, as applicable, to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender. Upon the remission by the Administrative Agent to the Swing Line Lender of the full amount specified in such Committed Loan Notice, the Borrower shall be deemed to have repaid the applicable Swing Line Loan.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Participating Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each Participating Revolving Credit Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Participating Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the applicable Overnight Rate from time to time in effect. If such Participating Revolving Credit Lender pays such amount, the amount so paid shall constitute such Lender's Revolving Credit Loan including in the relevant Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Participating Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which

such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or the failure to satisfy any condition in Article IV, (C) any adverse change in the condition (financial or otherwise) of the Loan Parties, (D) any breach of this Agreement, or (E) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that each Participating Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) (but not to purchase and fund risk participations in Swing Line Loans) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay the applicable Swing Line Loans, together with interest as provided herein.

(d) *Repayment of Participations.*

(i) At any time after any Participating Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Pro Rata Share or other applicable share provided for under this Agreement of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Participating Revolving Credit Lender shall pay to the Swing Line Lender its Pro Rata Share or other applicable share provided for under this Agreement thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Overnight Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender.

(e) *Interest for Account of Swing Line Lender.* The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans. Until each Participating Revolving Credit Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Pro Rata Share or other applicable share provided for under this Agreement of any Swing Line Loan, interest in respect of such Pro Rata Share or other applicable share provided for under this Agreement shall be solely for the account of the Swing Line Lender.

(f) *Payments Directly to Swing Line Lender.* The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

(g) *Provisions Related to Extended Revolving Credit Commitments.* If the Maturity Date shall have occurred in respect of any Participating Revolving Credit Commitments (the "**Expiring Credit Commitment**") at a time when other Participating Revolving Credit Commitments are in effect (or will automatically be in effect upon such maturity) with a longer maturity date (each a "**non-Expiring Credit Commitment**" and collectively, the "**non-Expiring**

Credit Commitments”), then each outstanding Swing Line Loan on the earliest occurring Maturity Date shall be deemed reallocated to the non-Expiring Credit Commitments on a pro rata basis; *provided* that (x) to the extent that the amount of such reallocation would cause the aggregate credit exposure to exceed the aggregate amount of such non-Expiring Credit Commitments, immediately prior to such reallocation (after giving effect to any repayments of Revolving Credit Loans and any reallocation of Letter of Credit participations as contemplated in Section 2.03(m)) the amount of Swing Line Loans to be reallocated equal to such excess shall be repaid or cash collateralized in a manner reasonably satisfactory to the Swing Line Lender and (y) notwithstanding the foregoing, if a Default or Event of Default has occurred and is continuing, the Borrower shall still be obligated to pay Swing Line Loans allocated to the Participating Revolving Credit Lenders holding the Expiring Credit Commitments at the Maturity Date of the Expiring Credit Commitment or if the Loans have been accelerated prior to the Maturity Date of the Expiring Credit Commitment.

Section 2.05 Prepayments.

(a) *Optional*. (i) The Borrower may, upon notice to the Administrative Agent by the Borrower, (*provided, no such notice shall be required in connection with the prepayment of the Term B Loans or Term B-2 Loans on the Amendment No. 3 Effective Date*) at any time or from time to time voluntarily prepay any Class or Classes of Term Loans and Revolving Credit Loans of any Class or Classes in whole or in part without premium or penalty, except as set forth in Section 2.05(a)(vi); *provided* that (1) such notice must be received by the Administrative Agent not later than 11:30 a.m. (New York City time) (A) two (2) Business Days prior to any date of prepayment of Eurocurrency Rate Loans (unless otherwise agreed by the Administrative Agent) and (B) on the date of prepayment of Base Rate Loans; (2) any prepayment of Eurocurrency Rate Loans shall be in a minimum principal amount of \$1,000,000, or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding; and (3) any prepayment of Base Rate Loans shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender’s Pro Rata Share or other applicable share provided for under this Agreement of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be, as set forth in Section 2.05(c), accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05. In the case of each prepayment of the Loans pursuant to this Section 2.05(a), the Borrower may in its sole discretion select the Borrowing or Borrowings (and the order of maturity of principal payments) to be repaid, and such payment shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares or other applicable share provided for under this Agreement.

(ii) The Borrower may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; *provided* that (1) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the

date of the prepayment, and (2) any such prepayment shall be in a minimum principal amount of \$100,000 or a whole multiple of \$10,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(iii) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.05(a)(i) or 2.05(a)(ii) if such prepayment would have resulted from a refinancing of all or a portion of the applicable Facility, which refinancing shall not be consummated or shall otherwise be delayed.

(iv) Voluntary prepayments of any Class of Term Loans permitted pursuant to Section 2.05(a)(i) shall be applied to the remaining scheduled installments of principal thereof pursuant to Section 2.07(a) in a manner determined at the discretion of the Borrower and specified in the notice of prepayment (and absent such direction, in direct order of maturity).

(v) Notwithstanding anything in any Loan Document to the contrary, so long as (x) no Default or Event of Default has occurred and is continuing and (y) no proceeds of Revolving Credit Loans or Swing Line Loans are used for this purpose, any Company Party may prepay the outstanding Term Loans (which shall, for the avoidance of doubt, be automatically and permanently canceled immediately upon such prepayment) on the following basis:

(A) Any Company Party shall have the right to make a voluntary prepayment of Term Loans at a discount to par pursuant to a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of Discounted Prepayment Offers (any such prepayment, the “**Discounted Term Loan Prepayment**”), in each case made in accordance with this Section 2.05(a)(v).

(B) (1) Any Company Party may from time to time offer to make a Discounted Term Loan Prepayment by providing the Auction Agent with five (5) Business Days’ notice in the form of a Specified Discount Prepayment Notice; *provided* that (I) any such offer shall be made available, at the sole discretion of the Company Party, to (x) each Term Lender and/or (y) each Term Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such offer shall specify the aggregate principal amount offered to be prepaid (the “**Specified Discount Prepayment Amount**”) with respect to each applicable Class, the Class or Classes of Term Loans subject to such offer and the specific percentage discount to par (the “**Specified Discount**”) of such Term Loans to be prepaid (it being understood that different Specified Discounts and/or Specified Discount Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(B)), (III) the Specified Discount Prepayment Amount shall be in an aggregate amount not less than \$10,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such offer shall remain outstanding through the Specified Discount Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Specified

Discount Prepayment Notice and a form of the Specified Discount Prepayment Response to be completed and returned by each such Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., on the third Business Day after the date of delivery of such notice to such Lenders (which date may be extended for a period not exceeding three (3) Business Days upon notice by the Company Party to, and with the consent of, the Auction Agent) (the “**Specified Discount Prepayment Response Date**”).

(2) Each Term Lender receiving such offer shall notify the Auction Agent (or its delegate) by the Specified Discount Prepayment Response Date whether or not it agrees to accept a prepayment of any of its applicable then outstanding Term Loans at the Specified Discount and, if so (such accepting Lender, a “**Discount Prepayment Accepting Lender**”), the amount and the Classes of such Lender’s Term Loans to be prepaid at such offered discount. Each acceptance of a Discounted Term Loan Prepayment by a Discount Prepayment Accepting Lender shall be irrevocable. Any Term Lender whose Specified Discount Prepayment Response is not received by the Auction Agent by the Specified Discount Prepayment Response Date shall be deemed to have declined to accept the applicable Borrower Offer of Specified Discount Prepayment.

(3) If there is at least one (1) Discount Prepayment Accepting Lender, the relevant Company Party will make a prepayment of outstanding Term Loans pursuant to this paragraph (B) to each Discount Prepayment Accepting Lender on the Discounted Prepayment Effective Date in accordance with the respective outstanding amount and Classes of Term Loans specified in such Lender’s Specified Discount Prepayment Response given pursuant to subsection (2) above; *provided* that, if the aggregate principal amount of Term Loans accepted for prepayment by all Discount Prepayment Accepting Lenders exceeds the Specified Discount Prepayment Amount, such prepayment shall be made pro rata among the Discount Prepayment Accepting Lenders in accordance with the respective principal amounts accepted to be prepaid by each such Discount Prepayment Accepting Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its reasonable discretion) will calculate such proration (the “**Specified Discount Proration**”). The Auction Agent shall promptly, and in any case within three (3) Business Days following the Specified Discount Prepayment Response Date, notify (I) the relevant Company Party of the respective Term Lenders’ responses to such offer, the Discounted Prepayment Effective Date and the aggregate principal amount of the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, and the aggregate principal amount and the Classes of Term Loans to be prepaid at the Specified Discount on such date and (III) each Discount Prepayment Accepting Lender of the Specified Discount Proration, if any, and confirmation of the principal amount, Class and Type of Term Loans of such Lender to be prepaid at the Specified Discount on such date. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the Company Party and such Term Lenders shall be conclusive and binding for all purposes absent manifest error.

The payment amount specified in such notice to the Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(C) (1) Any Company Party may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice in the form of a Discount Range Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Company Party, to (x) each Term Lender and/or (y) each Term Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate principal amount of the relevant Term Loans (the "**Discount Range Prepayment Amount**"), the Class or Classes of Term Loans subject to such offer and the maximum and minimum percentage discounts to par (the "**Discount Range**") of the principal amount of such Term Loans with respect to each relevant Class of Term Loans willing to be prepaid by such Company Party (it being understood that different Discount Ranges and/or Discount Range Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(C)), (III) the Discount Range Prepayment Amount shall be in an aggregate amount not less than \$10,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such solicitation by a Company Party shall remain outstanding through the Discount Range Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Discount Range Prepayment Notice and a form of the Discount Range Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., on the third Business Day after the date of delivery of such notice to such Lenders (which date may be extended for a period not exceeding three (3) Business Days upon notice by the Company Party to, and with the consent of, the Auction Agent) (the "**Discount Range Prepayment Response Date**"). Each Term Lender's Discount Range Prepayment Offer shall be irrevocable and shall specify a discount to par within the Discount Range (the "**Submitted Discount**") at which such Lender is willing to allow prepayment of any or all of its then outstanding Term Loans of the applicable Class or Classes and the maximum aggregate principal amount and Classes of such Lender's Term Loans (the "**Submitted Amount**") such Term Lender is willing to have prepaid at the Submitted Discount. Any Term Lender whose Discount Range Prepayment Offer is not received by the Auction Agent by the Discount Range Prepayment Response Date shall be deemed to have declined to accept a Discounted Term Loan Prepayment of any of its Term Loans at any discount to their par value within the Discount Range.

(2) The Auction Agent shall review all Discount Range Prepayment Offers received on or before the applicable Discount Range Prepayment Response Date and shall determine (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the Applicable Discount and Term Loans to be prepaid at such Applicable Discount in accordance with this subsection (C). The relevant Company Party agrees to accept on the Discount Range Prepayment Response Date all Discount Range Prepayment Offers received by the Auction Agent within the Discount Range by the Discount Range Prepayment Response Date, in the

order from the Submitted Discount that is the largest discount to par to the Submitted Discount that is the smallest discount to par, up to and including the Submitted Discount that is the smallest discount to par within the Discount Range (such Submitted Discount that is the smallest discount to par within the Discount Range being referred to as the “**Applicable Discount**”) which yields a Discounted Term Loan Prepayment in an aggregate principal amount equal to the lower of (I) the Discount Range Prepayment Amount and (II) the sum of all Submitted Amounts. Each Term Lender that has submitted a Discount Range Prepayment Offer to accept prepayment at a discount to par that is larger than or equal to the Applicable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Submitted Amount (subject to any required proration pursuant to the following subsection (3)) at the Applicable Discount (each such Term Lender, a “**Participating Lender**”).

(3) If there is at least one (1) Participating Lender, the relevant Company Party will prepay the respective outstanding Term Loans of each Participating Lender on the Discounted Prepayment Effective Date in the aggregate principal amount and of the Classes specified in such Lender’s Discount Range Prepayment Offer at the Applicable Discount; *provided* that if the Submitted Amount by all Participating Lenders offered at a discount to par greater than the Applicable Discount exceeds the Discount Range Prepayment Amount, prepayment of the principal amount of the relevant Term Loans for those Participating Lenders whose Submitted Discount is a discount to par greater than or equal to the Applicable Discount (the “**Identified Participating Lenders**”) shall be made pro rata among the Identified Participating Lenders in accordance with the Submitted Amount of each such Identified Participating Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “**Discount Range Proration**”). The Auction Agent shall promptly, and in any case within five (5) Business Days following the Discount Range Prepayment Response Date, notify (I) the relevant Company Party of the respective Term Lenders’ responses to such solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount of the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount and Classes of Term Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and Classes of such Term Lender to be prepaid at the Applicable Discount on such date, and (IV) if applicable, each Identified Participating Lender of the Discount Range Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the relevant Company Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(D) (1) Any Company Party may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice in the form of a Solicited Discounted Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Company Party, to (x) each Term Lender and/or (y) each Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate amount of the Term Loans (the "**Solicited Discounted Prepayment Amount**") and the Class or Classes of Term Loans the applicable Company Party is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(D)), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate amount not less than \$10,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such solicitation by a Company Party shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Solicited Discounted Prepayment Notice and a form of the Solicited Discounted Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., on the third Business Day after the date of delivery of such notice to such Term Lenders (which date may be extended for a period not exceeding three (3) Business Days upon notice by the Company Party to the Auction Agent) (the "**Solicited Discounted Prepayment Response Date**"). Each Term Lender's Solicited Discounted Prepayment Offer shall (x) be irrevocable, (y) remain outstanding until the Acceptance Date, and (z) specify both a discount to par (the "**Offered Discount**") at which such Term Lender is willing to allow prepayment of its then outstanding Term Loan and the maximum aggregate principal amount and Classes of such Term Loans (the "**Offered Amount**") such Term Lender is willing to have prepaid at the Offered Discount. Any Term Lender whose Solicited Discounted Prepayment Offer is not received by the Auction Agent by the Solicited Discounted Prepayment Response Date shall be deemed to have declined prepayment of any of its Term Loans at any discount.

(2) The Auction Agent shall promptly provide the relevant Company Party with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. Such Company Party shall review all such Solicited Discounted Prepayment Offers and select the smallest of the Offered Discounts specified by the relevant responding Term Lenders in the Solicited Discounted Prepayment Offers that is acceptable to the Company Party in its sole discretion (the "**Acceptable Discount**"), if any. If the Company Party elects, in its sole discretion, to accept any Offered Discount as the Acceptable Discount, then as soon as practicable after the determination of the Acceptable Discount, but in no event later than by the third Business Day after the date of receipt by such Company Party from the Auction Agent of a copy of all Solicited Discounted Prepayment Offers pursuant to the first sentence of this subsection (2) (the "**Acceptance Date**"), the Company Party shall submit an Acceptance and Prepayment Notice to the Auction Agent setting forth the Acceptable Discount. If the Auction Agent shall fail to receive an Acceptance and

Prepayment Notice from the Company Party by the Acceptance Date, such Company Party shall be deemed to have rejected all Solicited Discounted Prepayment Offers.

(3) Based upon the Acceptable Discount and the Solicited Discounted Prepayment Offers received by Auction Agent by the Solicited Discounted Prepayment Response Date, within three (3) Business Days after receipt of an Acceptance and Prepayment Notice (the “**Discounted Prepayment Determination Date**”), the Auction Agent will determine (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate principal amount and the Classes of Term Loans (the “**Acceptable Prepayment Amount**”) to be prepaid by the relevant Company Party at the Acceptable Discount in accordance with this Section 2.05(a)(v)(D). If the Company Party elects to accept any Acceptable Discount, then the Company Party agrees to accept all Solicited Discounted Prepayment Offers received by Auction Agent by the Solicited Discounted Prepayment Response Date, in the order from largest Offered Discount to smallest Offered Discount, up to and including the Acceptable Discount. Each Term Lender that has submitted a Solicited Discounted Prepayment Offer with an Offered Discount that is greater than or equal to the Acceptable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Offered Amount (subject to any required pro-rata reduction pursuant to the following sentence) at the Acceptable Discount (each such Lender, a “**Qualifying Lender**”). The Company Party will prepay outstanding Term Loans pursuant to this subsection (D) to each Qualifying Lender in the aggregate principal amount and of the Classes specified in such Lender’s Solicited Discounted Prepayment Offer at the Acceptable Discount; *provided* that if the aggregate Offered Amount by all Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount exceeds the Solicited Discounted Prepayment Amount, prepayment of the principal amount of the Term Loans for those Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount (the “**Identified Qualifying Lenders**”) shall be made pro rata among the Identified Qualifying Lenders in accordance with the Offered Amount of each such Identified Qualifying Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “**Solicited Discount Proration**”). On or prior to the Discounted Prepayment Determination Date, the Auction Agent shall promptly notify (I) the relevant Company Party of the Discounted Prepayment Effective Date and Acceptable Prepayment Amount comprising the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Term Loans and the Classes to be prepaid at the Applicable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the Classes of such Term Lender to be prepaid at the Acceptable Discount on such date, and (IV) if applicable, each Identified Qualifying Lender of the Solicited

Discount Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to such Company Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to such Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(E) In connection with any Discounted Term Loan Prepayment, the Company Parties and the Term Lenders acknowledge and agree that the Auction Agent may require as a condition to any Discounted Term Loan Prepayment, the payment of customary and documented fees and out-of-pocket expenses from a Company Party in connection therewith.

(F) If any Term Loan is prepaid in accordance with paragraphs (B) through (D) above, a Company Party shall prepay such Term Loans on the Discounted Prepayment Effective Date without premium or penalty, except as set forth in Section 2.05(a)(vi). The relevant Company Party shall make such prepayment to the Administrative Agent, for the account of the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, at the Administrative Agent's Office in immediately available funds not later than 1:00 p.m. on the Discounted Prepayment Effective Date and all such prepayments shall be applied to the remaining scheduled installments of principal of the relevant Class of Term Loans pursuant to Section 2.07(a) on a pro-rata basis across such installments. The Term Loans so prepaid shall be, as set forth in Section 2.05(c), accompanied by all accrued and unpaid interest on the par principal amount so prepaid up to, but not including, the Discounted Prepayment Effective Date. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(a)(v) shall be paid to the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, and shall be applied to the relevant Term Loans of such Lenders in accordance with their respective Pro Rata Share or other applicable share hereunder. The aggregate principal amount of the Classes and installments of the relevant Term Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the Classes of Term Loans prepaid on the Discounted Prepayment Effective Date in any Discounted Term Loan Prepayment. In connection with each prepayment pursuant to this Section 2.05(a)(v), the relevant Company Party shall waive any right to bring any action against the Administrative Agent, in its capacity as such, in connection with any such Discounted Term Loan Prepayment. In connection with each prepayment pursuant to this Section 2.05(a)(v), the relevant Company Party shall (a) make a representation to the Term Lenders and the Administrative Agent that it does not possess material non-public information with respect to Holdings and its Subsidiaries or the securities of any of them that has not been disclosed to the Term Lenders generally (other than Term Lenders who elect not to receive such information) or shall make a statement that such representation cannot be made and (b) waive any right to bring any action against the Administrative Agent, in its capacity as such, in connection with any such Discounted Term Loan Prepayment.

(G) To the extent not expressly provided for herein, each Discounted Term Loan Prepayment shall be consummated pursuant to procedures consistent with the

provisions in this Section 2.05(a)(v), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by the applicable Company Party.

(H) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.05(a)(v), each notice or other communication required to be delivered or otherwise provided to the Auction Agent (or its delegate) shall be deemed to have been given upon the Auction Agent's (or its delegate's) actual receipt during normal business hours of such notice or communication; *provided* that any notice or communication actually received outside of normal business hours shall be deemed to have been given as of the opening of business on the next Business Day.

(I) Each of the Company Parties and the Term Lenders acknowledge and agree that the Auction Agent may perform any and all of its duties under this Section 2.05(a)(v) by itself or through any Affiliate of the Auction Agent and expressly consents to any such delegation of duties by the Auction Agent to such Affiliate and the performance of such delegated duties by such Affiliate. The exculpatory provisions pursuant to this Agreement shall apply to each Affiliate of the Auction Agent and its respective activities in connection with any Discounted Term Loan Prepayment provided for in this Section 2.05(a)(v) as well as activities of the Auction Agent.

(J) Each Company Party shall have the right, by written notice to the Auction Agent, to revoke or modify its offer to make a Discounted Term Loan Prepayment and rescind the applicable Specified Discount Prepayment Notice, Discount Range Prepayment Notice or Solicited Discounted Prepayment Notice therefor at its discretion at any time on or prior to the applicable Specified Discount Prepayment Response Date (and if such offer is revoked pursuant to the preceding clauses, any failure by such Company Party to make any prepayment to a Lender, as applicable, pursuant to this Section 2.05(a)(v) shall not constitute a Default or Event of Default under Section 8.01 or otherwise).

(vi) Notwithstanding the foregoing, in the event that, on or prior to the date that is ~~six~~twelve (~~6~~12) months after the Amendment No. ~~13~~13 Effective Date, the Borrower (x) prepays, refinances, substitutes or replaces any Term B ~~Loans or Term B-2-3~~Loans pursuant to a Repricing Transaction (including, for avoidance of doubt, any prepayment made pursuant to Section 2.05(b)(iii) that constitutes a Repricing Transaction), or (y) effects any amendment of this Agreement resulting in a Repricing Transaction, the Borrower shall pay to the Administrative Agent, for the ratable account of each of the applicable Term Lenders, (I) in the case of clause (x), a prepayment premium of 1.00% of the aggregate principal amount of the Term B ~~Loans or Term B-2-3~~Loans so prepaid, refinanced, substituted or replaced and (II) in the case of clause (y), a fee equal to 1.00% of the aggregate principal amount of the applicable Term B ~~Loans or Term B-2-3~~Loans subject to such amendment. Such amounts shall be due and payable on the date of effectiveness of such Repricing Transaction.

(b) *Mandatory.* (i) Within five (5) Business Days after financial statements have been delivered pursuant to Section 6.01(a) (commencing with the fiscal year ended December 31, 2015) and the related Compliance Certificate has been delivered pursuant to Section 6.02(a), the Borrower shall, subject to clause (b)(vii) of this Section 2.05, cause to be prepaid an aggregate

principal amount of Term Loans in an amount equal to (A) the Applicable ECF Percentage of Excess Cash Flow, if any, for the Excess Cash Flow Period then ended minus (B) the sum of (1) all voluntary prepayments of (x) Term B-3 Loans and (y) Term Loans that are not Term B-3 Loans, Incremental Equivalent Debt and Refinancing Equivalent Debt (in each case secured by the Collateral on a first lien basis) during such Excess Cash Flow Period or after the end of such Excess Cash Flow Period and prior to when such Excess Cash Flow prepayment is due (limited in the case of any voluntary prepayments made pursuant to Section 2.05(a)(v) to the discounted amount actually paid in respect of the principal amount of such Term Loans (as opposed to the face amount so prepaid)), (2) all voluntary prepayments of Revolving Credit Loans during such Excess Cash Flow Period or after the end of such Excess Cash Flow Period and prior to when such Excess Cash Flow prepayment is due, to the extent the Revolving Credit Commitments are permanently reduced by the amount of such payments and (3) all voluntary prepayments of Second Lien Term Loans, Second Lien Incremental Equivalent Debt and Second Lien Refinancing Equivalent Debt during such Excess Cash Flow Period or after the end of such Excess Cash Flow Period and prior to when such Excess Cash Flow prepayment is due and, in the case of each of the immediately preceding clauses (1), (2) and (3) to the extent such prepayments are funded with Internally Generated Cash.

(ii) If (1) the Borrower or any Restricted Subsidiary of the Borrower Disposes of any property or assets (other than any Disposition of any property or assets permitted by Section 7.05(a), (b), (c), (d), (e), (g), (h), (i), (k), (l), (m), (n), (o), (p), (q), (s) or (t) (*provided*, that, in the case of Section 7.05(t), immediately after giving effect to such Sale Leaseback and the application of the proceeds (if any) therefrom, (A) no Event of Default shall have occurred and be continuing and (B) the Total Net Leverage Ratio on a Pro Forma Basis is not greater than 6.50:1.00) or (2) any Casualty Event occurs, which results in the realization or receipt by the Borrower or Restricted Subsidiary of Net Proceeds, the Borrower shall cause to be prepaid on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or any Restricted Subsidiary of such Net Proceeds, subject to clause (b)(vii) of this Section 2.05, an aggregate principal amount of Term Loans in an amount equal to 100% of all such Net Proceeds received; *provided* that if at the time that any such prepayment would be required, the Borrower (or any Restricted Subsidiary) is required to offer to repurchase Permitted Pari Passu Secured Refinancing Debt (or any Permitted Refinancing thereof that is secured on a pari passu basis with the Obligations under Term Loans and Revolving Credit Loans required to be secured on a first lien basis) pursuant to the terms of the documentation governing such Indebtedness with the net proceeds of such Disposition or Casualty Event (such Permitted Pari Passu Secured Refinancing Debt (or Permitted Refinancing thereof) required to be offered to be so repurchased, "**Other Applicable Indebtedness**"), then the Borrower may apply such Net Proceeds on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness at such time; *provided* that the portion of such net proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such net proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such net proceeds shall be allocated to the Term Loans in accordance with the terms hereof) to the prepayment of the Term Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.05(b)(ii) shall be reduced accordingly; *provided, further*, that to the extent the holders of Other Applicable Indebtedness decline to have such indebtedness repurchased or prepaid, the declined

amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof.

(iii) If the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness after the Closing Date not permitted to be incurred or issued pursuant to Section 7.03, the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds.

(iv) If the Borrower incurs or issues any Refinancing Loans (or Refinancing Equivalent Debt) resulting in Net Proceeds (as opposed to such Refinancing Loans or Refinancing Equivalent Debt arising out of an exchange of existing Term Loans for such Refinancing Loans or Refinancing Equivalent Debt), the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower of such Net Proceeds.

(v) If for any reason the aggregate Outstanding Amount of Revolving Credit Loans, Swing Line Loans and L/C Obligations at any time exceeds the aggregate Revolving Credit Commitments then in effect, the Borrower shall promptly prepay Revolving Credit Loans and Swing Line Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; *provided* that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b)(v) unless after the prepayment in full of the Revolving Credit Loans and Swing Line Loans such aggregate Outstanding Amount exceeds the aggregate Revolving Credit Commitments then in effect.

(vi) Each prepayment of Term Loans pursuant to Section 2.05(b) (A) shall be applied either (x) ratably to each Class of Term Loans then outstanding or (y) as requested by the Borrower in the notice delivered pursuant to clause (vii) below, to any Class or Classes of Term Loans with a Maturity Date preceding the Maturity Date of the remaining Classes of Term Loans then outstanding, (B) shall be applied, with respect to each such Class for which prepayments will be made, in a manner determined at the discretion of the Borrower in the applicable notice and, if not specified, in direct order of maturity to repayments thereof required pursuant to Section 2.07(a) and (C) shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Share (or other applicable share provided by this Agreement) of each such Class of Term Loans, subject to clause (vii) of this Section 2.05(b). Notwithstanding clause (A) above, (1) in the case of prepayments pursuant to Section 2.05(b)(iv), such prepayment shall be applied in accordance with this clause (vi) solely to those applicable Classes of Term Loans selected by the Borrower and specified in the applicable Refinancing Amendment or notice (i.e., the applicable Refinanced Debt or Refinanced Term Loans) and (2) any Incremental Amendment, Refinancing Amendment or Extension Amendment may provide (including on an optional basis as elected by the Borrower) for a less than ratable application of prepayments to any Class of Term Loans established thereunder.

(vii) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made by the Borrower pursuant to clauses

(i) through (iv) of this Section 2.05(b) at least two (2) Business Days prior to the date of such prepayment (unless otherwise agreed by the Administrative Agent). Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower's prepayment notice and of such Appropriate Lender's Pro Rata Share of the prepayment. Each Term Lender may reject all or a portion of its Pro Rata Share of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of Term Loans required to be made pursuant to clauses (i), (ii) and (iii) of this Section 2.05(b) by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 5:00 p.m. one (1) Business Day after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Term Loans to be rejected by such Lender. If a Term Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans. Any Declined Proceeds shall be offered to the Term Lenders not so declining such prepayment on a pro rata basis in accordance with the amounts of the Term Loans of such Lender (with such non-declining Term Lenders having the right to decline any prepayment with Declined Proceeds at the time and in the manner specified by the Administrative Agent). To the extent such non-declining Term Lenders elect to decline their Pro Rata Share of such Declined Proceeds, any Declined Proceeds remaining thereafter shall, after application towards any mandatory prepayment of Second Lien Term Loans, be retained by the Borrower (such remaining Declined Proceeds, the "**Borrower Retained Prepayment Amounts**").

(viii) Notwithstanding any other provisions of this Section 2.05, (i) to the extent that any of or all the Net Proceeds of any Disposition by a Foreign Subsidiary ("**Foreign Disposition**"), the Net Proceeds of any Casualty Event from a Foreign Subsidiary (a "**Foreign Casualty Event**") or Excess Cash Flow attributable to Foreign Subsidiaries are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05(b) but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to use commercially reasonable efforts to cause the applicable Foreign Subsidiary to promptly take all actions reasonably required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Proceeds or Excess Cash Flow is permitted under the applicable local law, such repatriation will be promptly effected and an amount equal to such repatriated Net Proceeds or Excess Cash Flow will be promptly (and in any event not later than five (5) Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to this Section 2.05(b) to the extent provided herein and (ii) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Foreign Disposition or any Foreign Casualty Event or Excess Cash Flow attributable to Foreign Subsidiaries would have material adverse tax consequences (as determined in good faith by the Borrower) with respect to such Net Proceeds or Excess Cash Flow, such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to

repay Term Loans at the times provided in this Section 2.05(b) but may be retained by the applicable Foreign Subsidiary.

(c) *Interest Funding Losses, Etc.* (i) Except to the extent otherwise agreed by each Lender so being prepaid, all prepayments of Loans (other than any Revolving Credit Loan that is a Base Rate Loan and any Swing Line Loan) shall be accompanied by all accrued and unpaid interest thereon through but not including the date of such prepayment (which, in the case of prepayments pursuant to Section 2.05(a)(v)(F) shall be the accrued and unpaid interest on the principal amount so prepaid up to, but not including, the applicable Discounted Prepayment Effective Date), together with, in the case of any such prepayment of a Eurocurrency Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurocurrency Rate Loan pursuant to Section 3.05.

(ii) So long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurocurrency Rate Loans is required to be made under this Section 2.05 (but excluding prepayments required under Section 2.05(b)(iv)), prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 2.05 in respect of any such Eurocurrency Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in its sole discretion, deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the relevant provisions of this Section 2.05. Such deposit shall be deemed to be a prepayment of such Loans by the Borrower for all purposes under this Agreement.

Section 2.06 Termination or Reduction of Commitments.

(a) *Optional.* The Borrower may, upon written notice to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class, in each case without premium or penalty; *provided* that (i) any such notice shall be received by the Administrative Agent at least three (3) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$500,000, or any whole multiple of \$100,000 in excess thereof or, if less, the entire amount thereof and (iii) if, after giving effect to any reduction of the Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Participating Revolving Credit Commitments, such sublimit shall be automatically reduced by the amount of such excess. Except as provided in the immediately preceding sentence, the amount of any such Revolving Credit Commitment reduction shall not be applied to the Letter of Credit Sublimit or the Swing Line Sublimit unless otherwise specified by the Borrower. Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of termination of any Commitments if such termination would have resulted from a refinancing of all of the applicable Facility, which refinancing shall not be consummated or otherwise shall be delayed.

(b) *Mandatory*. The commitment of the Additional Term B ~~Commitment of each Term-3~~ Lender to make Term B-3 Loans shall be ~~automatically and permanently reduced to \$0~~ terminated upon the fundingmaking of Term B-3 Loans ~~to be made by it on the Closing Date pursuant to Section 2.01~~. The Term Commitment of each Term Lender with respect to Incremental Term Loans, any Refinancing Term Facility or any Term Loan Extension Series shall be automatically and permanently reduced to \$0 upon the funding of Term Loans to be made by it on the date set forth in the corresponding Incremental Amendment, Refinancing Amendment or Extension Amendment. The Revolving Credit Commitment of each Revolving Credit Lender shall automatically and permanently terminate on the Maturity Date for the applicable Class of Revolving Credit Commitments; provided that (x) the foregoing shall not release any Revolving Credit Lender from any liability it may have for its failure to fund Revolving Credit Loans, L/C Advances or participations in Swing Line Loans that were required to be funded by it on or prior to such Maturity Date and (y) the foregoing will not release any Revolving Credit Lender from any obligation to fund its portion of L/C Advances or participations in Swing Line Loans with respect to Letters of Credit issued or Swing Line Loans made prior to such Maturity Date.

(c) *Application of Commitment Reductions; Payment of Fees*. The Administrative Agent will promptly notify the Appropriate Lenders of any termination or reduction of unused portions of the Letter of Credit Sublimit or the Swing Line Sublimit or the unused Commitments of any Class under this Section 2.06. Upon any reduction of unused Commitments of any Class, the Commitment of each Lender of such Class shall be reduced by such Lender's Pro Rata Share of the amount by which such Commitments are reduced (other than the termination of the Commitment of any Lender as provided in Section 3.07). All commitment fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

Section 2.07 Repayment of Loans.

(a) *Term Loans*. (i) The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders (A) on the last Business Day of each March, June, September and December, an aggregate principal amount equal to ~~\$1,018,622.45~~ 0.25% of the aggregate principal amount of Term B-3 Loans outstanding on the Amendment No. 3 Effective Date after giving effect to Amendment No. 3 (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05 and 10.07(p)) and (B) on the Maturity Date for any Class of Term Loans, the aggregate principal amount of all Term Loans of such Class outstanding on such date.

(ii) The amount of any such payment set forth in clause (i) above shall be adjusted to account for the addition of any Incremental Term Loans, Extended Term Loans or Refinancing Term Loans to contemplate (A) the reduction in the aggregate principal amount of any Term Loans that were paid down in connection with the incurrence of such Incremental Term Loans, Extended Term Loans or Refinancing Term Loans, and (B) any increase to payments to the extent and as required pursuant to the terms of any applicable Incremental Amendment, Extension Amendment or Refinancing Amendment.

(b) *Revolving Credit Loans*. The Borrower shall, jointly and severally, repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the Maturity Date for any Class of Revolving Credit Commitments the aggregate outstanding principal amount of all Revolving Credit Loans made in respect of such Revolving Credit Commitments.

(c) *Swing Line Loans*. The Borrower shall repay the aggregate principal amount of each Swing Line Loan on the earlier to occur of (i) the date five (5) Business Days after such Loan is made and (ii) the Latest Maturity Date for the Participating Revolving Credit Commitments.

Section 2.08 Interest.

(a) Subject to the provisions of Section 2.08(b), (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for Revolving Credit Loans made under the Initial Revolving Credit Commitments.

(b) During the continuance of a Default under Section 8.01(a), the Borrower shall pay interest on past due amounts owing by it hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; *provided* that no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on such amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.09 Fees. In addition to certain fees described in Sections 2.03(h) and (i):

(a) *Commitment Fee*. The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Credit Lender under each Class of Revolving Credit Commitments in accordance with its Pro Rata Share or other applicable share provided for under this Agreement, a commitment fee equal to the Applicable Rate with respect to Revolving Credit Commitments commitment fees for such Class times the actual daily amount by which the aggregate Revolving Credit Commitment for the applicable Class of Revolving Credit Commitments exceeds the sum of (A) the Outstanding Amount of Revolving Credit Loans for such Class of Revolving Credit Commitments and (B) the Outstanding Amount of L/C Obligations for such Class of Revolving Credit Commitments; provided that any commitment fee accrued with respect to any of the Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such

Lender shall be a Defaulting Lender except to the extent that such commitment fee shall otherwise have been due and payable by the Borrower prior to such time; and provided, further, that no commitment fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender. The commitment fee on each Class of Revolving Credit Commitments shall accrue at all times from the Closing Date until the Maturity Date for such Class of Revolving Credit Commitments, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each of March, June, September and December, commencing with the first such date during the first full fiscal quarter to occur after the Closing Date, and on the Maturity Date for such Class of Revolving Credit Commitments. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) *Other Fees.* The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing (including without limitation pursuant to the Fee Letter) in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

(c) *Upfront and Closing Fees.* The Borrower agrees to pay on the Closing Amendment No. 3 Effective Date to each Term B-3 Lender party to this Agreement on the Closing Amendment No. 3 Effective Date, as fee compensation for the funding of such Lender's Term B-3 Loan and making or conversion of such Lender's Revolving Credit Commitment, a closing Term B Loan or Term B-2 Loan into a Term B-3 Loan an upfront fee (the "Closing Upfront Fee") in an amount equal to ~~(x) 0.50~~ 1.00% of the stated principal amount of such Lender's Revolving Credit Commitment in effect on the Closing Date (provided that, in the case of this clause (x), a Revolving Credit Lender may agree with the Borrower to accept a lower fee in respect of all or a portion of its Revolving Credit Commitments) and ~~(y) 0.25%~~ 0.25% of the stated principal amount of such Lender's Term B-3 Loan made on the Closing Date. Such Closing Upfront Fee will be in all respects fully earned, due and payable on the Closing Date and Amendment No. 3 Effective and be non-refundable and non-creditable thereafter and, in the case of the Term B-3 Loans of the Additional Term B-3 Lender, such Closing Upfront Fee shall be netted against Term Loans made by such Additional Term B-3 Lender on the Closing Date Amendment No. 3 Date. The Closing Fee (as defined herein immediately prior to the Amendment No. 3 Effective Date) shall continue to be non-refundable and non-creditable.

Section 2.10 Computation of Interest and Fees.

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurocurrency Rate or the prime rate) shall be made on the basis of a year of three hundred and sixty-five (365) days, or three hundred and sixty-six (366) days, as applicable, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a three hundred and sixty (360) day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one

(1) day. In computing interest on any Loan, the day such Loan is made or converted to a Loan of a different Type shall be included and the date such Loan is repaid or converted to a Loan of a different type, as the case may be, shall be excluded. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11 Evidence of Indebtedness.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records and, in the case of the Administrative Agent, entries in the Register, evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(c) Entries made in good faith by the Administrative Agent in the Register pursuant to Sections 2.11(a) and (b), and by each Lender in its account or accounts pursuant to Sections 2.11(a) and (b), shall be *prima facie* evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.12 Payments Generally.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share provided for under this Agreement) of such payment in like funds as received by wire transfer to such Lender's applicable Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be; *provided* that, if such extension would cause payment of interest on or principal of Eurocurrency Rate Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(c) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(i) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Overnight Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at a rate per annum equal to the applicable Overnight Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower

shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(c) shall be conclusive, absent manifest error.

(d) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans and to fund participations in Letters of Credit and Swing Line Loans are several and not joint. The failure of any Lender to make any Loan or to fund any such participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may (to the fullest extent permitted by mandatory provisions of applicable Law), but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the sum of (a) the Outstanding Amount of all Loans outstanding at such time and (b) the Outstanding Amount of all L/C Obligations outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

Section 2.13 Sharing of Payments. If, other than as expressly provided elsewhere herein or required by court order, any Lender shall obtain payment in respect of any principal or interest on account of the Loans made by it, or the participations in L/C Obligations and Swing Line Loans held by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder)

thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in L/C Obligations or Swing Line Loans held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of any principal or interest on such Loans or such participations, as the case may be, pro rata with each of them; provided that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. For the avoidance of doubt, the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time (including the application of funds arising from the existence of a Defaulting Lender) or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased. For purposes of subclause (v)(a) of the definition of Indemnified Taxes, a Lender that acquires a participation pursuant to this Section 2.13 shall be treated as having acquired such participation on the earlier date(s) on which such Lender acquired the applicable interest(s) in the Commitment(s) and/or Loan(s) to which such participation relates.

Section 2.14 Incremental Credit Extensions.

(a) *Incremental Commitments.* The Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent (an "**Incremental Loan Request**"), request (A) one or more new commitments which may be of the same Class as any outstanding Term Loans (a "**Term Loan Increase**") or a new Class of term loans (collectively with any Term Loan Increase, the "**Incremental Term Commitments**") and/or (B) one or more increases in the amount of the Revolving Credit Commitments (a "**Revolving Commitment Increase**") or the establishment of one or more new revolving credit commitments (any such new commitments, collectively with any Revolving Commitment Increases, the "**Incremental Revolving Credit Commitments**") and the Incremental Revolving Credit Commitments, collectively with any

Incremental Term Commitments, the “**Incremental Commitments**”), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders.

(b) *Incremental Loans*. On the applicable date (each, an “**Incremental Facility Closing Date**”) specified in any Incremental Amendment (including through any Term Loan Increase or Revolving Increase, as applicable), subject to the satisfaction of the terms and conditions in this Section 2.14, (i) (A) each Incremental Term Lender of such Class shall make a Loan to the Borrower (an “**Incremental Term Loan**”) in an amount equal to its Incremental Term Commitment of such Class and (B) each Incremental Term Lender of such Class shall become a Lender hereunder with respect to the Incremental Term Commitment of such Class and the Incremental Term Loans of such Class made pursuant thereto and (ii) (A) each Incremental Revolving Credit Lender of such Class shall make its Commitment available to the Borrower (when borrowed, an “**Incremental Revolving Loan**”) and collectively with any Incremental Term Loan, an “**Incremental Loan**”) in an amount equal to its Incremental Revolving Credit Commitment of such Class and (B) each Incremental Revolving Credit Lender of such Class shall become a Lender hereunder with respect to the Incremental Revolving Credit Commitment of such Class and the Incremental Revolving Loans of such Class made pursuant thereto.

(c) *Incremental Loan Request*. Each Incremental Loan Request from the Borrower pursuant to this Section 2.14 shall set forth the requested amount and proposed terms of the relevant Incremental Term Loans or Incremental Revolving Credit Commitments. Incremental Term Loans may be made, and Incremental Revolving Credit Commitments may be provided, by any existing Lender (but no existing Lender will have an obligation to make any Incremental Commitment, nor will the Borrower have any obligation to approach any existing Lender to provide any Incremental Commitment) or by any Additional Lender (each such existing Lender or Additional Lender providing such Commitment or Loan, an “**Incremental Revolving Credit Lender**” or “**Incremental Term Lender**,” as applicable, and, collectively, the “**Incremental Lenders**”); *provided* that (i) the Administrative Agent, the Swing Line Lender and each L/C Issuer shall have consented (not to be unreasonably withheld or delayed) to such Additional Lender’s making such Incremental Term Loans or providing such Incremental Revolving Credit Commitments to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Term Loans or Revolving Credit Commitments, as applicable, to such Lender or Additional Lender, (ii) with respect to Incremental Term Commitments, any Affiliated Lender providing an Incremental Term Commitment shall be subject to the same restrictions set forth in Section 10.07(k) as they would otherwise be subject to with respect to any purchase by or assignment to such Affiliated Lender of Term Loans and (iii) Affiliated Lenders may not provide Incremental Revolving Credit Commitments.

(d) *Effectiveness of Incremental Amendment*. The effectiveness of any Incremental Amendment, and the Incremental Commitments thereunder, shall be subject to the satisfaction on the applicable date (which shall be no earlier than the date of such Incremental Amendment) specified therein (the “**Incremental Amendment Date**”) of each of the following conditions, together with any other conditions set forth in the Incremental Amendment:

(i) after giving effect to such Incremental Commitments, the conditions of Section 4.02 shall be satisfied (it being understood that all references to “the date of such Credit Extension” or similar language in such Section 4.02 shall be deemed to refer to the Incremental

Amendment Date); *provided, that*, such Incremental Amendment may include a waiver by the Incremental Lenders party thereto of the condition set forth in Section 4.02(iii) and, in connection with any Incremental Commitment the primary purpose of which is to finance a Permitted Acquisition, a waiver in full or in part of the conditions set forth in clauses (i) and (ii) (other than with respect to any Event of Default under Section 8.01(a) or (f)) of Section 4.02;

(ii) each Incremental Term Commitment shall be in an aggregate principal amount that is not less than \$10,000,000 and shall be in an increment of \$1,000,000 (*provided* that such amount may be less than \$10,000,000 if such amount represents all remaining availability under the limit set forth in Section 2.14(d)(iii)) and each Incremental Revolving Credit Commitment shall be in an aggregate principal amount that is not less than \$10,000,000 and shall be in an increment of \$1,000,000 (*provided* that such amount may be less than \$10,000,000 if such amount represents all remaining availability under the limit set forth in Section 2.14(d)(iii));

(iii) (A) after giving Pro Forma Effect to both (x) the making of Incremental Term Loans or establishment of Incremental Revolving Credit Commitments (assuming a borrowing of the maximum amount of Loans available thereunder) under such Incremental Amendment and (y) any Specified Transactions consummated in connection therewith, (1) if such Incremental Term Loans or Incremental Revolving Credit Commitments rank *pari passu* in right of security with the Obligations under Term Loans and Revolving Credit Loans secured on a first lien basis, the Consolidated First Lien Net Leverage Ratio does not exceed ~~5.00~~2.50 :1.00, (2) if such Incremental Term Loans or Incremental Revolving Credit Commitments rank junior in right of security with the Obligations under Term Loans and Revolving Credit Loans secured on a first lien basis, the Secured Net Leverage Ratio does not exceed ~~6.25~~4.20:1.00 or (3) if such Incremental Term Loans or Incremental Revolving Credit Commitments ~~is~~are unsecured, the Total Net Leverage Ratio does not exceed ~~6.25~~4.20:1.00; or (B) together with the Incremental Term Loans made and Incremental Revolving Credit Commitments established under such Incremental Amendment, the aggregate principal amount of Incremental Term Loans made and Incremental Revolving Credit Commitments established under this clause (B) (*plus* the Second Lien Incremental Usage Amount and Incremental Equivalent Debt incurred in reliance on clause (i)(B) of Section 2.14(h)) does not exceed ~~(i) \$85,000,000 (provided, that such amount shall not be reduced by the Term B-2 Loans, Additional Commitments (as defined in Amendment No.1) or the 2016 Second Lien Incremental Term Loan (as defined in Amendment No.1)), following the Amendment No. 3 Effective Date, (i) \$42,600,000~~ plus (ii) the principal amount of any voluntary prepayments of Term Loans following the Amendment No. 3 Effective Date (to the extent not made with the proceeds of Indebtedness (other than the incurrence of Revolving Credit Loans or extensions of credit under any other revolving credit or similar facility) plus (iii) in the case of any Incremental Commitment established after the Amendment No. 3 Effective Date that effectively extends the Maturity Date or any other maturity date with respect to any Class of Loans or Commitments hereunder, an amount equal to the portion of the relevant Class of Loans or Commitments that will be replaced by such Incremental Commitments plus (iv) in the case of any Incremental Commitment that effectively replaces any Revolving Credit Commitment terminated in accordance with Section ~~3.07~~3.07 after the Amendment No. 3 Effective Date, an amount equal to the relevant terminated Revolving Credit Commitment; *provided, that*, it is understood that Incremental Term Loans and Incremental Revolving Credit Commitments may be incurred under either clause (A) or clause (B) as selected by the Borrower in its sole

discretion, including by designating any portion of Incremental Commitments in excess of an amount permitted to be incurred under clause (A) at the time of such incurrence as incurred under clause (B)); provided further that the amount of Incremental Term Commitments, Incremental Term Loans and Incremental Revolving Credit Commitments that are permitted shall in no event be reduced by the amount of the increase in the Initial Revolving Credit Commitments occurring on the Amendment No. 3 Effective Date; and

(iv) to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (A) customary legal opinions, board resolutions and officers' certificates consistent with those delivered on the Closing Date (conformed as appropriate) other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent and (B) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Incremental Lenders are provided with the benefit of the applicable Loan Documents.

(e) *Required Terms.* The terms, provisions and documentation of the Incremental Term Loans and Incremental Term Commitments or the Incremental Revolving Loans and Incremental Revolving Credit Commitments, as the case may be, of any Class shall be as agreed between the Borrower and the applicable Incremental Lenders providing such Incremental Commitments, and except as otherwise set forth herein, to the extent not identical to any Class of Term Loans or Revolving Credit Commitments, as applicable, each existing on the Incremental Facility Closing Date, shall be consistent with clauses (i) through (iii) below, as applicable, and otherwise reasonably satisfactory to the Administrative Agent; *provided* that in the case of a Term Loan Increase or a Revolving Commitment Increase, the terms, provisions and documentation of such Term Loan Increase or Revolving Commitment Increase shall be identical (other than with respect to upfront fees, OID or similar fees) to the applicable Class of Term Loans or Revolving Credit Commitments being increased, in each case, as existing on the Incremental Facility Closing Date. In any event:

(i) the Incremental Term Loans:

(A) (I) shall rank *pari passu* or junior in right of payment with the Obligations under Term Loans and Revolving Credit Loans that are senior in right of payment and (II) shall be secured by the Collateral and shall rank *pari passu* or junior in right of security with the Obligations under Term Loans and Revolving Credit Loans that are secured on a first lien basis (and subject to a Subordination Agreement (if subject to payment subordination) and/or the Second Lien Intercreditor Agreement (if subject to lien subordination) (or, alternatively, terms in the Incremental Amendment substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent) or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent) or be unsecured,

(B) as of the Incremental Amendment Date, shall not have a final scheduled maturity date earlier than the Maturity Date of the Term B-3 Loans or any Extended Term Loans as to which the Term B-3 Loans were the Existing Term Loan Tranche,

(C) as of the Incremental Amendment Date, shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Term B-3 Loans,

(D) shall have an Applicable Rate, and subject to clauses (e)(i)(B) and (e)(i)(C) above, amortization determined by the Borrower and the applicable Incremental Term Lenders; *provided* the Applicable Rate and amortization for a Term Loan Increase shall be the Applicable Rate and amortization for the Class being increased,

(E) shall have fees determined by the Borrower and the applicable Incremental Term Loan arranger(s), and

(F) may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis (except for prepayments pursuant to Section 2.05(b)(iv) and Section 2.05(b)(vi)(A)(y) or any voluntary prepayments of any Class of Term Loans with an earlier Maturity Date than any other Classes of Term Loans)) in any voluntary or mandatory prepayments of Term Loans hereunder.

(ii) the Incremental Revolving Credit Commitments and Incremental Revolving Loans:

(A) (I) shall rank *pari passu* or junior in right of payment with the Obligations under the Term Loans and Revolving Credit Loans that are senior in right of payment and (II) shall rank *pari passu* in right of security with the Obligations under the Term Loans and Revolving Credit Loans that are secured on a first lien basis,

(B) shall not have a final scheduled maturity date or commitment reduction date earlier than the Maturity Date with respect to the Initial Revolving Credit Commitments,

(C) shall provide that the borrowing and repayment (except for (1) payments of interest and fees at different rates on Incremental Revolving Credit Commitments (and related outstandings), (2) repayments required upon the Maturity Date of the Incremental Revolving Credit Commitments and (3) repayment made in connection with a permanent repayment and termination of commitments (in accordance with clause (E) below)) of Loans with respect to Incremental Revolving Credit Commitments after the associated Incremental Facility Closing Date shall be made on a pro rata basis or less than a pro rata basis (but not more than a pro rata basis) with all other Revolving Credit Commitments then existing on the Incremental Facility Closing Date,

(D) may be elected to be included as additional Participating Revolving Credit Commitments under the Incremental Amendment (or in the case of any Revolving Commitment Increase to an existing Class of Participating Revolving Credit Commitment, shall be included), subject to (other than in the case of a Revolving Commitment Increase) the consent of the Swing Line Lender and each L/C Issuer, and on the Incremental Facility Closing Date all Swing Line Loans and Letters of Credit shall be participated on a pro rata basis by all Participating Revolving Credit Lenders in

accordance with their percentage of the Participating Revolving Credit Commitments existing after giving effect to such Incremental Amendment, *provided*, such election may be made conditional upon the maturity of one or more other Participating Revolving Credit Commitments, *provided, further*, that in connection with such election the Swing Line Lender or the L/C Issuers may, in their sole discretion and with the consent of the Administrative Agent (not to be unreasonably withheld or delayed), agree in the applicable Incremental Amendment to increase the Swing Line Sublimit or the Letter of Credit Sublimit so long as such increase does not exceed the amount of the additional Participating Revolving Credit Commitments,

(E) may provide that the permanent repayment of Revolving Credit Loans with respect to, and termination or reduction of, Incremental Revolving Credit Commitments after the associated Incremental Facility Closing Date be made on a pro rata basis or less than pro rata basis with all other Revolving Credit Commitments,

(F) shall provide that assignments and participations of Incremental Revolving Credit Commitments and Incremental Revolving Loans shall be governed by the same assignment and participation provisions applicable to Revolving Credit Commitments and Revolving Credit Loans then existing on the Incremental Facility Closing Date,

(G) shall have an Applicable Rate determined by the Borrower and the applicable Incremental Revolving Credit Lenders; *provided* the Applicable Rate for a Revolving Commitment Increase shall be the Applicable Rate for the Class being increased, and

(H) shall have fees determined by the Borrower and the applicable Incremental Revolving Credit Commitment arranger(s).

(iii) the All-In Yield applicable to the Incremental Term Loans or Incremental Revolving Loans of each Class shall be determined by the Borrower and the applicable Incremental Lenders and shall be set forth in each applicable Incremental Amendment; *provided, however*, that with respect to any Loans made under Incremental Term Commitments (to the extent *pari passu* in right of payment and security with the Term B-3 Loans), the All-In Yield applicable to such Incremental Term Loans shall not be greater than the applicable All-In Yield payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to Term B-3 Loans plus 50 basis points per annum unless the Applicable Rate (together with, as provided in the proviso below, the Eurocurrency Rate or Base Rate floor) with respect to the Term B-3 Loans is increased so as to cause the then applicable All-In Yield under this Agreement on the Term B-3 Loans to equal the All-In Yield then applicable to the Incremental Term Loans minus 50 basis points; *provided, further*, that any increase in All-In Yield to any Term B-3 Loan due to the application or imposition of a Eurocurrency Rate or Base Rate floor on any Incremental Term Loan shall be effected solely through an increase in (or implementation of, as applicable) any Eurocurrency or Base Rate floor applicable to such Term B-3 Loan.

(f) *Incremental Amendment.* Commitments in respect of Incremental Term Loans and Incremental Revolving Credit Commitments shall become additional Commitments pursuant

to an amendment (an “**Incremental Amendment**”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Incremental Lender providing such Commitments, the Administrative Agent and, for purposes of any election and/or increase to the Swing Line Sublimit or Letter of Credit Sublimit pursuant to Section 2.14(e)(ii)(D), the Swing Line Lender and each L/C Issuer. The Incremental Amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.14, including amendments as deemed necessary by the Administrative Agent in its reasonable judgment to effect any lien or payment subordination and associated rights of the applicable Lenders to the extent any Incremental Loans are to rank junior in right of security or payment or to address technical issues relating to funding and payments. The Borrower will use the proceeds of the Incremental Term Loans and Incremental Revolving Credit Commitments for any purpose not prohibited by this Agreement.

(g) *Reallocation of Revolving Credit Exposure.* Upon any Incremental Facility Closing Date on which Incremental Revolving Credit Commitments are effected through a Revolving Commitment Increase pursuant to this Section 2.14, (a) each of the Revolving Credit Lenders shall assign to each of the Incremental Revolving Credit Lenders, and each of the Incremental Revolving Credit Lenders shall purchase from each of the Revolving Credit Lenders, at the principal amount thereof, such interests in the Incremental Revolving Loans outstanding on such Incremental Facility Closing Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Credit Loans will be held by existing Revolving Credit Lenders and Incremental Revolving Credit Lenders ratably in accordance with their Revolving Credit Commitments after giving effect to the addition of such Incremental Revolving Credit Commitments to the Revolving Credit Commitments, (b) each Incremental Revolving Credit Commitment shall be deemed for all purposes a Revolving Credit Commitment and each Loan made thereunder shall be deemed, for all purposes, a Revolving Credit Loan and (c) each Incremental Revolving Credit Lender shall become a Lender with respect to the Incremental Revolving Credit Commitments and all matters relating thereto. The Administrative Agent and the Lenders hereby agree that the minimum borrowing and prepayment requirements in Section 2.02 and 2.05(a) of this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence.

(h) *Incremental Equivalent Debt.* The Borrower may, upon notice to the Administrative Agent, at any time or from time to time after the Closing Date, issue, incur or otherwise obtain Indebtedness of the Borrower (and any Permitted Refinancing thereof) in respect of one or more series of senior or subordinated notes or loans (which may be unsecured or secured on a junior lien basis or, in the case of notes only, a *pari passu* basis with the Obligations under Term Loans and Revolving Credit Loans required to be secured on a first lien basis), in each case issued in a public offering, Rule 144A or other private placement or bridge in lieu of the foregoing, or senior or subordinated mezzanine Indebtedness (which may be in the form of loans or notes and limited to being unsecured or secured solely on a junior lien basis), in each case, that are issued or made in lieu of Incremental Revolving Credit Commitments and/or Incremental Term Commitments (the “**Incremental Equivalent Debt**”); *provided* that (i) (A) after giving Pro Forma Effect to both (x) the issuance or incurrence of such Incremental Equivalent Debt (assuming a borrowing of the maximum credit thereunder) and (y) any Specified

Transactions consummated in connection therewith, (1) if such Incremental Equivalent Debt ranks *pari passu* in right of security with the Obligations under Term Loans and Revolving Credit Loans that are secured on a first lien basis, the Consolidated First Lien Net Leverage Ratio does not exceed ~~5.00~~2.50:1.00, (2) if such Incremental Equivalent Debt ranks junior in right of security with the Obligations under the Term Loans and Revolving Credit Loans that are secured on a first lien basis, the Secured Net Leverage Ratio does not exceed ~~6.25~~4.20: 1.00 and (3) if such Incremental Equivalent Debt is unsecured, the Total Net Leverage Ratio does not exceed ~~6.25~~4.20: 1.00 or (B) together with such Incremental Equivalent Debt, the aggregate principal amount of Incremental Equivalent Debt incurred or issued under this clause (B) and Incremental Term Loans made and Incremental Revolving Credit Commitments established under Section 2.14(d)(iii)(B) (*plus* the Second Lien Incremental Usage Amount) does not exceed ~~\$85,000,000~~ (~~provided, that such amount shall not be reduced by the Term B-2 Loans, Additional Commitments (as defined in Amendment No. 1) or the 2016 Second Lien Incremental Term Loan (as defined in Amendment No.1)~~), following the Amendment No. 3 Effective Date, \$42,600,000 plus the principal amount of any voluntary prepayments of Term Loans made after the Amendment No. 3 Effective Date (to the extent not made with the proceeds of Indebtedness (other than the incurrence of Revolving Credit Loans or extensions of credit under any other revolving credit or similar facility)) plus in the case of any Incremental Equivalent Debt incurred or established after the Amendment No. 3 Effective Date that effectively extends the Maturity Date or any other maturity date with respect to any Class of Loans or Commitments hereunder, an amount equal to the portion of the relevant Class of Loans or Commitments that will be replaced by such Incremental Commitments plus ~~(iv)~~ in the case of any Incremental Equivalent Debt incurred or established after the Amendment No. 3 Effective Date that effectively replaces any Revolving Credit Commitment terminated in accordance with Section 3.07, an amount equal to the relevant terminated Revolving Credit Commitment (and, for the avoidance of doubt, the amount under this clause (i) shall not be reduced by the increase in the Initial Revolving Credit Commitments occurring on the Amendment No. 3 Effective Date), (ii) such Incremental Equivalent Debt shall not be subject to any Guarantee by any Person other than a Loan Party, (iii) if such Incremental Equivalent Debt is secured, the obligations in respect thereof shall not be secured by any Lien on any asset of Holdings, the Borrower or any Restricted Subsidiary other than any asset constituting Collateral, (iv) no Default or Event of Default shall have occurred and be continuing or would exist immediately after giving effect to such incurrence, (v) if such Incremental Equivalent Debt is secured, the security agreements and other collateral documents relating to such Incremental Equivalent Debt shall be substantially similar to the Collateral Documents (with such differences as are reasonably satisfactory to the Administrative Agent), (vi) if such Incremental Equivalent Debt is (a) secured on a *pari passu* basis with the Obligations under Term Loans and Revolving Credit Loans that are secured on a first lien basis, then such Incremental Equivalent Debt shall be subject to a First Lien Intercreditor Agreement, (b) secured on a junior basis with the Obligations under Term Loans and Revolving Credit Loans that are secured on a first lien basis, then such Incremental Equivalent Debt shall be subject to the Second Lien Intercreditor Agreement or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent or (c) unsecured and subordinated to the Obligations, then such Incremental Equivalent Debt shall be subject to a Subordination Agreement (or, alternatively, terms in the definitive documentation for such Incremental Equivalent Debt substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent), (vii) such Incremental Equivalent Debt shall have a final

maturity date which is no earlier than the then Maturity Date and a Weighted Average Life to Maturity which is equal to or greater than the Weighted Average Life to Maturity of the Term B-3 Loans, (viii) such Incremental Equivalent Debt shall not be subject to any mandatory redemption or prepayment provisions or rights (except to the extent any such mandatory redemption or prepayment is required to be applied pro rata to the Term Loans required to be secured on a first lien basis and except with respect to customary "AHYDO catch-up payments", offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) and (ix) except as otherwise set forth in this clause (h), such Incremental Equivalent Debt shall have terms and conditions (other than with respect to pricing, fees, rate floors and optional prepayment or redemption terms) substantially similar to, or (taken as a whole) no more favorable (as reasonably determined by the Borrower) to the lenders or holders providing such Incremental Equivalent Debt, than those applicable to the Term B-3 Loans (except for covenants or other provisions (a) conformed (or added) in the Loan Documents, for the benefit of the Lenders holding Term B-3 Loans, pursuant to an amendment thereto subject solely to the reasonable satisfaction of the Administrative Agent or (b) applicable only to periods after the Latest Maturity Date at the time of the issuance or incurrence of such Incremental Equivalent Debt) or such terms and conditions shall be current market terms for such type of Incremental Equivalent Debt (as reasonably determined in good faith by the Borrower). It is understood that Incremental Equivalent Debt may be incurred under either clause (i)(A) or clause (i)(B) of the immediately preceding sentence as selected by the Borrower in its sole discretion, including by designating any portion of Incremental Equivalent Debt in excess of an amount permitted to be incurred under such clause (i)(A) at the time of such incurrence as incurred under such clause (i)(B).

(i) This Section 2.14 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.15 Refinancing Amendments.

(a) *Refinancing Commitments*. The Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent (a "**Refinancing Loan Request**"), request (A) a new Class of term loans (any such new Class, "**Refinancing Term Commitments**") or (B) the establishment of a new Class of revolving credit commitments (any such new Class, "**Refinancing Revolving Credit Commitments**" and collectively with any Refinancing Term Commitments, "**Refinancing Commitments**"), in each case, established in exchange for, or to extend, renew, replace, repurchase, retire or refinance, in whole or in part, existing Loans or Commitments (with respect to a particular Refinancing Commitment or Refinancing Loan, such existing Loans or Commitments, "**Refinanced Debt**"), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders.

(b) *Refinancing Loans*. On any Refinancing Facility Closing Date on which any Refinancing Term Commitments of any Class are effected, subject to the satisfaction of the terms and conditions in this Section 2.15, (i) each Refinancing Term Lender of such Class shall make a Loan to the Borrower (a "**Refinancing Term Loan**") in an amount equal to its Refinancing Term Commitment of such Class and (ii) each Refinancing Term Lender of such Class shall become a Lender hereunder with respect to the Refinancing Term Commitment of such Class and the Refinancing Term Loans of such Class made pursuant thereto. On any Refinancing Facility

Closing Date on which any Refinancing Revolving Credit Commitments of any Class are effected, subject to the satisfaction of the terms and conditions in this Section 2.15, (i) each Refinancing Revolving Credit Lender of such Class shall make its Commitment available to the Borrower (when borrowed, a “**Refinancing Revolving Loan**” and collectively with any Refinancing Term Loan, a “**Refinancing Loan**”) in an amount equal to its Refinancing Revolving Credit Commitment of such Class and (ii) each Refinancing Revolving Credit Lender of such Class shall become a Lender hereunder with respect to the Refinancing Revolving Credit Commitment of such Class and the Refinancing Revolving Loans of such Class made pursuant thereto.

(c) *Refinancing Loan Request.* Each Refinancing Loan Request from the Borrower pursuant to this Section 2.15 shall set forth the requested amount and proposed terms of the relevant Refinancing Term Loans or Refinancing Revolving Credit Commitments. Refinancing Term Loans may be made, and Refinancing Revolving Credit Commitments may be provided, by any existing Lender (but no existing Lender will have an obligation to make any Refinancing Commitment, nor will the Borrower have any obligation to approach any existing Lender to provide any Refinancing Commitment) or by any Additional Lender (each such existing Lender or Additional Lender providing such Commitment or Loan, a “**Refinancing Revolving Credit Lender**” or “**Refinancing Term Lender**,” as applicable, and, collectively, “**Refinancing Lenders**”); *provided* that (i) the Administrative Agent, the Swing Line Lender and each L/C Issuer shall have consented (not to be unreasonably withheld or delayed) to such Additional Lender’s making such Refinancing Term Loans or providing such Refinancing Revolving Credit Commitments to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Term Loans or Revolving Credit Commitments, as applicable, to such Lender or Additional Lender, (ii) with respect to Refinancing Term Commitments, any Affiliated Lender providing a Refinancing Term Commitment shall be subject to the same restrictions set forth in Section 10.07(k) as they would otherwise be subject to with respect to any purchase by or assignment to such Affiliated Lender of Term Loans and (iii) Affiliated Lenders may not provide Refinancing Revolving Credit Commitments.

(d) *Effectiveness of Refinancing Amendment.* The effectiveness of any Refinancing Amendment, and the Refinancing Commitments thereunder, shall be subject to the satisfaction on the date thereof (a “**Refinancing Facility Closing Date**”) of each of the following conditions, together with any other conditions set forth in the Refinancing Amendment:

(i) after giving effect to such Refinancing Commitments, the conditions of Sections 4.02(i) and (ii) shall be satisfied (it being understood that all references to “the date of such Credit Extension” or similar language in such Section 4.02 shall be deemed to refer to the effective date of such Refinancing Amendment);

(ii) each Refinancing Commitment shall be in an aggregate principal amount that is not less than \$25,000,000 and shall be in an increment of \$1,000,000 (*provided* that such amount may be less than \$25,000,000 and not in an increment of \$1,000,000 if such amount is equal to (x) the entire outstanding principal amount of Refinanced Debt that is in the form of Term Loans or (y) the entire principal amount of Refinanced Debt that is in the form of Revolving Credit Commitments); and

(iii) to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) customary legal opinions, board resolutions and officers' certificates consistent with those delivered on the Closing Date (conformed as appropriate) other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Refinancing Lenders are provided with the benefit of the applicable Loan Documents.

(e) *Required Terms.* The terms, provisions and documentation of the Refinancing Term Loans and Refinancing Term Commitments or the Refinancing Revolving Loans and Refinancing Revolving Credit Commitments, as the case may be, of any Class shall be as agreed between the Borrower and the applicable Refinancing Lenders providing such Refinancing Commitments, and except as otherwise set forth herein, to the extent not identical to any Class of Term Loans or Revolving Credit Commitments, as applicable, each existing on the Refinancing Facility Closing Date, shall be consistent with clauses (i) and (ii) below, as applicable, and otherwise reasonably satisfactory to the Administrative Agent. In any event:

(i) the Refinancing Term Loans:

(A) as of the Refinancing Facility Closing Date, shall not have a final scheduled maturity date earlier than the Maturity Date of the Refinanced Debt,

(B) as of the Refinancing Facility Closing Date, shall not have a Weighted Average Life to Maturity shorter than the remaining Weighted Average Life to Maturity of the Refinanced Debt,

(C) shall have an Applicable Rate and Eurocurrency Rate or Base Rate floor (if any), and subject to clauses (e)(i)(A) and (e)(i)(B) above, amortization determined by the Borrower and the applicable Refinancing Term Lenders,

(D) shall have fees determined by the Borrower and the applicable Refinancing Term Loan arranger(s),

(E) may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis (except for prepayments pursuant to Section 2.05(b)(iv) and Section 2.05(b)(vi)(A)(y) or any voluntary prepayments of any Class of Term Loans with an earlier Maturity Date than any other Classes of Term Loans)) in any voluntary or mandatory prepayments of Term Loans hereunder, or if junior in right of security, shall be on a junior basis with respect thereto,

(F) shall not have a greater principal amount than the principal amount of the Refinanced Debt plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees, expenses, OID and upfront fees associated with the refinancing, and

(G) (I) shall rank pari passu or junior in right of payment with the Obligations under Term Loans and Revolving Credit Loans that are senior in right of payment and (II) shall be secured by the Collateral and shall rank pari passu or junior in right of security

with the Obligations under Term Loans and Revolving Credit Loans that are secured on a first lien basis (and, if applicable, subject to a Subordination Agreement and/or the Second Lien Intercreditor Agreement (or, alternatively, terms in the Refinancing Amendment substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent) or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent); and

(ii) the Refinancing Revolving Credit Commitments and Refinancing Revolving Loans:

(A) (I) shall rank *pari passu* or junior in right of payment with the Obligations under the Term Loans and Revolving Credit Loans that are senior in right of payment and (II) shall rank *pari passu* in right of security with the Obligations under the Term Loans and Revolving Credit Loans that are secured on a first lien basis,

(B) shall not have a final scheduled maturity date or commitment reduction date earlier than the Maturity Date or commitment reduction date, respectively, with respect to the Refinanced Debt,

(C) shall provide that the borrowing and repayment (except for (1) payments of interest and fees at different rates on Refinancing Revolving Credit Commitments (and related outstandings), (2) repayments required upon the Maturity Date of the Refinancing Revolving Credit Commitments and (3) repayment made in connection with a permanent repayment and termination of commitments (in accordance with clause (E) below)) of Loans with respect to Refinancing Revolving Credit Commitments after the associated Refinancing Facility Closing Date shall be made on a *pro rata* basis or less than a *pro rata* basis (but not more than a *pro rata* basis) with all other Revolving Credit Commitments then existing on the Refinancing Facility Closing Date,

(D) may be elected to be included as additional Participating Revolving Credit Commitments under the Refinancing Amendment, subject to the consent of the Swing Line Lender and each L/C Issuer, and on the Refinancing Facility Closing Date all Swing Line Loans and Letters of Credit shall be participated on a *pro rata* basis by all Participating Revolving Credit Lenders in accordance with their percentage of the Participating Revolving Credit Commitments existing after giving effect to such Refinancing Amendment, *provided*, such election may be made conditional upon the termination of one or more other Participating Revolving Credit Commitments,

(E) may provide that the permanent repayment of Revolving Credit Loans with respect to, and termination or reduction of, Refinancing Revolving Credit Commitments after the associated Refinancing Facility Closing Date be made on a *pro rata* basis, less than *pro rata* basis or greater than *pro rata* basis with all other Revolving Credit Commitments,

(F) shall provide that assignments and participations of Refinancing Revolving Credit Commitments and Refinancing Revolving Loans shall be governed by the same assignment and participation provisions applicable to Revolving Credit

Commitments and Revolving Credit Loans then existing on the Refinancing Facility Closing Date,

(G) shall have an Applicable Rate and Eurocurrency Rate or Base Rate floor (if any) determined by the Borrower and the applicable Refinancing Revolving Credit Lenders,

(H) shall have fees determined by the Borrower and the applicable Refinancing Revolving Credit Commitment arranger(s), and

(I) shall not have a greater principal amount of Commitments than the principal amount of the Commitments of the Refinanced Debt and accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees, expenses, OID and upfront fees associated with the refinancing.

(f) *Refinancing Amendment.* Commitments in respect of Refinancing Term Loans and Refinancing Revolving Credit Commitments shall become additional Commitments pursuant to an amendment (a "**Refinancing Amendment**") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Refinancing Lender providing such Commitments, the Administrative Agent and, for purposes of any election pursuant to Section 2.15(e)(ii)(C), the Swing Line Lender and each L/C Issuer. The Refinancing Amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15, including amendments as deemed necessary by the Administrative Agent in its reasonable judgment to effect any lien or payment subordination and associated rights of the applicable Lenders to the extent any Refinancing Loans are to rank junior in right of security or payment or to address technical issues relating to funding and payments. The Borrower will use the proceeds of the Refinancing Term Loans and Refinancing Revolving Credit Commitments to extend, renew, replace, repurchase, retire or refinance, substantially concurrently, the applicable Refinanced Debt.

(g) *[Reserved.]*

(h) *Refinancing Equivalent Debt.*

(i) In lieu of incurring any Refinancing Term Loans, the Borrower may, upon notice to the Administrative Agent, at any time or from time to time after the Closing Date issue, incur or otherwise obtain (A) secured Indebtedness (including any Registered Equivalent Notes) in the form of one or more series of first lien senior secured notes (such notes, "**Permitted Pari Passu Secured Refinancing Debt**"), (B) secured Indebtedness (including any Registered Equivalent Notes) in the form of one or more series of second lien (or other junior lien) secured notes or second lien (or other junior lien) secured term loans (such notes or term loans, "**Permitted Junior Secured Refinancing Debt**") and (C) unsecured or subordinated Indebtedness (including any Registered Equivalent Notes) in the form of one or more series of unsecured or subordinated notes or term loans (such notes or term loans, "**Permitted Unsecured Refinancing Debt**") and together with Permitted Pari Passu Secured Refinancing Debt and

Permitted Junior Secured Refinancing Debt, and, in each case, any Permitted Refinancing thereof, “**Refinancing Equivalent Debt**”), in each case, in exchange for, or to extend, renew, replace, repurchase, retire or refinance, in whole or in part, any existing Class of Term Loans (such Term Loans, “**Refinanced Term Loans**”).

(ii) Any Refinancing Equivalent Debt:

(A) (1) shall not have a Maturity Date prior to the date that is on or after the Maturity Date of the Refinanced Term Loans, (2) if in the form of term loans, shall not have a Weighted Average Life to Maturity shorter than the remaining Weighted Average Life to Maturity of the Refinanced Term Loans, (3) if in the form of notes, shall not have scheduled amortization or payments of principal and not be subject to mandatory redemption, repurchase, prepayment or sinking fund obligations (other than customary “AHYDO catch-up payments”, offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default), in each case prior to the Maturity Date of the Refinanced Term Loans, (4) shall not be guaranteed by Persons other than Guarantors, (5) if in the form of subordinated Permitted Unsecured Refinancing Debt, shall be subject to a Subordination Agreement to which a Senior Representative acting on behalf of the holders of such Permitted Unsecured Refinancing Debt shall have become a party or otherwise subject (or, alternatively, terms in the definitive documentation for such Refinancing Equivalent Debt substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent); *provided* that if such Permitted Unsecured Refinancing Debt is the initial subordinated Permitted Unsecured Refinancing Debt incurred by the Borrower, then Holdings, the Borrower, the Subsidiary Guarantors, the Administrative Agent and the Senior Representative for such Permitted Unsecured Refinancing Debt shall have executed and delivered a Subordination Agreement, (6) shall not have a greater principal amount than the principal amount of the Refinanced Term Loans plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees, expenses, OID and upfront fees associated with the refinancing and (7) except as otherwise set forth in this clause (h)(ii), shall have terms and conditions (other than with respect to pricing, fees, rate floors and optional prepayment or redemption terms) substantially similar to, or (taken as a whole) no more favorable (as reasonably determined by the Borrower) to the lenders or holders providing such Refinancing Equivalent Debt, than those applicable to the Refinanced Term Loans (except for covenants or other provisions (a) conformed (or added) in the Loan Documents, for the benefit of the Lenders holding Term B-3 Loans, pursuant to an amendment thereto subject solely to the reasonable satisfaction of the Administrative Agent or (b) applicable only to periods after the Latest Maturity Date at the time of the issuance or incurrence of such Refinancing Equivalent Debt) or such terms and conditions shall be current market terms for such type of Refinancing Equivalent Debt (as reasonably determined in good faith by the Borrower),

(B) (1) if either Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt, shall be subject to security agreements relating to such Refinancing Equivalent Debt that are substantially the same as or more favorable to the Loan Parties than the Collateral Documents (with such differences as are reasonably

satisfactory to the Administrative Agent), (2) if Permitted Pari Passu Secured Refinancing Debt, (x) shall be secured by the Collateral on a *pari passu* basis with the Obligations under Term Loans and Revolving Credit Loans required to be secured on a first lien basis and shall not be secured by any property or assets of Holdings, the Borrower or any Restricted Subsidiary other than the Collateral, and (y) shall be subject to a First Lien Intercreditor Agreement to which a Senior Representative acting on behalf of the holders of such Permitted Pari Passu Secured Refinancing Debt shall have become a party or otherwise subject; *provided* that if such Permitted Pari Passu Secured Refinancing Debt is the initial Permitted Pari Passu Secured Refinancing Debt incurred by the Borrower, then Holdings, the Borrower, the Subsidiary Guarantors, the Administrative Agent and the Senior Representative for such Permitted Pari Passu Secured Refinancing Debt shall have executed and delivered a First Lien Intercreditor Agreement and (3) if Permitted Junior Secured Refinancing Debt, (x) shall be secured by the Collateral on a second priority (or other junior priority) basis to the Liens securing the Obligations under Term Loans and Revolving Credit Loans required to be secured on a first lien basis and shall not be secured by any property or assets of Holdings, the Borrower or any Restricted Subsidiary other than the Collateral, and (y) shall be subject to the Second Lien Intercreditor Agreement to which a Senior Representative acting on behalf of the holders of such Permitted Junior Secured Refinancing Debt shall have become a party or otherwise subject or other lien subordination or intercreditor arrangement satisfactory to the Borrower and the Administrative Agent, and

(C) shall be incurred solely to repay, repurchase, retire or refinance substantially concurrently the Refinanced Term Loans.

(iii) This Section 2.15 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.16 Extension of Term Loans; Extension of Revolving Credit Loans.

(a) *Extension of Term Loans.* The Borrower may at any time and from time to time request that all or a portion of the Term Loans of a given Class (an “**Existing Term Loan Tranche**”) be amended to extend the scheduled Maturity Date(s) with respect to the Term Loans of such Existing Term Loan Tranche (any such Term Loans which have been so amended, “**Extended Term Loans**”) and to provide for other terms consistent with this Section 2.16. In order to establish any Extended Term Loans, the Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Term Loan Tranche) (each, a “**Term Loan Extension Request**”) setting forth the proposed terms of the Extended Term Loans to be established, which shall (x) be identical as offered to each Lender under such Existing Term Loan Tranche (including as to the proposed interest rates and fees payable, but excluding any arrangement, structuring or other similar fees payable in connection therewith that are not generally shared with all relevant Lenders) and offered pro rata to each Lender under such Existing Term Loan Tranche and (y) be identical to the Term Loans under the Existing Term Loan Tranche from which such Extended Term Loans are intended to be amended, except that: (i) all or any of the scheduled amortization payments of principal of the Extended Term Loans may be delayed to later dates than the scheduled amortization payments of principal of the Term Loans of such Existing Term Loan

Tranche, to the extent provided in the applicable Extension Amendment; *provided, however*, that at no time shall there be Classes of Extended Term Loans and Refinancing Term Loans hereunder which have more than five (5) different Maturity Dates; (ii) the All-In Yield with respect to the Extended Term Loans (whether in the form of interest rate margin, upfront fees, original issue discount or otherwise) may be different than the All-In Yield for the Term Loans of such Existing Term Loan Tranche, in each case, to the extent provided in the applicable Extension Amendment; (iii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Term Loans); and (iv) Extended Term Loans may have call protection as may be agreed by the Borrower and the Lenders thereof; *provided*, that no Extended Term Loans may be optionally prepaid prior to the Maturity Date of the Term B-3 Loans, unless such optional prepayment is accompanied by a pro rata optional prepayment of the Term B-3 Loans; *provided, however*, that (A) no Event of Default shall have occurred and be continuing at the time a Term Loan Extension Request is delivered to Lenders, (B) in no event shall the Maturity Date of any Extended Term Loans of a given Term Loan Extension Series at the time of establishment thereof be earlier than the Maturity Date of the Existing Term Loan Tranche, (C) the Weighted Average Life to Maturity of any Extended Term Loans of a given Term Loan Extension Series at the time of establishment thereof shall be no shorter than the remaining Weighted Average Life to Maturity of the Existing Term Loan Tranche, (D) all documentation in respect of such Extension Amendment shall be consistent with the foregoing and (E) any Extended Term Loans may participate on a pro rata basis or less than or greater than a pro rata basis in any voluntary repayments or prepayments of principal of Term Loans hereunder and on a pro rata basis or less than a pro rata basis (but not greater than a pro rata basis except in the case of a prepayment under Section 2.05(b)(iv) and Section 2.05(b)(vi)(A)(y)), in any mandatory repayments or prepayments of Term Loans hereunder, in each case as specified in the respective Term Loan Extension Request. Any Extended Term Loans amended pursuant to any Term Loan Extension Request shall be designated a series (each, a “**Term Loan Extension Series**”) of Extended Term Loans for all purposes of this Agreement; *provided* that any Extended Term Loans amended from an Existing Term Loan Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Term Loan Extension Series with respect to such Existing Term Loan Tranche (in which case scheduled amortization with respect thereto shall be proportionately increased). Each request for a Term Loan Extension Series of Extended Term Loans proposed to be incurred under this Section 2.16 shall be in an aggregate principal amount that is not less than \$25,000,000 (it being understood that the actual principal amount thereof provided by the applicable Lenders may be lower than such minimum amount) and the Borrower may impose an Extension Minimum Condition with respect to any Term Loan Extension Request, which may be waived by the Borrower in its sole discretion.

(b) *Extension of Revolving Credit Commitments.* The Borrower may at any time and from time to time request that all or a portion of the Revolving Credit Commitments of a given Class (each, an “**Existing Revolver Tranche**”) be amended to extend the Maturity Date with respect to all or a portion of any principal amount of such Revolving Credit Commitments (any such Revolving Credit Commitments which have been so amended, “**Extended Revolving Credit Commitments**”) and to provide for other terms consistent with this Section 2.16. In order to establish any Extended Revolving Credit Commitments, the Borrower shall provide a

notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Revolver Tranche) (each, a “**Revolver Extension Request**”) setting forth the proposed terms of the Extended Revolving Credit Commitments to be established, which shall (x) be identical as offered to each Lender under such Existing Revolver Tranche (including as to the proposed interest rates and fees payable, but excluding any arrangement, structuring or other fees payable in connection therewith that are not generally shared with all relevant Lenders) and offered pro rata to each Lender under such Existing Revolver Tranche and (y) be identical to the Revolving Credit Commitments under the Existing Revolver Tranche from which such Extended Revolving Credit Commitments are to be amended, except that: (i) the Maturity Date of the Extended Revolving Credit Commitments may be delayed to a later date than the Maturity Date of the Revolving Credit Commitments of such Existing Revolver Tranche, to the extent provided in the applicable Extension Amendment; *provided, however*, that at no time shall there be Classes of Extended Revolving Credit Commitments and Refinancing Revolving Credit Commitments hereunder which have more than five (5) different Maturity Dates; (ii) the All-In Yield with respect to extensions of credit under the Extended Revolving Credit Commitments (whether in the form of interest rate margin, upfront fees, original issue discount or otherwise) may be different than the All-In Yield for extensions of credit under the Revolving Credit Commitments of such Existing Revolver Tranche, in each case, to the extent provided in the applicable Extension Amendment; (iii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Revolving Credit Commitments); and (iv) all borrowings under the applicable Revolving Credit Commitments (*i.e.*, the Existing Revolver Tranche and the Extended Revolving Credit Commitments of the applicable Revolver Extension Series) and repayments thereunder shall be made on a pro rata basis (except for (I) payments of interest and fees at different rates on Extended Revolving Credit Commitments (and related outstandings) and (II) repayments required upon the Maturity Date of the non-extending Revolving Credit Commitments); *provided, further*, that (A) no Event of Default shall have occurred and be continuing at the time a Revolver Extension Request is delivered to Lenders, (B) in no event shall the Maturity Date of any Extended Revolving Credit Commitments of a given Revolver Extension Series at the time of establishment thereof be earlier than the then Latest Maturity Date of any other Revolving Credit Commitments hereunder and (C) all documentation in respect of such Extension Amendment shall be consistent with the foregoing. Any Extended Revolving Credit Commitments amended pursuant to any Revolver Extension Request shall be designated a series (each, a “**Revolver Extension Series**”) of Extended Revolving Credit Commitments for all purposes of this Agreement; *provided* that any Extended Revolving Credit Commitments amended from an Existing Revolver Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Revolver Extension Series with respect to such Existing Revolver Tranche. Each request for a Revolver Extension Series of Extended Revolving Credit Commitments proposed to be incurred under this Section 2.16 shall be in an aggregate principal amount that is not less than \$10,000,000 (it being understood that the actual principal amount thereof provided by the applicable Lenders may be lower than such minimum amount).

(c) *Extension Request.* The Borrower shall provide the applicable Extension Request at least five (5) Business Days (or such shorter period as may be agreed by the Administrative

Agent) prior to the date on which Lenders under the Existing Term Loan Tranche or Existing Revolver Tranche, as applicable, are requested to respond, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.16. No Lender shall have any obligation to agree to have any of its Term Loans of any Existing Term Loan Tranche amended into Extended Term Loans or any of its Revolving Credit Commitments amended into Extended Revolving Credit Commitments, as applicable, pursuant to any Extension Request. Any Lender holding a Loan under an Existing Term Loan Tranche (each, an “**Extending Term Lender**”) wishing to have all or a portion of its Term Loans under the Existing Term Loan Tranche subject to such Extension Request amended into Extended Term Loans and any Revolving Credit Lender (each, an “**Extending Revolving Credit Lender**”) wishing to have all or a portion of its Revolving Credit Commitments under the Existing Revolver Tranche subject to such Extension Request amended into Extended Revolving Credit Commitments, as applicable, shall notify the Administrative Agent (each, an “**Extension Election**”) on or prior to the date specified in such Extension Request of the amount of its Term Loans under the Existing Term Loan Tranche or Revolving Credit Commitments under the Existing Revolver Tranche, as applicable, which it has elected to request be amended into Extended Term Loans or Extended Revolving Credit Commitments, as applicable (subject to any minimum denomination requirements imposed by the Administrative Agent). In the event that the aggregate principal amount of Term Loans under the Existing Term Loan Tranche or Revolving Credit Commitments under the Existing Revolver Tranche, as applicable, in respect of which applicable Term Lenders or Revolving Credit Lenders, as the case may be, shall have accepted the relevant Extension Request exceeds the amount of Extended Term Loans or Extended Revolving Credit Commitments, as applicable, requested to be extended pursuant to the Extension Request, Term Loans or Revolving Credit Commitments, as applicable, subject to Extension Elections shall be amended to Extended Term Loans or Revolving Credit Commitments, as applicable, on a pro rata basis (subject to rounding by the Administrative Agent, which shall be conclusive) based on the aggregate principal amount of Term Loans or Revolving Credit Commitments, as applicable, included in each such Extension Election.

(d) *Extension Amendment.* Extended Term Loans and Extended Revolving Credit Commitments shall be established pursuant to an amendment (each, a “**Extension Amendment**”) to this Agreement among the Borrower, the Administrative Agent and each Extending Term Lender or Extending Revolving Credit Lender, as applicable, providing an Extended Term Loan or Extended Revolving Credit Commitment, as applicable, thereunder, which shall be consistent with the provisions set forth in Sections 2.16(a) or (b) above, respectively (but which shall not require the consent of any other Lender). The effectiveness of any Extension Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in Section 4.02 and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) legal opinions, board resolutions and officers’ certificates consistent with those delivered on the Closing Date (conformed as appropriate) other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel’s form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that the Extended Term Loans or Extended Revolving Credit Commitments, as applicable, are provided with the benefit

of the applicable Loan Documents. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment. Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Extended Term Loans or Extended Revolving Credit Commitments, as applicable, incurred pursuant thereto, (ii) modify the scheduled repayments set forth in Section 2.07 with respect to any Existing Term Loan Tranche subject to an Extension Election to reflect a reduction in the principal amount of the Term Loans required to be paid thereunder in an amount equal to the aggregate principal amount of the Extended Term Loans amended pursuant to the applicable Extension (with such amount to be applied ratably to reduce scheduled repayments of such Term Loans required pursuant to Section 2.07), (iii) modify the prepayments set forth in Section 2.05 to reflect the existence of the Extended Term Loans and the application of prepayments with respect thereto, (iv) address technical issues relating to funding and payments and (v) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.16, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment.

(e) No conversion of Loans pursuant to any Extension in accordance with this Section 2.16 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

Section 2.17 Defaulting Lenders.

(a) *Adjustments*. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; *third*, if so determined by the Administrative Agent or requested by the L/C Issuer or Swing Line Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Swing Line Loan or Letter of Credit; *fourth*, as the Borrower may request (so long as no Default or Event of Default has occurred and is continuing), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to

satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or Swing Line Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.17(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender (x) shall not be entitled to receive any commitment fee pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall be limited in its right to receive Letter of Credit fees as provided in Section 2.03(h).

(iv) Reallocation of Pro Rata Share to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Swing Line Loans pursuant to Sections 2.03 and 2.04, the "**Pro Rata Share**" of each Non-Defaulting Lender's Revolving Credit Loans and L/C Obligations shall be computed without giving effect to the Participating Revolving Credit Commitment of that Defaulting Lender; *provided* that (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default or Event of Default has occurred and is continuing; and (ii) the aggregate obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swing Line Loans shall not exceed the positive difference, if any, of (1) the Participating Revolving Credit Commitment of that Non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Loans of that Non-Defaulting Lender under such Participating Revolving Credit Commitments.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, Swing Line Lender and each L/C Issuer agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be

necessary to cause the Revolving Credit Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Pro Rata Share (without giving effect to Section 2.17(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

ARTICLE III. TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

Section 3.01 Taxes.

(a) Except as provided in this Section 3.01, any and all payments made by or on account of the Borrower (the term Borrower under Article III being deemed to include any Subsidiary for whose account a Letter of Credit is issued) or any Guarantor under any Loan Document shall be made free and clear of and without deduction for any Taxes, except as required by any Law. If the Borrower, any Guarantor or other applicable withholding agent shall be required by any Laws to deduct any Taxes from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (i) if the Tax in question is an Indemnified Tax or Other Tax, the sum payable by the Borrower or any Guarantor shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.01), each Lender (or, in the case of a payment made to an Agent for its own account, such Agent) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions, (iii) the applicable withholding agent shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), if the Borrower or any Guarantor is the applicable withholding agent, it shall furnish to such Agent or Lender (as the case may be) the original or a copy of a receipt evidencing payment thereof or other evidence acceptable to such Agent or Lender.

(b) In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary Taxes and any other excise, property, intangible or mortgage recording Taxes, imposed by any Governmental Authority, which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document excluding, in each case, any such Tax imposed as a result of a Lender's Assignment and Assumption, grant of a participation, transfer or assignment to or designation of a new applicable Lending Office or other office for receiving payments under any Loan Document (collectively, "**Assignment Taxes**"), except for Assignment Taxes resulting from assignment or participation that is requested or required in writing by the Borrower (all such non-excluded Taxes described in this Section 3.01(b) being hereinafter referred to as "**Other Taxes**").

(c) Borrower and each Guarantor agrees to indemnify each Agent and each Lender for (i) the full amount of Indemnified Taxes and Other Taxes payable by such Agent or such Lender (including Indemnified Taxes and Other Taxes imposed on or attributable to amounts payable under this Section 3.01) and (ii) any expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the Governmental Authority. A certificate as to the amount of such payment or liability prepared in good faith and delivered by such Agent or Lender (or by an Agent on behalf of such Lender), accompanied by a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts shall be conclusive absent manifest error. Notwithstanding anything to the contrary contained in this Section 3.01(c), neither Borrower nor any Guarantor shall be required to indemnify any Agent or Lender pursuant to this Section 3.01(c) for any amount to the extent such Agent or Lender fails to notify the Borrower of such possible indemnification claim within 180 days after such Agent or Lender receives written notice from the applicable taxing authority of the specific tax assessment giving rise to such indemnification claim.

(d) Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Law or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, any applicable withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation obsolete or inaccurate in any material respect, deliver promptly and on or before the date such documentation expires, becomes obsolete or inaccurate to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding Tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the applicable withholding agent shall withhold amounts required to be withheld by applicable Law from such payments at the applicable statutory rate. Notwithstanding any other provision of this clause (d), a Lender shall not be required to deliver any form pursuant to this clause (d) that such Lender is not legally eligible to deliver. Without limiting the foregoing:

(i) Each Lender that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed original copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding.

(ii) Each Lender that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(A) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party,

(B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Sections 871(h) or 881(c) of the Code, (A) a certificate substantially in the form of Exhibit H hereto (any such certificate a “**United States Tax Compliance Certificate**”) and (B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms),

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a Participant holding a participation granted by a participating Lender), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, W-8BEN-E United States Tax Compliance Certificate, Form W-9, Form W-8IMY or any other required information from each beneficial owner, as applicable (*provided* that, if the Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such partner(s)), or

(E) two properly completed and duly signed original copies of any other form prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, U.S. federal withholding tax on any payments to such Lender under the Loan Documents.

(iii) Each Agent that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent two properly completed and duly signed original copies of Internal Revenue Service Form W-9 with respect to fees received for its own account, certifying that such Agent is exempt from U.S. federal backup withholding. Each Agent that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent two properly completed and duly signed original copies of (A) Internal Revenue Service Form W-8ECI with respect to fees received for its own account and (B) Internal Revenue Service Form W-8IMY (together with all required accompanying documentation) with respect to payments received by it on behalf of the Lenders. Notwithstanding anything to the contrary in this Section 3.01(d)(iii), no Agent shall be required to deliver any documentation that such Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

(iv) Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 3.01(d).

(e) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Laws and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Laws and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has or has not complied with such Lender's obligations under FATCA and, if necessary, to determine the amount to deduct and withhold from such payment. For purposes of this clause (e), the term "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Any Lender or Agent claiming any additional amounts payable pursuant to this Section 3.01 shall use its reasonable efforts to mitigate or reduce the additional amounts payable, which reasonable efforts may include a change in the jurisdiction of its Lending Office (or any other measures reasonably requested by the Borrower) if such a change or other measures would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, result in any unreimbursed cost or expense or be otherwise disadvantageous to such Lender.

(g) If any Lender or Agent determines, in its sole discretion, that it has received a refund in respect of any Indemnified Taxes or Other Taxes as to which indemnification or additional amounts have been paid to it by a Loan Party pursuant to this Section 3.01, it shall promptly remit such refund to such Loan Party (but only to the extent of indemnification or additional amounts paid by the Loan Party under this Section 3.01(g) with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) of the Lender or Agent, as the case may be, and without interest (other than any interest paid by the relevant taxing authority with respect to such refund net of any Taxes payable by any Agent or Lender on such interest); *provided* that the Loan Parties, upon the request of the Lender or Agent, as the case may be, agree promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant taxing authority) to such party in the event such party is required to repay such refund to the relevant taxing authority. This Section 3.01(g) shall not be construed to require any Agent or any Lender to make available its tax returns (or any other information relating to Taxes that it deems confidential) to the Borrower or any other Person.

(h) For the avoidance of doubt, the term "Lender" shall, for purposes of this Section 3.01 and the definition of "Indemnified Taxes", include any L/C Issuer and any Swing Line Lender.

Section 3.02 Illegality.

If any Lender reasonably determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans, or to determine or charge interest

rates based upon the Eurocurrency Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Loans to Eurocurrency Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all applicable Eurocurrency Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment and conversion.

Section 3.03 Inability to Determine Rates.

(a) If the ~~Required Lenders~~ (i) Administrative Agent reasonably ~~determines~~ determines that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that ~~(a)~~ deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount, currency and Interest Period of such Eurocurrency Rate Loan, ~~or (b), (x)~~ adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan or in connection with an existing or proposed Base Rate Loan, ~~or (c) and (y) the circumstances described in Section 3.03(c)(i) do not apply (in each case with respect to this clause (i), "Impacted Loans"), or (ii) the Administrative Agent or the Required Lenders determine for any reason~~ the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended (to the extent of the affected Eurocurrency Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate

component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of Section 3.03(a), until the Administrative Agent upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans (to the extent of the affected Eurocurrency Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Notwithstanding the foregoing but subject to the last sentence of this Section 3.03, if the Administrative Agent has made the determination described in clause (i) of Section 3.03(a), the Administrative Agent with the consent of the Borrower (such consent not to be unreasonably withheld or delayed), may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (i) of the first sentence of Section 3.03(a), (ii) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

(c) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents but subject to the last sentence of this Section 3.03, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining LIBOR for any requested Interest Period, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide LIBOR after such specific date (such specific date, the "Scheduled Unavailability Date"); or

(iii) syndicated loans currently being executed, or that include language similar to that contained in this Section 3.03, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR,

then, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing LIBOR in accordance with this Section 3.03 with (x) one or more SOFR-Based Rates or (y) another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion with the consent of the Borrower and may be periodically updated (the "Adjustment;" and any such proposed rate, a "LIBOR Successor Rate"), and any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders (A) in the case of an amendment to replace LIBOR with a rate described in clause (x), object to the Adjustment; or (B) in the case of an amendment to replace LIBOR with a rate described in clause (y), object to such amendment; provided that for the avoidance of doubt, in the case of clause (A), the Required Lenders shall not be entitled to object to any SOFR-Based Rate contained in any such amendment. Such LIBOR Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent with the consent of the Borrower (such consent not to be unreasonably withheld or delayed).

If no LIBOR Successor Rate has been determined and the circumstances under clause (i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended, (to the extent of the affected Eurocurrency Rate Loans or Interest Periods), and (y) the Eurocurrency Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans (to the extent of the affected Eurocurrency Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans (subject to the foregoing clause (y)) in the amount specified therein.

Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than zero for purposes of this Agreement (provided further that in no event shall such LIBOR Successor Rate be less than 1.00% per annum as applicable to the Term B-3 Loans).

In connection with the implementation of a LIBOR Successor Rate, the Administrative Agent will have the right with the consent of the Borrower (such consent not to be unreasonably withheld or delayed) to make LIBOR Successor Rate Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such LIBOR Successor Rate Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such LIBOR Successor Conforming Changes to the Lenders reasonably promptly after such amendment becomes effective.

For the avoidance of doubt, in the event that no alternative index rate or LIBOR Successor Rate is agreed in accordance with Section 3.03(b) or 3.03(c), as the case may be, then the last two sentences of Section 3.03(a) shall apply.

Section 3.04 Increased Cost and Reduced Return; Capital Adequacy; Eurocurrency Rate Loan Reserves.

(a) If any Lender reasonably determines that as a result of a Change in Law, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining Eurocurrency Rate Loans or (as the case may be) issuing or participating in Letters of Credit, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (including any Taxes (other than (i) Indemnified Taxes or Other Taxes or (ii) Taxes excluded from the definition of Indemnified Taxes (other than Taxes excluded solely under clause (ii) thereof)), including by imposing, modifying or holding applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, and excluding for purposes of this Section 3.04(a) any such increased costs or reduction in amount resulting from reserve requirements contemplated by Section 3.04(b) or the definition of Eurocurrency Rate), then from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by it, or participations in or issuance of Letters of Credit by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity and such Lender's desired return on capital), then from time to time upon demand of such Lender (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender, as the case may be, within fifteen (15) days after demand by such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, additional interest on the unpaid principal amount of each applicable Eurocurrency Rate Loan of the Borrower equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financing regulatory authority imposed in respect of the maintenance of the Commitments or the funding of any Eurocurrency Rate Loans of the Borrower, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrower shall have received at least fifteen (15) days' prior notice (with a copy to the Administrative Agent) of such additional interest or cost from such Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such notice.

Section 3.05 Funding Losses.

Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense actually incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Eurocurrency Rate Loan of the Borrower on a day other than the last day of the Interest Period for such Loan; or

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurocurrency Rate Loan of the Borrower on the date or in the amount notified by the Borrower;

including any loss or expense (excluding loss of anticipated profits or margin) arising from the liquidation or reemployment of funds obtained by it to maintain such Eurocurrency Rate Loan or from fees payable to terminate the deposits from which such funds were obtained.

Section 3.06 Matters Applicable to All Requests for Compensation.

(a) If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or issuing Letters of Credit hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate

the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect; *provided* nothing in this Section 3.06(a) shall affect or postpone any Obligations of the Borrower or the rights of the Lenders under this Article III.

(b) If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue Eurocurrency Rate Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into Eurocurrency Rate Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(d) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of Section ~~3.01~~, 3.02, 3.03 or 3.04 shall not constitute a waiver of such Lender's right to demand such compensation, *provided* that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of Section ~~3.01~~, 3.02, 3.03 or 3.04 for any increased costs incurred or reductions suffered more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event giving rise to such claim and of such Lender's intention to claim compensation therefor (except that, if the circumstance giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

(d) If the obligation of any Lender to make or continue any Eurocurrency Rate Loan or to convert Base Rate Loans into Eurocurrency Rate Loans shall be suspended pursuant to Section 3.06(b) hereof, such Lender's applicable Eurocurrency Rate Loans shall be automatically converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for such Eurocurrency Rate Loans (or, in the case of any immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurocurrency Rate Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's applicable Eurocurrency Rate Loans shall be applied instead to its Base Rate Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurocurrency Rate Loans shall be made or continued instead as Base Rate Loans (if possible), and all Base Rate Loans of such Lender that would otherwise be converted into Eurocurrency Rate Loans shall remain as Base Rate Loans.

(e) If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of any of such Lender's Eurocurrency Rate Loans pursuant to this Section 3.06 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurocurrency Rate Loans made by other Lenders under the applicable Facility are

outstanding, if applicable, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurocurrency Rate Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurocurrency Rate Loans under such Facility and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments for the applicable Facility.

(f) Any Agent or Lender claiming compensation under this Article III shall deliver a certificate to the Borrower setting forth in reasonable detail the additional amount or amounts to be paid to it hereunder, which shall be conclusive on the absence of manifest error. In determining such amounts, such Agent or Lender may use any reasonable averaging and attribution methods. Any Agent or Lender claiming compensation under Section 3.04 shall do so only to the extent such Agent or Lender requires similarly situated borrowers under comparable credit facilities to pay such amounts.

Section 3.07 Replacement of Lenders under Certain Circumstances. If (i) any Lender ceases to make Eurocurrency Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, (iii) any Lender is a Non-Consenting Lender, (iv) any Lender becomes a Defaulting Lender, or (v) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement (or, with respect to clause (iii) above, all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver and amendment) and the related Loan Documents to one or more Eligible Assignees (provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person) that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided that*:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.07(b)(ii)(B);

(b) such Lender shall have received payment of an amount equal to the applicable outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower;

(c) such Lender being replaced pursuant to this Section 3.07 shall (1) execute and deliver an Assignment and Assumption with respect to all, or a portion as applicable, of such Lender's Commitment and outstanding Loans and participations in L/C Obligations and Swing Line Loans, and (2) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); *provided that* the failure of any such Lender to execute an Assignment and Assumption or deliver such Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment may be recorded in the Register and the Notes shall be deemed to be canceled upon such failure;

(d) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender;

(e) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(f) such assignment shall not conflict with applicable Laws;

(g) any Lender that acts as an L/C Issuer may not be replaced hereunder at any time when it has any Letter of Credit outstanding hereunder unless arrangements reasonably satisfactory to such L/C Issuer (including the furnishing of a back-up standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such L/C Issuer or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to such L/C Issuer) have been made with respect to each such outstanding Letter of Credit; and

(h) the Lender that acts as the Administrative Agent cannot be replaced in its capacity as Administrative Agent other than in accordance with Section 9.06,

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each affected Lender or all the Lenders with respect to a certain Class or Classes of the Loans and/or Commitments and (iii) the Required Lenders (or, in the case of a consent, waiver or amendment involving all affected Lenders of a certain Class, the Required Class Lenders) have agreed (but solely to the extent required by Section 10.01) to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a **“Non-Consenting Lender.”**

In connection with any such replacement, (i) if the Lender to be replaced is a Non-Consenting Lender, the Borrower shall pay to each Non-Consenting Lender, concurrently with the effectiveness of the respective assignment, the fee set forth in Section 2.05(a)(vi) to the extent applicable and (ii) if any such Non-Consenting Lender or Defaulting Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Assumption reflecting such replacement within five (5) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Assumption Agreement to such Non-Consenting Lender or Defaulting Lender, then such Non-Consenting Lender or Defaulting Lender shall be deemed to have executed and delivered such Assignment and Assumption without any action on the part of the Non-Consenting Lender or Defaulting Lender.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 3.08 Survival.

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, resignation of the Administrative Agent and any assignment of rights by, or replacement of, any Lender.

**ARTICLE IV.
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

Section 4.01 Conditions to Initial Credit Extension.

The obligation of each Lender to make a Credit Extension hereunder on the Closing Date is subject to satisfaction of the following conditions precedent, except as otherwise agreed between the Borrower and the Administrative Agent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or pdf copies or other facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party:

(i) a Committed Loan Notice in accordance with the requirements hereof;

(ii) executed counterparts of this Agreement;

(iii) a Note executed by the Borrower in favor of each Lender that has requested a Note at least two (2) Business Days in advance of the Closing Date;

(iv) the Security Agreement, Perfection Certificate, Intellectual Property Security Agreement and each other Collateral Document required to be executed on the Closing Date, duly executed by each Loan Party thereto, together with:

(A) certificates, if any, representing the Pledged Equity referred to therein accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank; and

(B) evidence that all other actions, recordings and filings required by the Collateral Documents (other than the filing or recording of any Mortgages) that the Administrative Agent may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been taken, completed or otherwise provided for;

(v) such certificates of good standing (to the extent such concept exists) from the applicable secretary of state of the state of organization of each Loan Party, certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Closing Date;

(vi) an opinion from Weil, Gotshal & Manges LLP, counsel to the Loan Parties, in customary form;

(vii) a solvency certificate from the chief financial officer, chief accounting officer or other officer with duties of the Borrower (after giving effect to the Transactions) substantially in the form attached hereto as Exhibit D-2;

(viii) evidence that the Administrative Agent has been named as loss payee and/or additional insured, as applicable, under each insurance policy with respect to all insurance as to which the Administrative Agent shall have reasonably requested to be so named; and

(ix) a copy of the Second Lien Intercreditor Agreement, duly executed and delivered by each party thereto;

provided, however, that, each of the requirements set forth in clauses (iv) and (ix) above, including the delivery of documents and instruments necessary to satisfy the Collateral and Guarantee Requirement (except for the execution and delivery of the Security Agreement and to the extent that a Lien on the Collateral may be perfected (x) by the filing of a financing statement under the Uniform Commercial Code or (y) by the delivery of stock certificates of the Borrower and the Subsidiary Guarantors with respect to which a Lien may be perfected upon closing by the delivery of a stock certificate), shall not constitute conditions precedent to any Credit Extension on the Closing Date after the Borrower's use of commercially reasonable efforts to satisfy such requirement on or prior to the Closing Date without undue burden or expense (1) if the Borrower agrees to deliver, or cause to be delivered, such evidence of insurance, documents and instruments, or take or cause to be taken such other actions as may be required to confirm such insurance or perfect such security interests within ninety (90) days after the Closing Date (subject to extensions approved by the Administrative Agent in its reasonable discretion) or (2) other than with respect to the Borrower and Holdings, if the delivery of such documents and instruments cannot be provided as a condition precedent solely because the Board of Directors of the applicable entities (each such entity, a "**Deferred Loan Party**") have not authorized such documents or instruments (such documents and instruments, the "**Duly Authorized Documents**") and the elections of new directors or managers, as the case may be, of the applicable Deferred Loan Party's Board of Directors, to authorize such documents or instruments has not taken place.

(b) Payment of all fees and expenses due to the Administrative Agent and the Arrangers, to the extent invoiced at least three (3) Business Days prior to the Closing Date (except as otherwise reasonably agreed by the Borrower), required to be paid on the Closing Date.

(c) Prior to or substantially concurrently with the initial Borrowing on the Closing Date, (i) the Equity Contribution shall have been consummated; (ii) the initial borrowing under the Second Lien Credit Agreement shall have been consummated; (iii) the Merger shall have been consummated in accordance with the terms of the Merger Agreement, and the Merger

Agreement shall not have been amended or waived, and no consents shall have been given with respect thereto, in any material respect by the Borrower or any of its Subsidiaries in a manner materially adverse to the Lenders or the Arrangers (in each case in their capacity as such) without the consent of the Arrangers (such consent not to be unreasonably withheld, conditioned or delayed); *provided* that (a) any amendment, waiver or consent that results in a change in the amount of consideration required to consummate the Merger shall be deemed not to be materially adverse to the Lenders or the Arrangers so long as (i) any reduction shall be applied as follows: (1) 70% to reduce the commitments in respect of Term B Loans and the Second Lien Initial Term Loans on a pro rata basis and (2) 30% to reduce the Equity Contribution, and (ii) any increase is funded by amounts permitted to be drawn under the Initial Revolving Credit Commitments or the Equity Contribution (as the Equity Contribution may be increased), (b) the granting of any consent under the Merger Agreement that is not materially adverse to the interests of the Lenders or the Arrangers shall not otherwise constitute an amendment or waiver and (c) any change to the definition of "Material Adverse Change" in the Merger Agreement shall be deemed materially adverse to the Lenders and the Arrangers; and (v) the Refinancing shall have been consummated.

(d) There shall not have occurred a Material Adverse Change (as defined in, and interpreted pursuant to, the Merger Agreement) since the date of the Merger Agreement.

(e) The Specified Representations shall be true and correct in all material respects and a Responsible Officer of the Borrower shall have certified as to the same.

(f) The Arrangers shall have received the Audited Financial Statements.

(g) The Administrative Agent shall have received, at least two (2) days prior to the Closing Date, all documentation and other information about the Borrower and the Guarantors required under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act, that has been requested by the Administrative Agent in writing at least ten (10) days prior to the Closing Date.

(h) The Specified Merger Agreement Representations shall be true and correct in all material respects, but only to the extent the failure of the Specified Merger Agreement Representations to be true and correct in all material respects gives the Merger Sub (or its applicable Affiliate) the right to terminate its obligation to consummate (or gives the Merger Sub (or its applicable Affiliate) the right not to consummate) the Acquisition under the Merger Agreement.

Without limiting the generality of the provisions of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.02 Conditions to All Credit Extensions after the Closing Date.

The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) after the Closing Date is subject to the following conditions precedent:

(i) The representations and warranties of each Loan Party set forth in Article V and in each other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(ii) No Default shall exist or would result from such proposed Credit Extension or from the application of the proceeds therefrom.

(iii) The Administrative Agent and, if applicable, the relevant L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by the Borrower after the Closing Date shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(i) and (ii) have been satisfied on and as of the date of the applicable Credit Extension.

**ARTICLE V.
REPRESENTATIONS AND WARRANTIES**

The Borrower and each of the Subsidiary Guarantors party hereto represent and warrant to the Agents and the Lenders at the time of each Credit Extension (to the extent required to be true and correct for such Credit Extension pursuant to Article IV) that:

Section 5.01 Existence, Qualification and Power; Compliance with Laws.

Each Loan Party and each Restricted Subsidiary that is a Material Subsidiary (a) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concept exists in such jurisdiction), (b) has all requisite power and authority to (i) own or lease its assets and carry on its business as currently conducted and (ii) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and in good standing (to the extent such concept exists in such jurisdiction) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all applicable Laws, orders, writs and injunctions and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case referred to in clause (a) (other than with respect to Holdings and the Borrower), (b)(i) (other than with respect to Holdings and the Borrower), (c), (d) or (e), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.02 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transactions, (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01), or require any payment to be made under (x) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject or (iii) violate any Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) (A) referred to in clauses (ii) and (iii), to the extent that such violation, conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect and (B) solely for purposes of Section 4.01, (x) clause (iii) shall be limited to any violation of applicable Law that would result in a Company Material Adverse Effect and (y) clause (i) shall be limited to a contravention arising out of the execution, delivery and performance of the Loan Documents.

Section 5.03 Governmental Authorization; Other Consents.

No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement) and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect.

Section 5.04 Binding Effect.

This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is a party thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by (i) Debtor Relief Laws and by general principles of equity principles of good faith

and fair dealing, and (ii) the need for filings and registrations necessary to create or perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties and (iii) the effect of foreign Laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

Section 5.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements fairly present in all material respects the financial condition of the Portillo Restaurant Group as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(b) The Unaudited Financial Statements fairly present in all material respects the financial condition of the Persons referred to therein as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except (i) as otherwise expressly noted therein and (ii) to normal year-end audit adjustments, the absence of footnotes and other presentation items.

(c) The forecasts of consolidated balance sheets, income statements and cash flow statements of the Borrower and its Subsidiaries for each of the fiscal years ending July 31, 2015 through July 31, 2021, copies of which have been furnished to the Administrative Agent prior to the Closing Date, and all Projections delivered pursuant to Section 6.01 have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made, it being understood that projections as to future events are not to be viewed as facts and actual results may vary materially from such forecasts.

(d) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

Section 5.06 Litigation.

Except as set forth in Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Restricted Subsidiaries or against any of their properties or revenues (other than actions, suits, proceedings and claims in connection with the Transactions) that either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.07 Ownership of Property; Liens.

The Borrower and each of its Restricted Subsidiaries has good record title to, or valid leasehold interests in, or easements or other limited property interests in, all Real Property necessary in the ordinary conduct of its business, free and clear of all Liens except as set forth in Schedule 5.07 and except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted by Section 7.01 and except where the failure to have such title or other interest could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.08 Environmental Matters.

Except as specifically disclosed in Schedule 5.08 or except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

- (a) each Loan Party and its respective properties and operations are in compliance with all Environmental Laws, which includes obtaining and maintaining all applicable Environmental Permits required under such Environmental Laws to carry on the business of the Loan Parties;
- (b) the Loan Parties have not received any written notice that alleges any of them is in violation of or potentially liable under any Environmental Laws and none of the Loan Parties nor any of the Real Property is the subject of any claims, investigations, liens, demands, or judicial, administrative or arbitral proceedings pending or, to the knowledge of the Borrower, threatened in writing, under any Environmental Law the effect of which would be to impose liability on any Loan Party under such Environmental Law or to revoke or modify any Environmental Permit held by any of the Loan Parties; and
- (c) there has been no Release of Hazardous Materials on, at, under or from any Real Property or facilities owned, operated or leased by any of the Loan Parties, or, to the knowledge of the Borrower, Real Property formerly owned, operated or leased by any Loan Party that, in any case, could reasonably be expected to require the Borrower to perform any investigation, remedial activity or corrective action or cleanup under Environmental Laws or could otherwise reasonably be expected to result in the Borrower incurring liability under Environmental Laws.

Section 5.09 Taxes.

Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Borrower and its Restricted Subsidiaries have timely filed all tax returns required to be filed by them, and have paid all Taxes levied or imposed upon them or their properties, income, profits or assets, that are due and payable (including in their capacity as a withholding agent), except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax deficiency or assessment known to any Loan Parties against the Loan Parties that, if made would, individually or in the aggregate, have a Material Adverse Effect.

Section 5.10 ERISA Compliance.

- (a) Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other applicable Federal or state Laws.
- (b) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); and (iii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred

which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan, except, with respect to each of the foregoing clauses of this Section 5.10(b), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.11 Subsidiaries; Equity Interests.

As of the Closing Date (after giving effect to the Transactions), no Loan Party has any Material Subsidiaries other than those specifically disclosed in Schedule 5.11, and all of the outstanding Equity Interests owned by the Loan Parties (or a Subsidiary of any Loan Party) in such Material Subsidiaries have been validly issued and are fully paid and all Equity Interests owned by a Loan Party (or a Subsidiary of any Loan Party) in such Material Subsidiaries are owned free and clear of all Liens except (i) those created under the Collateral Documents and (ii) any Lien that is permitted under Section 7.01. As of the Closing Date, Schedules 1(a) and 5(a) to the Perfection Certificate (a) set forth the name and jurisdiction of each Domestic Subsidiary that is a Loan Party, (b) set forth the ownership interest of the Borrower and any other Subsidiary thereof in each Subsidiary, including the percentage of such ownership and (c) identifies each Subsidiary that is a Subsidiary the Equity Interests of which are required to be pledged on the Closing Date pursuant to the Collateral and Guarantee Requirement.

Section 5.12 Margin Regulations; Investment Company Act.

(a) The Borrower is not engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings or drawings under any Letter of Credit will be used for any purpose that violates Regulation U of the Board of Governors of the United States Federal Reserve System.

(b) Neither the Borrower nor any of its Restricted Subsidiaries is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 5.13 Disclosure.

No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, *pro forma* financial information and information of a general economic or industry nature) to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not materially misleading. With respect to projected financial information and *pro forma* financial information, the Borrower represents that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

Section 5.14 Labor Matters.

Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against the Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened and (b) hours worked by and payments made to employees of the Borrower or any of its Restricted Subsidiaries have been in compliance with the Fair Labor Standards Act or any other applicable Laws dealing with such matters.

Section 5.15 Intellectual Property; Licenses, Etc.

The Borrower and its Restricted Subsidiaries own, license or possess the right to use all of the trademarks, service marks, trade names, domain names, copyrights, patents, patent rights, licenses, technology, software, know-how database rights, design rights and other intellectual property rights (collectively, “**IP Rights**”) that are reasonably necessary for the operation of their respective businesses as currently conducted, and such IP Rights do not conflict with the rights of any Person, except to the extent the absence of such IP Rights and such conflicts, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower and its Restricted Subsidiaries as currently conducted does not infringe upon any rights held by any Person except for such infringements, individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the IP Rights is pending or, to the knowledge of the Borrower, threatened in writing against any Loan Party or any of the Restricted Subsidiaries, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.16 Solvency.

On the ~~Closing~~ Amendment No. 3 Effective Date, after giving effect to the Transactions, the Borrower and its Restricted Subsidiaries, on a consolidated basis, are Solvent.

Section 5.17 Subordination of Junior Financing.

The Obligations under any Facility are (a) “Senior Debt,” “Senior Indebtedness,” “Guarantor Senior Debt” or “Senior Secured Financing” (or any comparable term) under, and as defined in, any Junior Financing Documentation in respect of any Junior Financing that is subordinated in right of payment to the Obligations under such Facility and (b) “First Lien Credit Agreement Obligations” or any comparable term under, and as defined in, the Second Lien Intercreditor Agreement (except to the extent pari passu or junior in priority to the “Second Priority Debt Obligations” (as defined in the Second Lien Intercreditor Agreement)).

Section 5.18 USA Patriot Act, Anti-Corruption Laws and Sanctions.

(a) To the extent applicable, each of Holdings and its Subsidiaries is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the USA Patriot Act.

(b) (i) No part of the proceeds of the Loans (or any Letters of Credit) will be used directly or, to the knowledge of Holdings and its Subsidiaries, indirectly, (A) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”) or (B) except as would not reasonably be expected to have a Material Adverse Effect, in violation of any other Anti-Corruption Laws and (ii) Holdings, its Subsidiaries and, to the knowledge of Holdings or such Subsidiary, their respective directors, officers and employees, are currently in compliance with (A) the FCPA in all material respects and (B) except as would not reasonably be expected to have a Material Adverse Effect, any other Anti-Corruption Laws.

(c) (i) None of Holdings or its Subsidiaries will directly or, to the knowledge of Holdings or such Subsidiary, indirectly, use the proceeds of the Loans in violation of applicable Sanctions or otherwise knowingly make available such proceeds to any Person for the purpose of financing the activities of any Sanctioned Person, except to the extent licensed, exempted or otherwise approved by a competent governmental body responsible for enforcing such Sanctions, (ii) none of Holdings, any Subsidiary or to the knowledge of Holdings or such Subsidiary, their respective directors, officers or employees or, to the knowledge of the Borrower, any controlled Affiliate of Holdings, the Borrower or its Subsidiaries that will act in any capacity in connection with or benefit from any Facility, is a Sanctioned Person and (iii) none of Holdings, its Subsidiaries or, to the knowledge of Holdings or such Subsidiary, their respective directors, officers and employees, are in violation of applicable Sanctions in any material respect.

Section 5.19 Security Documents.

Except as otherwise contemplated hereby or under any other Loan Documents, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents (including the delivery to the Administrative Agent of any Pledged Debt and any Pledged Equity required to be delivered pursuant to the applicable Collateral Documents), are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties, except as otherwise provided hereunder, including subject to Liens permitted by Section 7.01, a legal, valid, enforceable and perfected first priority Lien on all right, title and interest of the respective Loan Parties in the Collateral described therein.

Notwithstanding anything herein (including this Section 5.19) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty as to (A) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (C) on the Closing Date and until required pursuant to Section 6.11 or 4.01(a)(iv), the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Closing Date pursuant to Section 4.01(a)(iv).

**ARTICLE VI.
AFFIRMATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements as to which arrangements reasonably satisfactory to the applicable Hedge Bank have been made) hereunder which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or such Letter of Credit has been deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer), then from and after the Closing Date, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.15) cause each of its Restricted Subsidiaries to:

Section 6.01 Financial Statements.

Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) commencing with the fiscal year ending December 31, 2014, within one hundred fifty (150) days after the end of each of the fiscal years of the Borrower ending December 31, 2014 and December 31, 2015, and one hundred twenty (120) days after the end of each fiscal year of the Borrower thereafter, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of comprehensive income, shareholders' equity and cash flows for such fiscal year, setting forth in each case commencing with the fiscal year ending December 31, 2015, in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an accounting firm, which accounting firm shall, commencing with the fiscal year ending December 31, 2015, be an independent registered public accounting firm of nationally recognized standing, which report and opinion (i) shall be prepared in accordance with generally accepted auditing standards and (ii) shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (except as may be required as a result of (x) a prospective Event of Default with respect to the Financial Covenant, (y) an actual Event of Default with respect to the Financial Covenant or (z) the impending maturity of any Facility, any Incremental Equivalent Debt, any Refinancing Equivalent Debt, the Second Lien Term Loans, any Second Lien Incremental Equivalent Debt or any Second Lien Refinancing Equivalent Debt);

(b) commencing with the fiscal quarter ending September 30, 2014, within seventy-five (75) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter and the related (i) consolidated statements of comprehensive income for such fiscal quarter and for the portion of the fiscal year then ended and (ii) consolidated

statements of cash flows for the portion of the fiscal year then ended, setting forth in each case commencing with the fiscal quarter ending September 30, 2015 in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) no later than one hundred fifty (150) days after the end of the fiscal year ending December 31, 2015 and within one-hundred twenty (120) days after the end of each subsequent fiscal year, a reasonably detailed consolidated budget for the then-current fiscal year on a quarterly basis (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal year and the related consolidated statements of projected cash flow and projected income for such fiscal year and a summary of the material underlying assumptions applicable thereto) (collectively, the "**Projections**"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such Projections, it being understood that actual results may vary from such Projections and that such variations may be material; and

(d) simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 6.01(a) and 6.01(b) above, the related unaudited consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from such consolidated financial statements.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 6.01 may be satisfied with respect to financial information of the Borrower and the Restricted Subsidiaries by furnishing (A) the applicable financial statements of Holdings (or any direct or indirect parent of Holdings) or (B) the Borrower's or Holdings' (or any direct or indirect parent thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; *provided that*, with respect to clauses (A) and (B), (i) to the extent such information relates to Holdings (or a parent thereof), such information is accompanied by unaudited consolidating information that explains in reasonable detail the differences between the information relating to Holdings (or such direct or indirect parent thereof), on the one hand, and the information relating to the Borrower and its consolidated Restricted Subsidiaries on a standalone basis, on the other hand and (ii) to the extent such information is in lieu of information required to be provided under Section 6.01(a), such materials are, to the extent applicable, accompanied by a report and opinion of any accounting firm, which accounting firm shall, commencing with the fiscal year ending December 31, 2015, be an independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (except as may be required as a result of (x) a prospective Event of Default with respect to the Financial Covenant, (y) an actual Event of Default with respect to the Financial Covenant or (z) the impending maturity of any Facility, any Incremental Equivalent Debt, any Refinancing Equivalent Debt, the Second Lien Term Loans, any Second Lien Incremental Equivalent Debt or any Second Lien Refinancing Equivalent Debt).

Any financial statement required to be delivered pursuant to Section 6.01(a) or (b) shall not be required to include acquisition accounting adjustments relating to the Transactions or any Permitted Acquisition to the extent it is not practicable to include any such adjustments in such financial statement.

Documents required to be delivered pursuant to Section 6.01 and Section 6.02(b) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower (or any direct or indirect parent of the Borrower) posts such documents, or provides a link thereto on the website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on IntraLinks or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that (i) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents (which may be electronic copies delivered via electronic mail) to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(a) to the Administrative Agent (which may be electronic copies delivered via electronic mail). Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks, DebtDomain, SyndTrak or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Subsidiaries, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (*provided, however*, that to the extent such Borrower Materials

constitute Information, they shall be treated as set forth in Section 10.08); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Administrative Agent and the Arranger shall treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark the Borrower Materials "PUBLIC."

Section 6.02 Certificates; Other Information.

Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) no later than five (5) days after ~~the~~each delivery of the financial statements referred to in Section 6.01(a) and (b) a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower, in each case together with a management's discussion and analysis of the consolidated results of operations of the Borrower for the quarter or year, as the case may be, covered by such financial statements;

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(c) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), (i), in the case of annual Compliance Certificates only, a report setting forth the information required by those sections of the Perfection Certificate describing the legal name and the jurisdiction of formation of each Loan Party and the location of the chief executive office of each Loan Party or confirming that there has been no change in such information since the Closing Date or, if later, the date of the last such report and (ii) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such Compliance Certificate (to the extent that there have been any changes in the identity or status as a Restricted Subsidiary or Unrestricted Subsidiary of any such Subsidiaries since the later of the Closing Date or the most recent list provided); and

(d) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Loan Parties or any of their respective Restricted Subsidiaries, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request.

Section 6.03 Notices.

Promptly after a Responsible Officer of the Borrower has obtained actual knowledge thereof, notify the Administrative Agent:

(a) of the occurrence of any Default;

(b) of the occurrence of an ERISA Event which could reasonably be expected to result in a Material Adverse Effect; and

(c) of the filing or commencement of, or any written threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority against the Borrower or any of its Restricted Subsidiaries, that could in each case reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to Section 6.03(a), (b) or (c) (as applicable) and (y) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04 Payment of Taxes.

Pay, discharge or otherwise satisfy, as the same shall become due and payable in the normal conduct of its business, all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (a) any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP or (b) the failure to pay or discharge the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization, and

(b) take all reasonable action to maintain all rights, privileges (including its good standing where applicable in the relevant jurisdiction), permits, licenses and franchises material to the ordinary conduct of its business,

except, in the case of clause (a) (other than with respect to the Borrower) or (b), to the extent (i) that failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (ii) pursuant to any merger, consolidation, liquidation, dissolution or Disposition permitted by Article VII.

Section 6.06 Maintenance of Properties.

Except if the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and fire, casualty or condemnation excepted.

Section 6.07 Maintenance of Insurance.

Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons. Each such policy of insurance shall as appropriate (i) name the Administrative Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interest may appear or (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement that names the Administrative Agent, on behalf of the Secured Parties, as loss payee thereunder. If the improvements on any Mortgaged Property are at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then, to the extent required by applicable Flood Insurance Laws, the Borrower shall, or shall cause each Loan Party to, (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount reasonably satisfactory to the Administrative Agent and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent.

Section 6.08 Compliance with Laws.

Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.09 Books and Records.

Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP and which reflect all material financial transactions and matters involving the assets and business of the Borrower or a Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

Section 6.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* that only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year and only one (1) such time shall be at the Borrower's expense; *provided, further*, that during the continuance of an Event of Default, the Administrative Agent (or any of its respective representatives or independent contractors), on behalf of the Lenders, may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 6.10, none of the Borrower or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (c) is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 6.11 Additional Collateral; Additional Guarantors.

At the Borrower's expense, subject to the limitations and exceptions of this Agreement, including, without limitation, the provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(a) Upon the formation or acquisition of any new direct or indirect wholly owned Material Domestic Subsidiary (in each case, other than an Excluded Subsidiary) by any Loan Party or the designation in accordance with Section 6.14 of any existing direct or indirect wholly owned Material Domestic Subsidiary as a Restricted Subsidiary (in each case, other than an Excluded Subsidiary) ~~or~~, any Subsidiary becoming a wholly owned Material Domestic Subsidiary (in each case, other than an Excluded Subsidiary) or any wholly owned Material Domestic Subsidiary ceasing to be an Excluded Subsidiary:

(i) within sixty (60) days after such formation, acquisition or designation or such a Subsidiary so becoming a Material Domestic Subsidiary, or such longer period as the Administrative Agent may agree in its discretion:

(A) cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Administrative Agent, other than with respect to any Excluded Assets, joinders to this Agreement as Guarantors, Security Agreement Supplements, Intellectual Property Security Agreements, a counterpart of the Intercompany Note, joinders to the Intercreditor Agreements then in effect and other security agreements and documents as reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent (consistent with the Security Agreement, Intellectual Property Security Agreements and other security agreements in effect on the Closing Date), in each case granting Liens required by the Collateral and Guarantee Requirement;

(B) cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement (and the parent of each such Material Domestic Subsidiary that is a Guarantor) to deliver any and all certificates representing Equity Interests (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement or the Security Agreement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(C) take and cause such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement and the parent of such Material Domestic Subsidiary to take whatever action (including the recording of Mortgages, the filing of UCC financing statements and delivery of stock and membership interest certificates to the extent certificated) as may be required pursuant to the terms of the Collateral Documents or as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and perfected first priority Liens (subject to Liens permitted by Section 7.01) to the extent required by the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement;

(ii) if reasonably requested by the Administrative Agent, within sixty (60) days after such request (or such longer period as the Administrative Agent may agree in its discretion), deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties to the Administrative Agent as to such matters set forth in this Section 6.11(a) as the Administrative Agent may reasonably request;

(iii) as promptly as practicable after the request therefor by the Administrative Agent, deliver to the Administrative Agent with respect to each Material Real Property, any existing title reports, abstracts or environmental assessment reports, to the extent available and in the possession or control of the Borrower; *provided, however*, that there shall be no obligation to deliver to the Administrative Agent any existing environmental assessment report whose disclosure to the Administrative Agent would require the consent of a Person other than the Borrower or one of its Subsidiaries, where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained; and

(iv) if reasonably requested by the Administrative Agent, within sixty (60) days after such request (or such longer period as the Administrative Agent may agree in its discretion), deliver to the Administrative Agent any other items necessary from time to time to satisfy the Collateral and Guarantee Requirement with respect to perfection and existence of security interests with respect to property of any Guarantor acquired after the Closing Date and subject to the Collateral and Guarantee Requirement, but not specifically covered by the preceding clauses (i), (ii) or (iii) or clause (b) below.

(b) Not later than one hundred twenty (120) days after the acquisition by any Loan Party of Material Real Property as determined by the Borrower (acting reasonably and in good faith) (or such longer period as the Administrative Agent may agree in its discretion) that is required to be provided as Collateral pursuant to the Collateral and Guarantee Requirement, which property would not be automatically subject to another Lien pursuant to pre-existing Collateral Documents, cause such property to be subject to a Lien and Mortgage in favor of the Administrative Agent for the benefit of the Secured Parties and take, or cause the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect or record such Lien, in each case to the extent required by, and subject to the limitations and exceptions of this Agreement, including, without limitation, the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement.

Section 6.12 Compliance with Environmental Laws.

Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and, in each case to the extent the Loan Parties are required by applicable Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with applicable Environmental Laws.

Section 6.13 Further Assurances.

Promptly upon reasonable request by the Administrative Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents, to the extent required pursuant to the Collateral and Guarantee Requirement. If the Administrative Agent reasonably determines that it is required by applicable Law to have appraisals prepared in respect of the Real Property of any Loan Party subject to a mortgage constituting Collateral, the Borrower shall provide to the Administrative Agent appraisals that satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of FIRREA.

Section 6.14 Designation of Subsidiaries. The Borrower may at any time after the Closing Date designate any Restricted Subsidiary of the Borrower as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that (i) immediately before and after such designation, no Default shall have occurred and be continuing, (ii) in the case of the designation of an Unrestricted Subsidiary as a Restricted Subsidiary, immediately after giving effect to such designation, the Borrower could incur \$1.00 of Permitted Ratio Debt, or the Consolidated Cash Interest Coverage Ratio would be no less than the Consolidated Cash Interest Coverage Ratio immediately prior to giving effect thereto, (iii) no Subsidiary may be designated

as an Unrestricted Subsidiary if, after such designation, it would be a “Restricted Subsidiary” for the purpose of any Junior Financing, any Incremental Equivalent Debt, any Permitted Ratio Debt or any Permitted Refinancing thereof and (iv) no Restricted Subsidiary may be designated an Unrestricted Subsidiary if it was previously designated an Unrestricted Subsidiary. The designation of any Subsidiary as an Unrestricted Subsidiary after the Closing Date shall constitute an Investment by the Borrower therein at the date of designation as set forth in the definition of Investment. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the Borrower in Unrestricted Subsidiaries pursuant to the definition of Investment.

Section 6.15 Maintenance of Ratings. Use commercially reasonable efforts to maintain (i) a public corporate credit rating (but not any specific rating) from S&P and a public corporate family rating (but not any specific rating) from Moody’s, in each case in respect of the Borrower, and (ii) a public rating (but not any specific rating) in respect of the Term B-3 Loans and the Initial Revolving Credit Commitments from each of S&P and Moody’s.

Section 6.16 Use of Proceeds.

Use the proceeds of any Borrowing on the Closing Date, whether directly or indirectly, in a manner consistent with the uses set forth in the preliminary statements to this Agreement, and after the Closing Date, use the proceeds of any Borrowing or Letter of Credit for any purpose not otherwise prohibited under this Agreement, including for general corporate purposes, working capital needs, the repayment of Indebtedness, the making of Restricted Payments and the making of Investments. Use the proceeds of the Term B-3 Loans made by the Additional Term B-3 Lender on the Amendment No. 3 Effective Date for any purpose other than the repayment of Term B Loans that do not constitute Converted Term B Loans and the repayment of Term B-2 Loans that do not constitute Converted Term B-2 Loans.

Section 6.17 Annual/Quarterly Lender Calls.

Participate in a conference call with the Administrative Agent and the Lenders to discuss the financial condition and results of operations of the Borrower and its Subsidiaries for the each most recently-ended period for which financial statements have been delivered pursuant to Section 6.01(a) or Section 6.01(b), as the case may be, which call shall occur within a reasonable period of time after the delivery of such ~~audited~~ financial statements and after the Lenders have first been provided reasonable notice of such call; provided, however, if the Borrower is holding a conference call open to the public to discuss the financial condition and results of operations of the Borrower and its Subsidiaries for ~~the~~such most recently-ended period for which ~~audited~~such financial statements have been delivered, the Borrower will not be required to hold a second, separate call for the Lenders as long as Lenders are provided access to such conference call.

Section 6.18 Post-Closing Actions.

Complete each of the actions described on Schedule 6.18 as soon as commercially reasonable and by no later than the date set forth in Schedule 6.18 with respect to such action or such later date as the Administrative Agent may reasonably agree.

**ARTICLE VII.
NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements as to which arrangements reasonably satisfactory to the applicable Hedge Bank have been made) hereunder which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or such Letter of Credit has been deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer), then from and after the Closing Date, the Borrower (and, with respect to Section 7.14 only, Holdings) shall not and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

Section 7.01 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) (i) Liens created pursuant to any Loan Document and (ii) subject to the Second Lien Intercreditor Agreement in the capacity of "Second Priority Debt Obligations" and the limitations in Section 7.03(q), Liens on the Collateral created pursuant to any Second Lien Loan Document;

(b) Liens existing on the Closing Date and listed in Schedule 7.01(b) and any modifications, replacements, renewals, refinancings or extensions thereof; *provided* that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 7.03, and (B) proceeds and products thereof, and (ii) the replacement, renewal, extension or refinancing of the obligations secured or benefited by such Liens, to the extent constituting Indebtedness, is permitted by Section 7.03;

(c) Liens for taxes, assessments or governmental charges (i) that are not overdue for a period of more than thirty (30) days or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or the equivalent accounting principles in the relevant local jurisdiction or (ii) that are not required to be paid pursuant to Section 6.04.

(d) statutory or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, so long as, in each case, such Liens secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Liens or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or the equivalent accounting principles in the relevant local jurisdiction;

(e) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, health, disability or employee benefits, unemployment insurance and other social security laws or similar legislation or regulation or other insurance-related obligations (including, but not limited to, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Holdings, the Borrower or any of its Restricted Subsidiaries;

(f) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business or consistent with past practice or industry practice;

(g) easements, rights-of-way, covenants, conditions, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and minor title defects affecting Real Property that do not in the aggregate materially interfere with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries, taken as a whole, or the use of the property for its intended purpose, and any other exceptions to title on the final Mortgage Policies issued to the Administrative Agent in connection with the Mortgaged Properties;

(h) Liens securing judgments or orders for the payment of money not constituting an Event of Default under Section 8.01(h);

(i) leases, licenses, cross-licenses, subleases or sublicenses granted to others in the ordinary course of business which (i) do not interfere in any material respect with the business of the Borrower and its Restricted Subsidiaries, taken as a whole, (ii) do not secure any Indebtedness or (iii) are permitted by Section 7.05;

(j) Liens in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(k) Liens (i) of a collection bank arising under Section 4-208 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking or other financial institution arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry or arising pursuant to such banking institution's general terms and conditions;

(l) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 7.06 to be applied against the purchase price for such Investment or other acquisition, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or other acquisition or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(m) Liens (i) in favor of the Borrower or a Restricted Subsidiary on assets of a Non-Loan Party or (ii) in favor of the Borrower or any Subsidiary Guarantor on assets of a Restricted Subsidiary;

(n) any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases, subleases, licenses, cross-licenses or sublicenses entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(o) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(p) Liens deemed to exist in connection with Investments in repurchase agreements under Section 7.06 or the definition of "Permitted Investments";

(q) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts maintained in the ordinary course of business and not for speculative purposes;

(r) Liens that are contractual rights of set-off or rights of pledge (i) relating to the establishment of depository relations with banks or other deposit-taking financial institutions and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any of its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(s) Liens solely on any cash earnest money deposits made by the Borrower or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(t) ground leases in respect of Real Property on which facilities owned or leased by the Borrower or any of its Restricted Subsidiaries are located;

(u) Liens to secure Indebtedness permitted under Section 7.03(e); *provided* that (i) such Liens are created within two hundred seventy (270) days of the acquisition, construction, repair, lease or improvement of the property subject to such Liens, (ii) such Liens do not at any time encumber property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits and (iii) with respect to Capitalized Leases, such Liens do not at any time extend to or cover any assets (except for replacements, additions and accessions to such assets) other than the assets subject to such Capitalized Leases and the proceeds and products thereof and customary security deposits; *provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(v) Liens on property of any Non-Loan Party, which Liens secure Indebtedness of any Non-Loan Party permitted under Section 7.03 or other obligations of any Non-Loan Party not constituting Indebtedness;

(w) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (other than by designation as a Restricted Subsidiary pursuant to Section 6.14), in each case after the Closing Date; *provided* that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition) and (iii) the Indebtedness secured thereby is permitted under Section 7.03(g), (m), (s) or (x);

(x) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Real Property that does not materially interfere with the ordinary conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(y) Liens arising from precautionary Uniform Commercial Code financing statement or similar filings;

(z) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(aa) the modification, replacement, renewal or extension of any Lien permitted by clauses (b), (u), (w) and (cc) of this Section 7.01; *provided* that (i) the Lien does not extend to any additional property, other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien and (B) proceeds and products thereof, and (ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by Section 7.03 (to the extent constituting Indebtedness);

(bb) Liens with respect to property or assets of the Borrower or any of its Restricted Subsidiaries securing obligations in an aggregate principal amount outstanding at any time not to exceed the greater of \$25,000,000 and 2.20% of Total Assets, in each case determined as of the date of incurrence;

(cc) Liens securing obligations in respect of Indebtedness; *provided*, that (1) after giving Pro Forma Effect to the incurrence of such Indebtedness (and any Specified Transactions consummated in connection therewith), (x) if such Liens are not expressly junior in right of security with the Obligations under Term Loans and Revolving Credit Loans that are secured on a first lien basis, the Borrower's Consolidated First Lien Net Leverage Ratio shall be no greater than ~~5.00~~2.50:1.00 or (y) if such Liens rank junior in right of security with the Liens securing the Obligations under Term Loans and Revolving Credit Loans that are secured on a first lien basis, the Borrower's Secured Net Leverage Ratio shall be no greater than ~~6.25~~4.20:1.00;

(dd) Liens on the Collateral securing obligations in respect of: (i) Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt and any Permitted Refinancing of any of the foregoing; *provided* that (x) any such Liens securing any Permitted Refinancing in respect of Permitted Pari Passu Secured Refinancing Debt are subject to the First Lien Intercreditor Agreement and (y) any such Liens securing any Permitted Refinancing in respect of Permitted Junior Secured Refinancing Debt are subject to the Second Lien Intercreditor Agreement or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent and (ii) Second Lien Incremental Equivalent Debt and Second Lien Refinancing Equivalent Debt; *provided* such Liens are subject to the Second Lien Intercreditor Agreement or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent;

(ee) Liens on specific items of inventory or other goods and the proceeds thereof of any Person securing such Person's obligations in respect of letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods in the ordinary course of business;

(ff) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(gg) Liens securing obligations in respect of Indebtedness permitted under Section 7.03(w);

(hh) Liens on the Securitization Assets arising in connection with a Qualified Securitization Financing; and

(ii) Liens in respect of Sale Leasebacks (including any Sale Leaseback Transaction), in each case on the assets or property sold and leased back in such Sale Leaseback.

The expansion of Liens by virtue of accrual of interest, the accretion of accreted value, the payment of interest or dividends in the form of additional Indebtedness, amortization of original issue discount and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 7.01.

Section 7.02 [Reserved].

Section 7.03 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) (i) Indebtedness outstanding on the Closing Date and listed in Schedule 7.03(b) and any Permitted Refinancing thereof and (ii) intercompany Indebtedness among the Borrower and any Restricted Subsidiary outstanding on the Closing Date and any Permitted Refinancing thereof; *provided* that all such Indebtedness of any Loan Party owed to any Non-Loan Party shall be unsecured and subordinated to the Obligations pursuant to an Intercompany Note;

(c) Guarantees by the Borrower and any Restricted Subsidiary in respect of Indebtedness of the Borrower or any Restricted Subsidiary of the Borrower otherwise permitted hereunder; *provided* that (A) no Guarantee by any Restricted Subsidiary of any Indebtedness constituting a Specified Junior Financing Obligation, Incremental Equivalent Debt or Refinancing Equivalent Debt shall be permitted unless such guaranteeing party shall have also provided a Guarantee of the Obligations on the terms set forth herein and (B) if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(d) Indebtedness of the Borrower or any Restricted Subsidiary owing to any Loan Party or any other Restricted Subsidiary (or issued or transferred to any direct or indirect parent of a Loan Party which is substantially contemporaneously transferred to a Loan Party or any Restricted Subsidiary of a Loan Party) to the extent constituting a Restricted Investment permitted by Section 7.06 or a Permitted Investment; *provided* that all such Indebtedness of any Loan Party owed to any Non-Loan Party shall be unsecured and subordinated to the Obligations pursuant to the Intercompany Note;

(e) (i) Attributable Indebtedness and other Indebtedness (including Capitalized Leases) financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred by the Borrower or any Restricted Subsidiary prior to or within two hundred seventy (270) days after the acquisition, construction, repair, replacement, lease or improvement of the applicable asset and any Permitted Refinancing thereof in an aggregate amount not to exceed the greater of \$20,000,000 and 2.00% of Total Assets, in each case determined at the time of incurrence at any time outstanding and (ii) Attributable Indebtedness arising out of Sale Leaseback and any Permitted Refinancing of such Attributable Indebtedness;

(f) Indebtedness in respect of Swap Contracts designed to hedge against Holdings', the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes and Guarantees thereof;

(g) Indebtedness of the Borrower or any Restricted Subsidiary (i) assumed (including Acquired Indebtedness) in connection with any Permitted Acquisition or (ii) incurred to finance a Permitted Acquisition and, in the case of clauses (i) and (ii), any Permitted Refinancing of any such Indebtedness; *provided* that after giving Pro Forma Effect to such Permitted Acquisition and the assumption or incurrence of such Indebtedness incurred or assumed pursuant to this clause (g), ~~either~~:

(A) the Consolidated Cash Interest Coverage Ratio is at least 2.00:1.00, ~~or~~ and

~~(B) the Consolidated Cash Interest Coverage Ratio is equal to or greater than immediately prior to such Permitted Acquisition, or~~

(B) ~~(C)~~ the Total Net Leverage Ratio is no greater than ~~6.25~~ 5.20 :1.00, ~~or~~

~~(D) the Total Net Leverage Ratio is equal to or less than immediately prior to such Permitted Acquisition;~~

provided that (1) any such Indebtedness incurred (but not assumed) does not mature or have scheduled amortization or payments of principal (other than customary “AHYDO catch-up payments”, customary offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) prior to the Maturity Date of the Term B-3 Loans at the time such Indebtedness is incurred and (2) any such Indebtedness incurred by a Non-Loan Party does not exceed in the aggregate at any time outstanding the greater of \$20,000,000 and 2.00% of Total Assets, in each case determined at the time of incurrence;

(h) Indebtedness representing deferred compensation to employees of the Borrower (and any direct or indirect parent thereof) or any of its Restricted Subsidiaries incurred in the ordinary course of business;

(i) Indebtedness to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests or other equity-based awards of the Borrower or any direct or indirect parent of the Borrower permitted by Section 7.06;

(j) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition, in each case, constituting indemnification obligations or obligations in respect of purchase price (including earnouts) or other similar adjustments;

(k) Indebtedness consisting of obligations of the Borrower or any of its Restricted Subsidiaries under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions, and Permitted Acquisitions or any other Investment expressly permitted under this Agreement;

(l) Cash Management Obligations and other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements in the ordinary course of business and any Guarantees thereof;

(m) Indebtedness which, when aggregated with the principal amount of all other Indebtedness incurred pursuant to this clause (m) and then outstanding, does not exceed the greater of \$45,000,000 and 4.50% of Total Assets (in each case determined at the time of incurrence or assumption, it being understood that any Indebtedness incurred pursuant to this Section 7.03(m) shall cease to be deemed incurred or outstanding for purposes of this Section 7.03(m) but shall be deemed incurred for the purposes of this covenant from and after the first date on which the Borrower or such Restricted Subsidiary could have incurred such Indebtedness under Section 7.03(s) without reliance on this Section 7.03(m));

(n) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, incurred in the ordinary course of business;

(o) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(p) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(q) (x) Indebtedness incurred under the Second Lien Credit Agreement, Second Lien Incremental Equivalent Debt and Second Lien Refinancing Equivalent Debt, in an aggregate principal amount not exceeding an amount at any time outstanding equal to (1) ~~\$96,000,000~~ 155,000,000 plus (2) the Second Lien Incremental Usage Amount at such time and (y) Indebtedness incurred under the Second Lien Credit Agreement or Second Lien Incremental Equivalent Debt to the extent (1) if such Indebtedness is secured, the Secured Net Leverage Ratio on a Pro Forma Basis after giving effect to such incurrence and the use of proceeds thereof does not exceed 6.254.20:1.00 and (2) if such Indebtedness is unsecured, the Total Net Leverage Ratio on a Pro Forma Basis after giving effect to such incurrence and the use of proceeds thereof does not exceed 6.254.20:1.00 and (z) Permitted Refinancings or Second Lien Refinancing Equivalent Debt in respect of Indebtedness incurred pursuant to clause (x) or (y) hereof;

(r) Indebtedness supported by a Letter of Credit, in a principal amount not to exceed the face amount of such Letter of Credit;

(s) Permitted Ratio Debt and any Permitted Refinancing thereof;

(t) Refinancing Equivalent Debt;

(u) Indebtedness of a Non-Loan Party which, when aggregated with the principal amount of all other Indebtedness incurred pursuant to this clause (u) and then outstanding, does not exceed the greater of \$15,000,000 and 1.25% of Total Assets (in each case determined at the date of incurrence or issuance, it being understood that any Indebtedness incurred pursuant to this Section 7.03(u) shall cease to be deemed incurred or outstanding for purposes of this Section 7.03(u) but shall be deemed incurred or issued for the purposes of this covenant from and after the first date on which the Borrower or such Restricted Subsidiary could have incurred such Indebtedness under Section 7.03(s) without reliance on this Section 7.03(u));

(v) Indebtedness incurred by a Securitization Subsidiary in a Qualified Securitization Financing that is not recourse (except for Standard Securitization Undertakings and Limited Originator Recourse) to the Borrower or any of the Restricted Subsidiaries;

(w) Incremental Equivalent Debt;

(x) Indebtedness of the Borrower or any Restricted Subsidiary (and any Permitted Refinancing thereof) in an aggregate principal amount not to exceed the amount of the net cash proceeds received by the Borrower since the Closing Date from the issuance or sale of Equity Interests of the Borrower or cash contributed to the capital of the Borrower (in each case, other than proceeds of Disqualified Equity Interests, sales of Equity Interests to the Borrower or any of its Subsidiaries or proceeds which have been designated as a Cure Amount) as determined in accordance with clauses (b) and (c) of the definition of "Cumulative Credit" to the extent such net cash proceeds have not been applied pursuant to such clauses to make Restricted Payments pursuant to Section 7.06 or to prepay, redeem, purchase, defease or satisfy Indebtedness pursuant to Section 7.13, so long as (i) such Indebtedness is incurred within one (1) year following the receipt by the Borrower of such net cash proceeds and (ii) such Indebtedness is designated as "Contribution Indebtedness" on the date incurred;

(y) unsecured Indebtedness in respect of obligations of the Borrower or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; *provided* that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money; and

(z) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (y) above.

For purposes of determining compliance with Section 7.03, in the event that an item of Indebtedness (or any portion thereof) at any time, whether at the time of incurrence or upon the application of all or a portion of the proceeds thereof or subsequently, meets the criteria of more than one of the categories of permitted Indebtedness described in Section 7.03(a) through (z) above, the Borrower, in its sole discretion, will classify and may subsequently reclassify such item of Indebtedness (or any portion thereof) in any one or more of the types of Indebtedness described in Section 7.03(a) through (z) and will only be required to include the amount and type of such Indebtedness in such of the above clauses as determined by the Borrower at such time. The Borrower will be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in Section 7.03(a) through (z). Notwithstanding the foregoing, Indebtedness incurred (a) under the Loan Documents, any Incremental Commitments,

any Incremental Loans, any Refinancing Commitments and any Refinancing Loans shall only be classified as incurred under Section 7.03(a), (b) as Refinancing Equivalent Debt shall only be classified as incurred under Section 7.03(t), (c) as Incremental Equivalent Debt shall only be classified as incurred under Section 7.03(w) and (d) under the Second Lien Credit Agreement and Second Lien Incremental Equivalent Debt and Second Lien Refinancing Equivalent Debt shall only be classified as incurred under Section 7.03(q).

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and expenses (including OID) incurred in connection with such refinancing.

The accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.03. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP. Notwithstanding the foregoing, no Non-Loan Party shall guarantee Indebtedness for borrowed money of any Loan Party.

Section 7.04 Fundamental Changes.

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (other than as part of the Transactions), except that:

(a) any Restricted Subsidiary may merge, amalgamate or consolidate with (i) the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that the Borrower shall be the continuing or surviving Person or (ii) one or more other Restricted Subsidiaries; *provided* that when any Person that is a Loan Party (other than the Borrower) is merging with a Restricted Subsidiary, a Loan Party shall be the continuing or surviving Person unless the resulting Investment made in connection with a Loan Party merging with a Non-Loan Party shall otherwise be a Restricted Investment permitted by Section 7.06 or a Permitted Investment;

(b) (i) any Subsidiary that is a Non-Loan Party may merge, amalgamate or consolidate with or into any other Subsidiary that is a Non-Loan Party, (ii) any Subsidiary (other than the Borrower) may liquidate or dissolve and (iii) the Borrower or any Subsidiary may change its legal form if, with respect to clauses (ii) and (iii), the Borrower determines in good faith that such action is in the best interest of the Borrower and its Subsidiaries and if not materially disadvantageous to the Lenders (it being understood that in the case of any change in legal form, the Borrower will remain the Borrower and a Subsidiary that is a Guarantor will remain a Guarantor unless such Guarantor is otherwise permitted to cease being a Guarantor hereunder);

(c) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then (i) the transferee must be a Loan Party or (ii) to the extent constituting an Investment, such Investment must be a Restricted Investment permitted by Section 7.06 or a Permitted Investment;

(d) so long as no Default has occurred and is continuing or would result therefrom, the Borrower may merge or consolidate with any other Person; *provided* that (i) the Borrower shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the “**Successor Company**”), (A) the Successor Company shall be an entity organized or existing under the Laws of the United States, any state thereof, or the District of Columbia, (B) the Successor Company shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have confirmed that its Guarantee shall apply to the Successor Company’s obligations under the Loan Documents, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement and other applicable Collateral Documents confirmed that its obligations thereunder shall apply to the Successor Company’s obligations under the Loan Documents, (E) if requested by the Administrative Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, shall have by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Administrative Agent) confirmed that its obligations thereunder shall apply to the Successor Company’s obligations under the Loan Documents, and (F) the Borrower shall have delivered to the Administrative Agent an officer’s certificate and an opinion of counsel, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement; *provided, further*, that if the foregoing are satisfied, the Successor Company will succeed to, and be substituted for, the Borrower under this Agreement;

(e) so long as no Event of Default has occurred and is continuing or would result therefrom (in the case of a merger, amalgamation or consolidation involving a Loan Party), any Restricted Subsidiary may merge, amalgamate or consolidate with any other Person in order to effect an Investment permitted pursuant to Section 7.06 or a Permitted Investment; *provided* that the continuing or surviving Person shall be a Restricted Subsidiary of the Borrower, which together with each of its Restricted Subsidiaries, shall have complied with the requirements of Section 6.11 to the extent required pursuant to the Collateral and Guarantee Requirement;

(f) the Borrower and the Restricted Subsidiaries may consummate the Merger, related transactions contemplated by the Merger Agreement (and documents related thereto) and the Transactions; and

(g) so long as no Event of Default has occurred and is continuing or would result therefrom, a merger, consolidation, amalgamation, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 7.05.

Section 7.05 Dispositions.

Make any Disposition (other than as part of or in connection with the Transactions), except:

(a) (w) Dispositions of obsolete, worn out, used or surplus property, whether now owned or hereafter acquired, in the ordinary course of business, (x) Dispositions of property no longer used or useful in the conduct of the business of the Borrower or any of its Restricted Subsidiaries and (y) Dispositions to landlords of improvements made to leased real property pursuant to customary terms of leases entered into in the ordinary course of business;

(b) Dispositions of inventory, goods held for sale in the ordinary course of business and immaterial assets in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(d) Dispositions of property to the Borrower or any Restricted Subsidiary; *provided* that if the transferor of such property is a Loan Party (i) the transferee thereof must be a Loan Party or (ii) if such transaction constitutes an Investment, such Investment must be a Restricted Investment permitted by Section 7.06 or a Permitted Investment;

(e) Dispositions that are permitted by Section 7.04 (other than Section 7.04(g)) or otherwise constitute a Restricted Payment (including a Restricted Investment) permitted by Section 7.06 and Liens permitted by Section 7.01 (other than Section 7.01(1)(ii));

(f) Dispositions of non-core assets acquired in connection with Permitted Acquisitions taking place following the Closing Date;

(g) Dispositions of Cash Equivalents;

(h) (i) leases, subleases, licenses, cross-licenses or sublicenses, in each case in the ordinary course of business and which do not materially interfere with the business of the Borrower or any of its Restricted Subsidiaries and (ii) Dispositions of intellectual property that are not material to the business of the Borrower or any of its Restricted Subsidiaries;

(i) transfers of property subject to Casualty Events;

(j) Dispositions of property; *provided* that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Default has occurred and is continuing), no Event of Default shall have occurred and be continuing or would result from such Disposition and (ii) with respect to any Disposition pursuant to this clause (j) for a purchase price in excess of \$10,000,000 the Borrower or any of its Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 7.01, Liens permitted by Section 7.01(a), clauses (ii) and (iii) of Section 7.01(k), Section 7.01(m), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(v), Section 7.01(w), Section 7.01(aa), Section 7.01(bb) (solely to the extent the Obligations under the Term Loans and Revolving Credit Loans that are secured on a first lien basis shall be secured on a *pari passu* or senior basis with such Liens), Section 7.01(cc), Section 7.01(dd) and Section 7.01(gg)); *provided, however*, that for the purposes of this clause (j)(ii), the following shall be deemed to be cash: (A) any liabilities (as shown on the Borrower's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that (i) are assumed by the transferee with respect to the applicable Disposition or (ii) are otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Borrower or its Restricted Subsidiaries) and, in each case, for which the Borrower and all of its Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities, notes or other obligations or assets received by the Borrower or the applicable Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within one hundred eighty (180) days following the closing of the applicable Disposition, and (C) aggregate non-cash consideration received by the Borrower or the applicable Restricted Subsidiary having an aggregate fair market value (determined as of the closing of the applicable Disposition for which such non-cash consideration is received) not to exceed the greater of \$20,000,000 and 2.00% of Total Assets as determined at the time of such Dispositions (net of any non-cash consideration converted into cash and Cash Equivalents);

(k) to the extent allowable under Section 1031 of the Code (or comparable or successor provision), any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Borrower or any of the Restricted Subsidiaries that is not in contravention of Section 7.07;

(l) Dispositions or discounts without recourse of accounts receivable in connection with the compromise or collection thereof in the ordinary course of business;

(m) Dispositions by any Loan Party to any wholly-owned Restricted Subsidiary of the type described in clauses (d), (h) and (i) of the definition of "Excluded Subsidiary" to the extent consisting of contributions or other Dispositions of Equity Interests in other Restricted Subsidiaries of the type described in clauses (d), (h) and (i) of the definition of "Excluded Subsidiary" to such wholly-owned Restricted Subsidiary;

(n) any swap of assets in exchange for services or other assets in the ordinary course of business of comparable or greater value or usefulness to the business of the Borrower and its Subsidiaries as a whole, as determined in good faith by the management of the Borrower;

(o) any sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(p) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(q) the unwinding of any Swap Contract;

(r) the lapse or abandonment in the ordinary course of business of any registrations or applications for registration of any immaterial IP Rights;

(s) any Disposition of Securitization Assets to a Securitization Subsidiary;

(t) any Disposition of the Sale Leaseback Properties in connection with a Sale Leaseback (each, a “**Sale Leaseback Transaction**”); and

(u) Dispositions in the aggregate pursuant to this clause (u) not to exceed the greater of \$10,000,000 and 0.75% of Total Assets as determined at the time of such Disposition;

provided that any Disposition of any property pursuant to this Section 7.05 (except pursuant to Sections 7.05(a), (d), (e), (h), (i), (l), (m), (p), (q) and (r) and except for Dispositions from a Loan Party to any other Loan Party) shall be for no less than the fair market value of such property at the time of such Disposition. To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than Holdings, the Borrower or a Restricted Subsidiary, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and the Administrative Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

Section 7.06 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower, and other Restricted Subsidiaries of the Borrower (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) the Borrower and each Restricted Subsidiary may declare and make dividend payments or other Restricted Payments payable solely in the Equity Interests (other than Disqualified Equity Interests not otherwise permitted by Section 7.03) of such Person;

(c) Restricted Payments made (i) to consummate the Transactions, (ii) in respect of working capital adjustments or purchase price adjustments pursuant to the Merger Agreement, (iii) in order to satisfy indemnity and other similar obligations under the Merger Agreement and (iv) to holders of Equity Interests of Borrower (immediately prior to giving effect to the Transactions) in connection with, or as a result of, their exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, in each case, with respect to the Transactions;

(d) to the extent constituting Restricted Payments, the Borrower (or any direct or indirect parent thereof) and its Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Section 7.04 or 7.08 (other than Section 7.08(f) or 7.08(l));

(e) repurchases of Equity Interests in the Borrower or any Restricted Subsidiary of the Borrower deemed to occur upon exercise of stock options or warrants or the settlement or vesting of other equity-based awards if such Equity Interests represent a portion of the exercise price of, or tax withholdings with respect to, such options, warrants or other equity-based awards;

(f) the Borrower and each Restricted Subsidiary may (i) pay (or make Restricted Payments to allow Holdings or any other direct or indirect parent thereof to pay) for the repurchase, retirement or other acquisition or retirement for value of Equity Interests or settlement of equity-based awards of such Restricted Subsidiary (or of the Borrower or any other such direct or indirect parent thereof) held by any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) or any of its Subsidiaries or (ii) make Restricted Payments in the form of distributions to allow Holdings or any direct or indirect parent of Holdings to pay principal or interest on promissory notes that were issued to any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) in lieu of cash payments for the repurchase, retirement or other acquisition or retirement for value of such Equity Interests or equity-based awards held by such Persons, in each case, upon the death, disability, retirement or termination of employment or services, as applicable, of any such Person or pursuant to any employee, manager or director equity plan, employee, manager or director stock option plan or any other employee, manager or director benefit plan or any agreement (including any stock subscription agreement, shareholder agreement or stockholders' agreement) with any employee, director, officer or consultant of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) or any of its Restricted Subsidiaries; *provided* that the aggregate amount of Restricted Payments made pursuant to this clause (f) together with the aggregate amount of loans and advances to Holdings or any parent thereof made pursuant to clause (25) of the definition of "Permitted Investments" in lieu of Restricted Payments permitted by this clause (f) shall not exceed \$10,000,000 in any calendar year (which shall increase to \$15,000,000 subsequent to the consummation of a Qualified IPO) (with 100% of the unused amounts in any calendar year being carried over to succeeding calendar years); *provided further* that such amount in any calendar year may further be increased by an amount not to exceed:

(A) amounts used to increase the Cumulative Credit pursuant to clauses (b) and (c) of the definition of "Cumulative Credit";

(B) the Net Proceeds of key man life insurance policies received by the Borrower or its Restricted Subsidiaries less the amount of Restricted Payments previously made with the cash proceeds of such key man life insurance policies;

and *provided further* that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from members of management of the Borrower, any of the Borrower's direct or indirect parent companies or any of the Borrower's Restricted Subsidiaries in connection with a repurchase of Equity Interests of any of the Borrower's direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of this Agreement;

(g) the Borrower and its Restricted Subsidiaries may make Restricted Payments in an aggregate amount not to exceed (x) the greater of \$20,000,000 and 2.00% of Total Assets as determined at the time of such Restricted Payment (less the amount of any prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings in reliance on the dollar amount set forth in Section 7.13(a)(iv)), *plus* (y) the Cumulative Credit at such time (*provided*, that with respect to any Restricted Payment (other than a Restricted Investment) made out of amounts under clause (a)(ii) of the definition of "Cumulative Credit" pursuant to this clause (y), ~~no Event of Default has occurred and is continuing or would result therefrom and~~ the Borrower, immediately after giving effect to such Restricted Payment on a Pro Forma Basis, could incur \$1.00 of additional Permitted Ratio Debt); provided that no Restricted Payment may be made pursuant to this clause (g) if an Event of Default has occurred and is continuing or would result therefrom;

(h) the Borrower may make Restricted Payments to any direct or indirect parent of the Borrower:

(i) to pay its operating costs and expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries, Transaction Expenses and any reasonable and indemnification claims made by directors or officers of such parent attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries;

(ii) the proceeds of which shall be used to pay (or make Restricted Payments to allow any direct or indirect parent thereof to pay) franchise and similar taxes and other fees and expenses required to maintain its (or any of its direct or indirect parents') corporate existence;

(iii) for any taxable period for which the Borrower is a disregarded entity or a partnership for U.S. federal income tax purposes or for which the Borrower and/or any of its Subsidiaries is a member of a consolidated, combined or similar income tax group of which a direct or indirect parent of the Borrower is the common parent, in an amount equal to the product of (x) taxable income of the Borrower and, to the extent applicable, its Subsidiaries and (y) the highest combined marginal income tax rate applicable to an individual or corporate resident in New York City that holds equity in the Borrower ("**Tax Distribution**").

(iv) to finance any Permitted Investments and other Investments that would be permitted to be made pursuant to this Section 7.06 and Section 7.08 if made by the Borrower or any of its Restricted Subsidiaries; *provided* that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or the Restricted Subsidiaries or (2) the merger (to the extent permitted in Section 7.04) of the Person formed or acquired into the Borrower or its Restricted Subsidiaries in order to consummate such Permitted Acquisition or Investment, in each case, in accordance with the requirements of Section 6.11;

(v) the proceeds of which (A) shall be used to pay salary, commissions, bonus and other benefits payable to and indemnities provided on behalf of officers, employees, directors and members of management of Holdings or any direct or indirect parent company of Holdings and any payroll social security or similar taxes thereof to the extent such salaries, commissions, bonuses and other benefits are attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries or (B) shall be used to make payments permitted under Sections 7.08 (e), (i), (k) and (p) (but only to the extent such payments have not been and are not expected to be made by the Borrower or a Restricted Subsidiary); and

(vi) the proceeds of which shall be used by Holdings to pay (or to make Restricted Payments to allow any direct or indirect parent thereof to pay) (A) fees and expenses (other than to Affiliates) related to any unsuccessful equity or debt offering by Holdings (or any direct or indirect parent thereof) that is directly attributable to the operations of the Borrower and its Restricted Subsidiaries and (B) expenses and indemnities of the trustee with respect to any debt offering by Holdings (or any direct or indirect parent thereof);

(i) payments made or expected to be made by Holdings, the Borrower or any of the Restricted Subsidiaries in respect of withholding or other payroll and other similar Taxes payable by or with respect to any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) and any repurchases of Equity Interests in consideration of such payments including deemed repurchases in connection with the exercise of stock options or the vesting or settlement of other equity-based awards;

(j) after a Qualified IPO, (i) any Restricted Payment by the Borrower or any other direct or indirect parent of the Borrower to pay listing fees and other costs and expenses attributable to being a publicly traded company which are reasonable and customary and (ii) additional Restricted Payments in an aggregate amount per annum not to exceed an amount equal to 6% of the net proceeds received by (or contributed to) the Borrower and its Restricted Subsidiaries from such Qualified IPO;

(k) Holdings, the Borrower or any of the Restricted Subsidiaries may pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted Acquisition;

(l) Restricted Payments in an aggregate amount not to exceed the net cash proceeds received by the Borrower or any Restricted Subsidiary from a Person other than Holdings or a Subsidiary thereof from the sale of the Sale Leaseback Properties pursuant to a Sale Leaseback Transaction; *provided*, that immediately after giving effect to any such Restricted Payment (A) no Event of Default has occurred and is continuing and (B) the Total Net Leverage Ratio on a Pro Forma Basis is not greater than ~~6.50~~3.70:1.00;

(m) so long as no Event of Default shall have occurred and be continuing or would result therefrom, additional Restricted Payments (the proceeds of which may be utilized by Holdings to make additional Restricted Payments) so long as immediately after giving effect to such Restricted Payment, the Total Net Leverage Ratio calculated on a Pro Forma Basis is less than or equal to ~~4.75~~3.70 to 1.00, and satisfaction of such test shall be evidenced by a certificate from a Responsible Officer of the Borrower demonstrating such satisfaction calculated in reasonable detail; and

(n) the Special Distribution in an amount not to exceed \$110 million.

Notwithstanding the foregoing provisions of this Section 7.06, in no event shall Borrower or any Restricted Subsidiary make any Restricted Payment to any Person of which Borrower is a Subsidiary for the purpose of making any payment on Indebtedness or Preferred Equity Interests of such Person or any other Person of which Borrower is a Subsidiary.

Section 7.07 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date or any business or any other activities reasonably related, complementary, synergistic or ancillary thereto (including related, complementary, synergistic or ancillary technologies) or reasonable extensions thereof.

Section 7.08 Transactions with Affiliates.

Enter into any transaction of any kind with any Affiliate of the Borrower involving aggregate payments or consideration in excess of \$1,500,000 for any individual transaction or series of related transactions, whether or not in the ordinary course of business, other than

(a) transactions among Holdings, the Borrower and its Restricted Subsidiaries,

(b) on terms substantially as favorable to the Borrower or such Restricted Subsidiary as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate,

(c) the Transactions and the payment of fees and expenses (including Transaction Expenses) as part of or in connection with the Transactions,

(d) the issuance of Equity Interests or equity-based awards to any officer, director, employee or consultant of the Borrower or any of its Restricted Subsidiaries or any direct or indirect parent of Holdings in connection with the Transactions,

(e) the payment of management, monitoring, consulting, advisory and other fees (including transaction and termination fees), indemnities and expenses pursuant to the Sponsor Management Agreement (plus any unpaid management, consulting, monitoring, advisory and other fees, indemnities and expenses accrued in any prior year),

(f) Restricted Payments permitted under Section 7.06 and Permitted Investments other than Permitted Investments under clauses (3), (10), (11) and (13) of the definition thereof,

(g) transactions by the Borrower and its Restricted Subsidiaries permitted under an express provision (including any exceptions thereto) of this Article VII,

(h) employment, consulting, severance and other service or benefit related arrangements between the Borrower and its Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option and other equity award plans and employee benefit plans and arrangements in the ordinary course of business,

(i) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, officers, employees and consultants of Holdings, the Borrower and its Restricted Subsidiaries (or any direct or indirect parent of the Borrower) in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries,

(j) transactions pursuant to agreements, instruments or arrangements in existence on the Closing Date and set forth in Schedule 7.08 or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect,

(k) payments by the Borrower and any of its Restricted Subsidiaries to one or more direct or indirect holders of Equity Interests in Holdings (including any Sponsor) made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions or divestitures), which payments are approved by the majority of the members of the Board of Directors or a majority of the disinterested members of the Board of Directors of the Borrower in good faith,

(l) payments by the Borrower or any of its Subsidiaries pursuant to any tax sharing agreements with any direct or indirect parent of the Borrower to the extent attributable to the ownership or operation of the Borrower and the Subsidiaries, but only to the extent permitted by Section 7.06(h)(iii),

(m) the issuance or transfer of Equity Interests (other than Disqualified Equity Interests) of Holdings to any Permitted Holder or to any former, current or future director, manager, officer, employee or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees or Affiliate of any of the foregoing) of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof,

(n) transactions with customers, clients, joint venture partners, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party,

(o) any payments required to be made pursuant to the Merger Agreement,

(p) the payment of reasonable out-of-pocket costs and expenses and indemnities to equity holders of any direct or indirect parent of Holdings pursuant to the stockholders' agreement entered into, and as in effect on, on the Closing Date,

(q) transactions in which the Borrower or any of the Restricted Subsidiaries, as the case may be, deliver to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (b) of this Section 7.08,

(r) payments to or from, and transactions with, joint ventures (to the extent any such joint venture is only an Affiliate as a result of Investments by Holdings and the Restricted Subsidiaries in such joint venture) to the extent otherwise constituting a Permitted Investment or Restricted Payment permitted under Section 7.06, and

(s) any Disposition of Securitization Assets or related assets, Investment permitted pursuant to clause (14) of the definition of "Permitted Investments" or Standard Securitization Undertakings and Limited Originator Recourse, in each case in connection with any Qualified Securitization Financing.

Section 7.09 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability of:

(a) any Non-Loan Party to make Restricted Payments to any Loan Party or

(b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Lenders with respect to the Facilities and the Obligations or under the Loan Documents; *provided* that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which

(i) (x) exist on the Closing Date and (to the extent not otherwise permitted by this Section 7.09) are listed in Schedule 7.09 and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such Contractual Obligation,

(ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary of the Borrower, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary of the Borrower,

(iii) are customary restrictions that arise in connection with (x) any Lien permitted by Sections 7.01(k), (l), (p), (q), (r)(i), (r)(ii), (s) and (ee) and relate to the property subject to such Lien or (y) arise in connection with any Disposition permitted by Section 7.04 or 7.05 and relate solely to the assets or Person subject to such Disposition,

(iv) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures constituting Permitted Investments or otherwise permitted under Section 7.06 and applicable solely to such joint venture,

(v) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 7.03 but solely to the extent any negative pledge relates to the property financed by such Indebtedness and the proceeds and products thereof,

(vi) are customary restrictions on leases, subleases, licenses, cross-licenses, sublicenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the property interest, rights or the assets subject thereto,

(vii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 7.03(e), (g), (n)(i) and (u) to the extent that such restrictions apply only to the property or assets securing such Indebtedness or, in the case of Section 7.03(g), to the Restricted Subsidiaries incurring or guaranteeing such Indebtedness,

(viii) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary,

(ix) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business,

(x) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business,

(xi) arise in connection with cash or other deposits permitted under Sections 7.01 or the definition of Permitted Investments, and limited to such cash or deposits, and

(xii) comprise restrictions imposed by any agreement governing Indebtedness entered into on or after the Closing Date and permitted under Section 7.03 that are, taken as a whole, in the good faith judgment of the Borrower, no more restrictive with respect to the Borrower or any Restricted Subsidiary than customary market terms for Indebtedness of such type (and, in any event, are no more restrictive than the restrictions contained in this Agreement), so long as the Borrower shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required hereunder.

Section 7.10 [Reserved].

Section 7.11 Financial Covenants.

Permit the Consolidated First Lien Net Leverage Ratio as of any Compliance Date to be greater than ~~7.306~~ 50:1.00 as of such Compliance Date (the “**Financial Covenant**”). The provisions of this Section 7.11 are for the benefit of the Revolving Credit Lenders only and the Required Revolving Credit Lenders may amend, waive or otherwise modify this Section 7.11 or the defined terms used for purposes of this Section 7.11 or waive any Default or Event of Default resulting from a breach of this Section 7.11 without the consent of any Lenders other than the Required Revolving Credit Lenders in accordance with the provisions of Section 10.01(i).

Section 7.12 Accounting Changes.

Make any change in its fiscal year; *provided, however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

Section 7.13 Prepayments, Etc. of Junior Financing.

(a) Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled principal, interest and mandatory prepayments shall be permitted) any Indebtedness incurred under the Second Lien Credit Agreement, Second Lien Incremental Equivalent Debt, Second Lien Refinancing Equivalent Debt or any other Indebtedness for borrowed money of a Loan Party that is subordinated in right of payment or Collateral to the Obligations expressly by its terms (including any Incremental Equivalent Debt or Refinancing Equivalent Debt that is subordinated in right of Collateral to the Liens securing the Obligations under Term Loans and Revolving Credit Loans required to be secured on a first lien basis) and any Permitted Refinancing of any of the foregoing (collectively, “**Junior Financing**”), except

(i) the refinancing thereof with any Indebtedness (to the extent such Indebtedness constitutes (x) a Permitted Refinancing and, if such Indebtedness was originally incurred under Section 7.03(g), is permitted pursuant to Section 7.03(g) or (y) in the case of Indebtedness incurred under the Second Lien Credit Agreement, Second Lien Incremental Equivalent Debt or Second Lien Refinancing Equivalent Debt “Refinancing Loans” (as defined in the Second Lien Credit Agreement) or Second Lien Refinancing Equivalent Debt), to the extent not required to prepay any Loans pursuant to Section 2.05(b),

(ii) the conversion or exchange of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of Holdings or any of its direct or indirect parents,

(iii) the prepayment of Indebtedness of the Borrower or any Restricted Subsidiary to the Borrower or any Restricted Subsidiary,

(iv) prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings prior to their scheduled maturity in an aggregate amount not to exceed (x) the greater of \$20,000,000 and 2.00% of Total Assets as determined at the time of such transaction (less the amount of any Restricted Payments made in reliance on the dollar amount set forth in Section 7.06(g)(x)) plus (y) the Cumulative Credit at such time (provided, that with respect to any prepayment, redemption, purchase, defeasance or other payment in respect of Junior Financings made out of amounts under clause (a)(ii) of the definition of "Cumulative Credit" pursuant to this clause (y), no Event of Default has occurred and is continuing or would result therefrom and the Borrower, immediately after giving effect to such prepayment, redemption, purchase, defeasance or other payment on a Pro Forma Basis, could incur \$1.00 of additional Permitted Ratio Debt), and

(v) so long as no Event of Default shall have occurred and be continuing or would result therefrom, additional prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings, so long as immediately after giving effect to such prepayment, redemption, purchase, defeasance or other payment, the Total Net Leverage Ratio calculated on a Pro Forma Basis is less than or equal to ~~4.75~~3.70 to 1.00, and satisfaction of such test shall be evidenced by a certificate from a Responsible Officer of the Borrower demonstrating such satisfaction calculated in reasonable detail.

(b) Amend, modify or change in any manner materially adverse to the interests of the Lenders, as determined in good faith by the Borrower, any term or condition of any Junior Financing Documentation in respect of any Junior Financing having an aggregate outstanding principal amount in excess of the Threshold Amount (other than as a result of any Permitted Refinancing in respect thereof) without the consent of the Administrative Agent (which consent shall not be unreasonably withheld, conditioned or delayed); *provided that*, in respect of any Junior Financing, the following shall not, in and of themselves, be deemed materially adverse to the interests of the Lenders: (1) any term or condition of any Junior Financing Documentation in respect of any Permitted Refinancing thereof, "Refinancing Loans" (as defined in the Second Lien Credit Agreement) or Second Lien Refinancing Equivalent Debt, (2) any modification to the All-In Yield or changes to, or additions of, premiums or penalties; (3) any increase in the aggregate principal amount to the extent otherwise permitted by this Agreement; (4) any extension of maturity date or increase to Weighted Average Life to Maturity; (5) any amendment, modification or change to any terms applicable only to periods after the Latest Maturity Date at the time of such amendment, modification or change, (6) amendments, modifications or changes to maintain consistency with, as applicable, those being made substantially concurrently to the Loan Documents (including, for the avoidance of doubt, the addition of any covenant or other provision added or extended (including the addition of a financial covenant or the extension of an existing financial covenant for the benefit of Term Lenders) under this Agreement, or any Incremental Equivalent Debt or Refinancing Equivalent Debt which is secured by the Collateral on a pari passu or senior basis to the Junior Financing, *provided* such additional covenant (including any financial covenant) includes a cushion on any dollar baskets, thresholds or covenant levels consistent with the existing cushion (if any) between applicable covenants in this Agreement and such Junior Financing) and (7) reductions to any cushion on levels, baskets or thresholds between covenants under this Agreement and substantially similar covenants under any Junior Financing to the extent such cushion is reduced by no more than 10% from the cushion in effect on the date such Junior Financing is incurred.

Section 7.14 Permitted Activities.

With respect to Holdings, engage in any material operating or business activities; *provided* that the following and any activities incidental thereto shall be permitted in any event: (i) its ownership of the Equity Interests of the Borrower and activities incidental thereto, including payment of dividends and other amounts in respect of its Equity Interests, (ii) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (iii) the performance of its obligations with respect to the Loan Documents, the Second Lien Loan Documents, Permitted Holdings Debt and any other Indebtedness, (iv) any public offering of its common stock or any other issuance or sale of its Equity Interests, (v) financing activities, including the issuance of securities, incurrence of Indebtedness, payment of dividends, making contributions to the capital of the Borrower and guaranteeing the obligations of the Borrower; *provided* that any such Indebtedness shall (a) be unsecured, (b) not be guaranteed by the Borrower or any Restricted Subsidiary and (c) not have a maturity date prior to the Latest Maturity Date in effect for the Term Loans on the date of incurrence of such Indebtedness, (vi) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and the Borrower, (vii) holding any cash or property (but not operate any property), (viii) providing indemnification to officers and directors and (ix) any activities incidental to the foregoing. Holdings shall not own any Equity Interests other than those of the Borrower.

**ARTICLE VIII.
EVENTS OF DEFAULT AND REMEDIES**

Section 8.01 Events of Default.

Any of the following from and after the Closing Date shall constitute an event of default (an “**Event of Default**”):

(a) *Non-Payment.* Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable (or required to be paid) hereunder or with respect to any other Loan Document; or

(b) *Specific Covenants.* The Borrower or, in the case of Section 7.14, Holdings, fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03(a) or 6.05(a) (solely with respect to the Borrower), Article VII or under the “Market Flex” section of the Fee Letter; *provided* that the Financial Covenant is subject to cure pursuant to Section 8.04; *provided, further*, that the Borrower’s failure to comply with the Financial Covenant shall not constitute an Event of Default with respect to any Term Loans or Term Commitments unless and until the Required Revolving Credit Lenders shall have terminated their Revolving Credit Commitments and declared all amounts outstanding thereunder to be due and payable pursuant to Section 8.02; or

(c) *Other Defaults.* Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(d) *Representations and Warranties.* Any representation, warranty, certification or statement of fact made or deemed made by any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect in any material respect when made or deemed made; or

(e) *Cross-Default.* Any Loan Party or any Restricted Subsidiary (A) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate outstanding principal amount of not less than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts and not as a result of any other default thereunder by any Loan Party), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; *provided* that this clause (e)(B) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder; *provided, further*, that such failure is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to Section 8.02; or

(f) *Insolvency Proceedings, Etc.* Any Loan Party or any Restricted Subsidiary that is a Material Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) *Attachment.* Any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of the Borrower and the Restricted Subsidiaries, taken as a whole, and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) *Judgments.* There is entered against any Loan Party or any Restricted Subsidiary a final judgment and order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which

the insurer has been notified of such judgment or order and has not denied coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(i) *Invalidity of Loan Documents.* Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05) or as a result of acts or omissions by the Administrative Agent or any Lender or the satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document or the validity or priority of a Lien as required by the Collateral Documents on a material portion of the Collateral; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations and termination of the Aggregate Commitments), or purports in writing to revoke or rescind any Loan Document; or

(j) *Change of Control.* There occurs any Change of Control; or

(k) *Collateral Documents.* (i) Any Collateral Document after delivery thereof pursuant to Section 4.01, 6.11 or 6.13 shall for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction not prohibited under this Agreement) cease to create a valid and perfected Lien, with the priority required by the Collateral Documents on and security interest in any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01, (x) except to the extent that any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or results from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file Uniform Commercial Code continuation statements and (y) except as to Collateral consisting of Real Property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage or (ii) any Lien created or purported to be created by the Collateral Documents shall cease to have the lien priority established or purported to be established by the applicable Intercreditor Agreement; or

(l) *Duly Authorized Documents.* Any Deferred Loan Party fails to deliver any Duly Authorized Documents by 5:00 p.m. on the Closing Date; or

(m) *ERISA.* (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of a Loan Party or an ERISA Affiliate in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect.

Section 8.02 Remedies Upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Lenders, shall take any or all of the following actions:

- (i) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;
- (ii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;
- (iii) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and
- (iv) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code of the United States or any Debtor Relief Laws, the obligation of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

Notwithstanding anything to the contrary, if the only Events of Default then having occurred and continuing are pursuant to a failure to observe the Financial Covenant, the Administrative Agent shall only take the actions set forth in this Section 8.02 at the request of the Required Revolving Credit Lenders (as opposed to Required Lenders).

Section 8.03 Application of Funds.

Except as may be otherwise provided in any applicable Incremental Amendment with respect to Obligations under the applicable Incremental Loans or in any applicable Refinancing Amendment with respect to Obligations under the applicable Refinancing Loans (in each case, which shall not be more favorable to the holders of such Loans than the allocation described below), after the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), subject to the Second Lien Intercreditor Agreement, any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order (to the fullest extent permitted by mandatory provisions of applicable Law):

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs payable under Section 10.04 and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause *Second* payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and L/C Borrowings, and any fees, premiums and scheduled periodic payments due under Treasury Services Agreements or Secured Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Third* payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings (including to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit), and any breakage, termination or other payments under Treasury Services Agreements or Secured Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Fourth* held by them;

Fifth, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Notwithstanding the foregoing, no amount received from any Guarantor shall be applied to any Excluded Swap Obligation of such Guarantor.

Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause *Fourth* above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above and, if no Obligations remain outstanding, to the Borrower.

Section 8.04 Borrower's Right to Cure.

Notwithstanding anything to the contrary contained in Section 8.01 or Section 8.02:

(a) For the purpose of determining whether an Event of Default under the Financial Covenant has occurred, the Borrower may on one or more occasions designate any portion of the net cash proceeds from a sale or issuance of Qualified Equity Interests of the Borrower or any contribution to the common capital of the Borrower (or from any other contribution to capital or sale or issuance of any other Equity Interests on terms reasonably satisfactory to the

Administrative Agent) (the “**Cure Amount**”) as an increase to Consolidated EBITDA for the applicable fiscal quarter; *provided* that (i) such amounts to be designated are actually received by the Borrower on or after the first day of such applicable fiscal quarter and on or prior to the tenth Business Day after the date on which financial statements are required to be delivered with respect to such applicable fiscal quarter (the “**Cure Expiration Date**”), (ii) such amounts do not exceed the aggregate amount necessary to cure any Event of Default under the Financial Covenant as of such date and (iii) the Borrower shall have provided notice to the Administrative Agent on the date such amounts are designated as a “Cure Amount” (it being understood that to the extent any such notice is provided in advance of delivery of a Compliance Certificate for the applicable period, the amount of such net cash proceeds that is designated as the Cure Amount may be different than the amount necessary to cure any Event of Default under the Financial Covenant and may be modified, as necessary, in a subsequent corrected notice delivered on or before the Cure Expiration Date (it being understood that in any event the final designation of the Cure Amount shall continue to be subject to the requirements set forth in clauses (i) and (ii) above)). The Cure Amount used to calculate Consolidated EBITDA for one (1) fiscal quarter shall be used and included when calculating Consolidated EBITDA for each Test Period that includes such fiscal quarter.

(b) The parties hereby acknowledge that this Section 8.04 may not be relied on for purposes of calculating any financial ratios other than for determining actual compliance with Section 7.11 and shall not result in any adjustment to any amounts (including the amount of Indebtedness) or increase in cash (and shall not be included for purposes of determining pricing, mandatory prepayments and the availability or amount permitted pursuant to any covenant under Article VII) with respect to the quarter with respect to which such Cure Amount was made other than the amount of the Consolidated EBITDA referred to in the immediately preceding sentence.

(c) In furtherance of clause (a) above, (A) upon actual receipt and designation of the Cure Amount by the Borrower, the Financial Covenant shall be deemed satisfied and complied with as of the end of the relevant fiscal quarter with the same effect as though there had been no failure to comply with the Financial Covenant and any Event of Default under the Financial Covenant (and any other Default arising solely as a result thereof) shall be deemed not to have occurred for purposes of the Loan Documents, and (B) upon delivery to the Administrative Agent prior to the Cure Expiration Date of a notice from the Borrower stating its good faith intention to exercise its right set forth in this Section 8.04, neither the Administrative Agent on or after the last day of the applicable quarter nor any Lender may exercise any rights or remedies under Section 8.02 (or under any other Loan Document) on the basis of any actual or purported Event of Default under the Financial Covenant (and any other Default as a result thereof) until and unless the Cure Expiration Date has occurred without the Cure Amount having been received and designated; *provided* that, until such actual receipt and designation of such Cure Amount by the Borrower, no Revolving Credit Loan, Swing Line Loan or L/C Credit Extension shall be required to be made.

(d) (i) In each period of four consecutive fiscal quarters, there shall be at least two (2) fiscal quarters in which no cure right set forth in this Section 8.04 is exercised and (ii) there shall be no *pro forma* reduction in Indebtedness with the Cure Amount for determining compliance with the Financial Covenant for the fiscal quarter with respect to which such Cure Amount was made.

(e) There can be no more than five (5) fiscal quarters in which the cure rights set forth in this Section 8.04 are exercised during the term of the Initial Revolving Credit Commitments and any Extended Revolving Credit Commitments in respect thereof.

ARTICLE IX.
ADMINISTRATIVE AGENT AND OTHER AGENTS

Section 9.01 Appointment and Authority.

(a) Each of the Lenders and L/C Issuers hereby irrevocably appoints UBS to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX (other than Sections 9.06 (solely with respect to the removal and consent rights of the Borrower set forth therein) and Section 9.10 (solely with respect to the requirement for execution, filing and other actions with respect to the Collateral Documents and other collateral documentation set forth therein) and 9.10) are solely for the benefit of the Administrative Agent, the Lenders and each L/C Issuer, and no Loan Party shall have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article X (including the second paragraph of Section 10.05), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

Section 9.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the

Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 9.03 Exculpatory Provisions.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and
- (c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.
- (d) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or the L/C Issuer.
- (e) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 9.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.05 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Section 9.06 Resignation of Administrative Agent.

The Administrative Agent may resign as the Administrative Agent upon ten (10) days' notice to the Lenders and the Borrower; *provided* that if no successor agent is appointed in accordance with the terms set forth below within such ten (10)-day period, the Administrative Agent shall not be permitted to resign until the earlier to occur of (x) the date of the appointment of the successor agent or (y) the date that is thirty (30) days after the last day of such ten (10)-day period. If the Administrative Agent is subject to an Agent-Related Distress Event, the Borrower may remove the Administrative Agent upon ten (10) days' notice. Upon the resignation or removal of the Administrative Agent under this Agreement, the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which such appointment shall be subject to the consent of the Borrower (which consent of the Borrower shall not be unreasonably withheld or delayed if such successor is a commercial bank with a combined capital and surplus of at least \$5,000,000,000 that is a "U.S. person" and a "financial institution" within the meaning of Treasury Regulation Section 1.1441-1, and otherwise may be withheld at the Borrower's sole

discretion) at all times other than during the existence of an Event of Default under Section 8.01(a) or (f); *provided*, that in no event shall a Disqualified Institution be a successor agent. If no successor agent is appointed by the Required Lenders prior to the effective date of the resignation or removal of the Administrative Agent, the retiring or removed Administrative Agent may appoint, after consulting with the Lenders and subject to the Borrower's consent right set forth above, a successor agent from among the Lenders; *provided* that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments and communications provided to be made to or through the Administrative Agent shall instead be made to each Lender and the L/C Issuer directly and all determinations provided to be made by the Administrative Agent shall instead be made by the Required Lenders, in each case until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent. Upon resignation or removal, the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation or the removed Administrative Agent's removal hereunder and under the other Loan Documents, hereunder and under the other Loan Documents, the provisions of this Article and Sections 10.04 and 10.05 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

Any resignation by or removal of UBS as Administrative Agent pursuant to this Section 9.06 shall also constitute its resignation as L/C Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swing Line Lender, (ii) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

Section 9.07 Non-Reliance on Administrative Agent and Other Lenders.

Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and

based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 9.08 No Other Duties, Etc.

Anything herein to the contrary notwithstanding, none of the Administrative Agent, Bookrunners, Arrangers or Syndication Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

Section 9.09 Administrative Agent May File Proofs of Claim.

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(h) and (i), 2.09, 10.04 and 10.05) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09, 10.04 and 10.05.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer or in any such proceeding.

Section 9.10 Collateral and Guaranty Matters.

Each of the Lenders (including in its capacities as a potential Hedge Bank) and the L/C Issuer irrevocably authorize the Administrative Agent,

(a) to automatically release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations as to which no claim has been asserted and (B) obligations and liabilities under Treasury Services Agreements and Secured Hedge Agreements not due and payable) and the expiration or termination of all Letters of Credit (other than Letters of Credit that are Cash Collateralized or back-stopped by a letter of credit in form, amount and substance reasonably satisfactory to the Administrative Agent or a deemed reissuance under another facility as to which other arrangements satisfactory to the Administrative Agent and the L/C Issuer shall have been made), (ii) at the time the property subject to such Lien is Disposed or to be Disposed as part of or in connection with any Disposition permitted (other than a lease and other than to a Person that is a Loan Party) hereunder or under any other Loan Document, (iii) subject to Section 10.01, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to clause (c) below or (v) if such property becomes an Excluded Asset;

(b) to release or subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(u) to the extent required by the holder of, or pursuant to the terms of any agreement governing, the obligations secured by such Liens; and

(c) to release any Subsidiary Guarantor from its obligations under the Guaranty, if in the case of any such Subsidiary, such Person ceases to be a Material Domestic Subsidiary or becomes an Excluded Subsidiary as a result of a transaction or designation permitted hereunder; *provided* that no such release shall occur if such Guarantor continues to be a guarantor or obligor in respect of any Junior Financing, any Refinancing Equivalent Debt or any Incremental Equivalent Debt or any Permitted Refinancing in respect thereof; *provided further*, that notwithstanding the foregoing, if any Subsidiary Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of Excluded Subsidiary, such Guarantor shall not be released from its obligations under the Guaranty or any other Loan Document unless (x) such Subsidiary Guarantor would no longer be a direct or indirect Subsidiary of the Borrower or (y) after giving pro forma effect to such release and the consummation of the relevant transaction, the Borrower would be permitted to make an Investment in such Person to be so released pursuant to clause (1) of the definition of "Permitted Investments" (and, if this clause (y) shall be applicable, Borrower shall be deemed to have made such an Investment in such Person pursuant to such clause (1)).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will (and each Lender irrevocably authorizes the Administrative Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

Section 9.11 Secured Cash Management Agreements and Secured Hedge Agreements.

Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Treasury Services Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Hedge Bank.

The Lenders hereby authorize the Administrative Agent to enter into any First Lien Intercreditor Agreement, the Second Lien Intercreditor Agreement, any Subordination Agreement or other intercreditor agreement or arrangement permitted under this Agreement and the Lenders acknowledge that any such intercreditor agreement is binding upon the Lenders.

Section 9.12 Withholding Tax Indemnity.

To the extent required by any applicable Laws (as determined in good faith by the Administrative Agent), the Administrative Agent may withhold from any payment to any Lender under any Loan Document an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 3.01, each Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within ten (10) days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered

the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.12. The agreements in this Section 9.12 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations. For the avoidance of doubt, the term "Lender" shall, for purposes of this Section 9.12, include any L/C Issuer and any Swing Line Lender.

**ARTICLE X.
MISCELLANEOUS**

Section 10.01 Amendments, Etc.

Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (other than with respect to any amendment or waiver contemplated in Sections 10.01(a) through

(i) below, which shall only require the consent of the Lenders expressly set forth therein and not the Required Lenders) (or by the Administrative Agent with the consent of the Required Lenders) and the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided that*, no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.02 or of any Default, mandatory prepayment or mandatory reduction of any Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.07(a)(B) or 2.08 (other than pursuant to Section 2.08(b)), without the written consent of each Lender directly and adversely affected thereby, it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest and it further being understood that any change to the definition of "Consolidated First Lien Net Leverage Ratio," "Consolidated Cash Interest Coverage Ratio", "Total Net Leverage Ratio" or "Secured Net Leverage Ratio" or, in each case, in the component definitions thereof shall not constitute a reduction in any amount of interest;

(c) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document (or extend the timing of payments of such fees or other amounts) without the written consent of each Lender directly and adversely affected thereby, it being understood that any change to the definition of "Consolidated First Lien Net Leverage Ratio," "Consolidated Cash Interest Coverage Ratio",

“Total Net Leverage Ratio” or “Secured Net Leverage Ratio” or, in each case, in the component definitions thereof shall not constitute a reduction in any rate of interest; *provided* that, for the avoidance of doubt, only the consent of the Required Lenders shall be necessary to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) change any provision of this Section 10.01 or the definition of “Required Revolving Credit Lenders,” “Required Lenders,” “Required Class Lenders,” or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents, without the written consent of each Lender directly affected thereby (it being understood that each Lender shall be directly and adversely affected by a change to the “Required Lenders” or “Pro Rata Share” definitions);

(e) other than in connection with a transaction permitted under Section 7.04 or Section 7.05, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(f) other than in connection with a transaction permitted under Section 7.04 or Section 7.05, release all or substantially all of the aggregate value of the Guarantees, without the written consent of each Lender;

(g) (1) waive any condition set forth in Section 4.02 as to any Credit Extension under one or more Class of Revolving Credit Commitments or (2) amend, waive or otherwise modify any term or provision which directly affects Lenders under one or more Class of Revolving Credit Commitments and does not directly affect Lenders under any other Class, in each case, without the written consent of the Required Class Lenders under such applicable Class or Classes of Revolving Credit Commitments (and in the case of multiple Classes which are affected, such Required Class Lenders shall consent together as one Class) (it being understood that any amendment to the conditions of effectiveness of Incremental Commitments set forth in Section 2.14 shall be subject to clause (h) below); *provided, however*, that the waivers described in this clause (g) shall not require the consent of any Lenders other than (x) the Required Class Lenders under such Class or Classes and (y) in the case of any waiver that otherwise would be subject to clause (a), (b), (c), (d) or (e) above, each Lender, each directly affected Lender or each directly and adversely affected Lender (as specified in clause (a), (b), (c), (d) or (e) above) under the applicable Class or Classes of Revolving Credit Commitments;

(h) amend, waive or otherwise modify any term or provision (including the availability and conditions to funding under Section 2.14 with respect to Incremental Term Loans and Incremental Revolving Credit Commitments and the rate of interest applicable thereto) which directly affects Lenders of one or more Incremental Term Loans or Incremental Revolving Credit Commitments (including Loans extended under such Commitments) and does not directly affect Lenders under any other Class, in each case, without the written consent of the Required Class Lenders under such applicable Incremental Term Loans or Incremental Revolving Credit Commitments (and in the case of multiple Classes which are affected, such Required Class Lenders shall consent together as one Class); *provided, however*, that the waivers described in this clause (h) shall not require the consent of any Lenders other than (x) the Required Class Lenders under such applicable Incremental Term Loans or Incremental Revolving Credit

Commitments and (y) in the case of any waiver that otherwise would be subject to clause (a), (b), (c), (d) or (e) above, each Lender, each directly affected Lender or each directly and adversely affected Lender (as specified in clause (a), (b), (c), (d) or (e) above) under the applicable Class or Classes of Incremental Term Loans or Incremental Revolving Credit Commitments (including Loans extended under such Commitments); *provided further however*, that the aggregate amount of Incremental Term Loans and Incremental Revolving Credit Commitments permitted under Section 2.14(d)(iii) shall not be permitted to be increased without the consent of the Required Lenders;

(i) amend or otherwise modify: (a) the Financial Covenant, (b) the exception set forth in Section 6.01(a)(ii) (or in the comparable provision in the paragraph immediately succeeding Section 6.01(d)) and (c) Section 8.04, and in each case any definition related thereto (as any such definition is used therein but not as otherwise used in this Agreement or any other Loan Document) or waive any Default or Event of Default resulting from a failure to perform or observe the Financial Covenant (including any related Default or Event of Default under Section 6.01) or Section 8.04 without the written consent of the Required Revolving Credit Lenders; *provided, that*, the waivers described in this clause (i) shall not require the consent of any Lenders other than the Required Revolving Credit Lenders; or

(j) amend, modify or waive any term or provision of Section 2.13 or 8.03 that would alter the pro rata sharing of payments or priority of payments specified thereby, as applicable, without the consent of each Lender directly and adversely affected thereby;

and *provided, further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by each L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; *provided, however*, that this Agreement may be amended to adjust the mechanics related to the issuance of Letters of Credit, including mechanical changes relating to the existence of multiple L/C Issuers, with only the written consent of the Administrative Agent, the applicable L/C Issuer and the Borrower so long as the obligations of the Revolving Credit Lenders, if any, who have not executed such amendment, and if applicable the other L/C Issuers, if any who have not executed such amendment, are not adversely affected thereby; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; *provided, however*, that this Agreement may be amended to adjust the borrowing mechanics related to Swing Line Loans with only the written consent of the Administrative Agent, the Swing Line Lenders and the Borrower so long as the obligations of the Revolving Credit Lenders, if any, who have not executed such amendment are not adversely affected thereby; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; and (iv) Section 10.07(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification; *provided further however* that if at any time there is more than one Revolving Credit Lender but there are not at least three Revolving Credit Lenders, each of which Lenders is not an Affiliate of another Revolving Credit Lender, then the Required Class Lenders (if applicable to the Revolving Credit Commitments) and the Required Revolving Credit Lenders shall in any event constitute at least two Revolving Credit Lenders that are not Affiliates of one another.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any such Defaulting Lender may not be increased or extended without the consent of such Lender, (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms materially and adversely affects any Defaulting Lender to a greater extent than other affected Lenders shall require the consent of such Defaulting Lender and (x) the consent of any Defaulting Lender shall be required in respect of any amendments referred to in Section 10.01(b).

Notwithstanding the foregoing, no Lender consent is required to effect any amendment or supplement to any First Lien Intercreditor Agreement, the Second Lien Intercreditor Agreement, any Subordination Agreement or other intercreditor agreement or arrangement permitted under this Agreement (i) that is for the purpose of adding the holders of Permitted Pari Passu Secured Refinancing Debt, Permitted Junior Secured Refinancing Debt, subordinated Permitted Unsecured Refinancing Debt, Incremental Equivalent Debt (or, in each case, a Senior Representative with respect thereto), Second Lien Incremental Equivalent Debt or Second Lien Refinancing Equivalent Debt as parties thereto, as expressly contemplated by the terms of such First Lien Intercreditor Agreement, such Second Lien Intercreditor Agreement, such Subordination Agreement or such other intercreditor agreement or arrangement permitted under this Agreement, as applicable (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (ii) that is expressly contemplated by any First Lien Intercreditor Agreement, the Second Lien Intercreditor Agreement, any Subordination Agreement or other intercreditor agreement or arrangement permitted under this Agreement; *provided, further*, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent.

Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans, Revolving Credit Loans, Swing Line Loans and L/C Obligations and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

In addition, notwithstanding the foregoing, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the Replacement Term Loans (as defined below) to permit the refinancing of all outstanding Term Loans of any Class ("**Replaced Term Loans**") with replacement term loans ("**Replacement**

Term Loans”) hereunder; *provided* that (a) the aggregate principal amount of such Replacement Term Loans shall not exceed the aggregate principal amount of such Replaced Term Loans, plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees and expenses associated with such Replacement Term Loans, (b) the All-In Yield with respect to such Replacement Term Loans (or similar interest rate spread applicable to such Replacement Term Loans) shall not be higher than the All-In Yield for such Replaced Term Loans (or similar interest rate spread applicable to such Replaced Term Loans) immediately prior to such refinancing unless the maturity of the Replacement Term Loans is at least one (1) year later than the maturity of the Replaced Term Loans, (c) the Weighted Average Life to Maturity of such Replacement Term Loans shall not be shorter than the Weighted Average Life to Maturity of such Replaced Term Loans at the time of such refinancing (except by virtue of amortization or prepayment of the Replaced Term Loans prior to the time of such incurrence) and (d) all other terms applicable to such Replacement Term Loans shall be substantially identical to, or less favorable to the Lenders providing such Replacement Term Loans than, those applicable to such Replaced Term Loans, except to the extent necessary to provide for covenants and other terms applicable to any period after the Latest Maturity Date of the Term Loans in effect immediately prior to such refinancing. Each amendment to this Agreement providing for Replacement Term Loans may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent and the Borrower to effect the provisions of this paragraph, and for the avoidance of doubt, this paragraph shall supersede any other provisions in this Section 10.01 to the contrary.

Notwithstanding anything to the contrary contained in this Section 10.01, guarantees, collateral security documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i)(A) to comply with local Law or advice of local counsel and/or (B) effectuate the provisions of clause (3)(Y) of the definition of “Permitted Investments”, (ii) to cure ambiguities or defects or (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents.

If the Administrative Agent and the Borrower shall have jointly identified an obvious error (including, but not limited to, an incorrect cross-reference) or any error or omission of a technical or immaterial nature, in each case, in any provision of this Agreement or any other Loan Document (including, for the avoidance of doubt, any exhibit, schedule or other attachment to any Loan Document), then the Administrative Agent (acting in its sole discretion) and the Borrower or any other relevant Loan Party shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document. Notification of such amendment shall be made by the Administrative Agent to the Lenders promptly upon such amendment becoming effective.

Section 10.02 Notices and Other Communications; Facsimile Copies.

- (a) Notices; Effectiveness; Electronic Communications.

(i) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (C) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(A) if to the Borrower, the Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(B) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrower, the Administrative Agent, the L/C Issuers and the Swing Line Lender.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (C) below shall be effective as provided in such subsection (C).

(C) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or

intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(b) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “**Agent Parties**”) have any liability to the Loan Parties, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Loan Parties, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(c) Change of Address, Etc. Each of the Borrower, the Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(d) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were

incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence, willful misconduct or bad faith of such Person, as determined by a final non-appealable judgment of a court of competent jurisdiction. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03 No Waiver; Cumulative Remedies.

No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.09 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided, further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 10.04 Attorney Costs and Expenses.

The Borrower agrees (a) if the Closing Date occurs, to pay or reimburse the Administrative Agent and the other Agents for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents, and any amendment, waiver,

consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs, which shall be limited to Cahill Gordon & Reindel LLP and one local counsel as reasonably necessary in any relevant jurisdiction material to the interests of the Lenders taken as a whole (and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnitees similarly situated) and (b) after the Closing Date, to pay or reimburse the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all respective Attorney Costs, which shall be limited to Attorney Costs of one counsel to the Administrative Agent and the Lenders taken as a whole and one local counsel as reasonably necessary in any relevant jurisdiction material to the interests of the Lenders taken as a whole and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnitees similarly situated). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within thirty (30) days after written demand therefor (together with backup documentation supporting such reimbursement request); *provided* that, with respect to the Closing Date, all amounts due under this Section 10.04 shall be paid on the Closing Date solely to the extent invoiced to the Borrower within three (3) Business Days prior to the Closing Date. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its discretion. For the avoidance of doubt, this Section 10.04 shall not apply to Taxes, except any Taxes that represent costs and expenses arising from any non-Tax claim.

Section 10.05 Indemnification by the Borrower.

The Borrower shall indemnify and hold harmless each Agent, Agent-Related Person, Lender, Arranger and Bookrunner and their Affiliates, and their respective officers, directors, employees, partners, agents, advisors and other representatives of the foregoing (collectively the “**Indemnitees**”) from and against any and all liabilities, losses, damages, claims, or out-of-pocket expenses (including Attorney Costs but limited in the case of legal fees and expenses to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, one local counsel for all Indemnitees taken as a whole in each relevant jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnitees similarly situated) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom including any refusal by an L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, or (c) any actual or alleged Environmental Liability of the

Loan Parties or any Subsidiary, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) (a "**Proceeding**") and regardless of whether any Indemnitee is a party thereto or whether or not such Proceeding is brought by the Borrower or any other Person and, in each case, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee (all of the foregoing, collectively, the "**Indemnified Liabilities**"); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, losses, damages, claims or out-of-pocket expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any of its Related Indemnified Persons, as determined by a final non-appealable judgment of a court of competent jurisdiction, (y) a material breach of any obligations under any Loan Document by such Indemnitee or of any of its Related Indemnified Persons, as determined by a final non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent or arranger or any similar role under any Facility and other than any claims arising out of any act or omission of the Borrower or any of its Affiliates (as determined in a final and non-appealable judgment of a court of competent jurisdiction). No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement (except for direct (as opposed to indirect, special, punitive or consequential) damages resulting from the gross negligence, bad faith or willful misconduct, as determined by a court of competent jurisdiction in a final and non-appealable judgment, of any such Indemnitee), nor shall any Indemnitee, Related Indemnified Person, Loan Party or any Subsidiary have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party, or which are included in a third-party claim, and for any out-of-pocket expenses related thereto). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, any Subsidiary of any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents are consummated. All amounts due under this Section 10.05 shall be paid within thirty (30) days after written demand therefor (together with backup documentation supporting such reimbursement request); *provided, however*, that such Indemnitee shall promptly refund such amount to the extent that there is a final judicial or arbitral determination that such Indemnitee was not entitled to indemnification rights with respect to such payment pursuant to the express terms of this Section 10.05. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. For the avoidance of doubt, this Section 10.05 shall not apply to Taxes, except any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, demands, actions, prepayments, suits, costs, expenses and disbursements arising from any non-Tax claims.

To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under this Section 10.05 or Section 10.04 to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this paragraph are subject to the provisions of Section 2.12(e).

Section 10.06 Payments Set Aside.

To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (except as permitted by Section 7.04) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Assignee pursuant to an assignment made in accordance with the provisions of Section 10.07(b) (such an assignee, an "**Eligible Assignee**") and (A) in the case of any Assignee that, immediately prior to or upon giving effect to such assignment, is an Affiliated Lender, Section 10.07(k), (B) in the case of any Assignee that is Holdings or any of its Subsidiaries, Section 10.07(l), or (C) in the case of any Assignee that, immediately prior to or upon giving effect to such assignment, is a Debt Fund Affiliate, Section 10.07(o), (ii) by way of participation in accordance with the provisions of Section 10.07(e), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(g) or (i) or (iv) to an SPC in accordance with the provisions of

Section 10.07(h) (and any other attempted assignment or transfer by any party hereto shall be null and void); *provided, however*, that notwithstanding the foregoing, no Lender may assign or transfer by participation any of its rights or obligations hereunder to (i) any Person that is a Defaulting Lender, (ii) a natural Person or a Disqualified Institution or (iii) to Holdings, the Borrower or any of their respective Subsidiaries (except pursuant to Section 2.05(a)(v) or Section 10.07(l)). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(e) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement. The Administrative Agent shall promptly give notice to the Borrower of any request by a Lender to assign any of its rights or obligations hereunder to any Person that is on the Disqualified Institutions List or, to the extent it has knowledge, any Person that is an Affiliate of a Person on the Disqualified Institutions List.

(b) (i) Subject to the limitations set forth in paragraph (a) above and the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (“**Assignees**”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this Section 10.07(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed, except in connection with a proposed assignment to any Disqualified Institution) of:

(A) the Borrower, *provided* that no consent of the Borrower shall be required for (i) an assignment of all or a portion of the Term Loans to a Lender, an Affiliate of a Lender or an Approved Fund, (ii) other than with respect to any proposed assignment to any Person that is a Disqualified Institution, if an Event of Default under Section 8.01(a) or, solely with respect to the Borrower, Section 8.01(f) has occurred and is continuing, to any Assignee or (iii) an assignment of all or a portion of the Loans pursuant to Section 10.07(k), Section 10.07(l) or Section 10.07(o); *provided* that, other than with respect to any proposed assignment to any Person that is a Disqualified Institution, the Borrower shall be deemed to have consented to any such assignment of the Term Loans unless it shall have objected thereto by written notice to the Administrative Agent within fifteen (15) Business Days after having received notice thereof;

(B) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for an assignment of all or a portion of the Loans pursuant to Section 10.07(k), Section 10.07(l) or Section 10.07(o);

(C) each applicable L/C Issuer at the time of such assignment; *provided* that no consent of the applicable L/C Issuers shall be required for any assignment of a Term Loan or any assignment to an Agent or an Affiliate of an Agent; *provided* that the consent of the Existing L/C Issuer shall not be so required unless any Existing Letters of Credit are outstanding at such time; and

(D) the Swing Line Lender; *provided* that no consent of the Swing Line Lender shall be required for any assignment of a Term Loan or any assignment to an Agent or an Affiliate of an Agent.

Notwithstanding the foregoing or anything to the contrary set forth herein, to the extent any Lender is required to assign any portion of its Commitments, Loans and other rights, duties and obligations hereunder in order to comply with applicable Laws, such assignment may be made by such Lender without the consent of the Borrower, the Administrative Agent, any applicable L/C Issuer, the Swing Line Lender or any other party hereto so long as such Lender complies with the requirements of Section 10.07(b)(ii).

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than an amount of \$5,000,000 (in the case of each Revolving Credit Loan) or \$1,000,000 (in the case of a Term Loan), and shall be in increments of an amount of \$5,000,000 (in the case of each Revolving Credit Loan) or \$1,000,000 (in the case of Term Loans), in excess thereof unless each of the Borrower and the Administrative Agent otherwise consent; *provided* that such assignments shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (unless waived or reduced by the Administrative Agent in its sole discretion); and

(C) other than in the case of assignments pursuant to Section 10.07(l), the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

This paragraph (b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis among such Facilities.

In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(c) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(d), from and after the effective date specified in each Assignment and Assumption, (1) other than in connection with an assignment pursuant to Section 10.07(l), the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and (2) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (c) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(e).

(d) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption, each Affiliated Lender Assignment and Assumption delivered to it, and each notice of cancellation of any Loans delivered by the Borrower pursuant to Section 10.07(k) or Section 10.07(l) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans, L/C Obligations (specifying the Unreimbursed Amounts), L/C Borrowings and the amounts due under Section 2.03, owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent and any Lender (but in the case of any Lender, such inspection shall be limited to reviewing such Lender's own entry in the Register only), at any reasonable time and from time to time upon reasonable prior notice. This Section 10.07(d) and Section 2.11 shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations). Notwithstanding the foregoing, in no event shall the Administrative Agent be obligated to ascertain, monitor or inquire as to whether any Lender is an Affiliated Lender nor shall the Administrative Agent be obligated to monitor the aggregate amount of Term Loans or Incremental Term Loans held by Affiliated Lenders.

(e) Any Lender may at any time sell participations to any Person (other than a natural person, a Disqualified Institution or a Defaulting Lender) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C

Obligations and/or Swing Line Loans) owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (a) through (f) of the first proviso to Section 10.01 that requires the affirmative vote of such Lender. Subject to Section 10.07(f), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender (subject, for the avoidance of doubt, to the limitations and requirements of those Sections (including Section 3.01(d) and Sections 3.06 and 3.07) applying to each Participant as if it were a Lender, and it being understood that the documentation required under Section 3.01(d) shall be delivered solely to the participating Lender) and had acquired its interest by assignment pursuant to Section 10.07(c). To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. No Lender shall have the obligation to disclose all or a portion of the Participant Register (including the identity of the Participant or any information relating to a Participant's interest in any Loans or other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that any loans are in registered form for U.S. federal income tax purposes.

(f) A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent (not to be unreasonably withheld or delayed; for the avoidance of doubt, the Borrower shall have a reasonable basis for withholding consent if such Participant would result in a materially increased indemnification obligation to the Borrower at such time).

(g) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Notwithstanding anything to the contrary contained herein, any Lender (a “**Granting Lender**”) may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an “**SPC**”) the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided that* (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof, shall be appropriately reflected in the Participant Register. Each party hereto hereby agrees that (i) an SPC shall be entitled to the benefit of Sections 3.01, 3.04 and 3.05 (subject to the requirements and the limitations of such Sections and Sections 3.06 and 3.07 and it being understood that the documentation required under Section 3.01(d) shall be delivered solely to the Granting Lender), but neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement except, in the case of Section 3.01, to the extent that the grant to the SPC was made with the prior written consent of the Borrower which may be withheld in the Borrower’s sole and absolute discretion, (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the Lender hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of \$3,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(i) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the Administrative Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided that* unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(j) Notwithstanding anything to the contrary contained herein, any L/C Issuer or Swing Line Lender may, upon thirty (30) days’ notice to the Borrower and the Lenders, resign as an L/C Issuer or Swing Line Lender, respectively; *provided that* on or prior to the expiration of such thirty (30)-day period with respect to such resignation, the relevant L/C Issuer or Swing Line Lender shall have identified a successor L/C Issuer or Swing Line Lender reasonably acceptable to the Borrower willing to accept its appointment as successor L/C Issuer or Swing

Line Lender, as applicable. In the event of any such resignation of an L/C Issuer or Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders willing to accept such appointment a successor L/C Issuer or Swing Line Lender hereunder; *provided* that no failure by the Borrower to appoint any such successor shall affect the resignation of the relevant L/C Issuer or the Swing Line Lender, as the case may be, except as expressly provided above. If an L/C Issuer resigns as an L/C Issuer, it shall retain all the rights and obligations of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If the Swing Line Lender resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c).

(k) Any Lender may at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to a Person who is or will become, after such assignment, an Affiliated Lender through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis consistent with the procedures set forth in Section 2.05(a)(v) or (y) open market purchase on a non-pro rata basis, in each case subject to the following limitations:

(i) the assigning Lender and the Affiliated Lender purchasing such Lender's Term Loans shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit K hereto (an "**Affiliated Lender Assignment and Assumption**");

(ii) Affiliated Lenders will not receive information provided solely to Lenders by the Administrative Agent or any Lender and will not be permitted to attend or participate in conference calls or meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices of prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II;

(iii) (A) each Affiliated Lender that purchases any Term Loans pursuant to clause (x) above shall represent and warrant to the selling Lender and the Administrative Agent (other than any other Affiliated Lender), or shall make a statement that such representation cannot be made, that it does not possess material non-public information with respect to Holdings and its Subsidiaries or the securities of any of them that has not been disclosed to the Term Lenders generally (other than Term Lenders who elect not to receive such information) and (B) each Lender (other than any other Affiliated Lender) that assigns any Term Loans to an Affiliated Lender pursuant to clause (k)(y) above shall deliver to the Administrative Agent and the applicable Affiliated Lender a customary Big Boy Letter;

(iv) the aggregate principal amount of Term Loans held at any one time by Affiliated Lenders shall not exceed 25% of the original principal amount of all Term Loans at such time outstanding; (such percentage, the "**Affiliated Lender Cap**"); *provided* that to the extent any assignment to an Affiliated Lender would result in the aggregate principal amount of all Loans held by Affiliated Lenders exceeding the Affiliated Lender Cap, the assignment of such excess amount will be void *ab initio*; and

(v) as a condition to each assignment pursuant to this clause (k), the Administrative Agent and the Borrower shall have been provided a notice in the form of Exhibit E-2 to this Agreement in connection with each assignment to an Affiliated Lender or a Person that upon effectiveness of such assignment would constitute an Affiliated Lender pursuant to which such Affiliated Lender shall waive any right to bring any action in connection with such Term Loans against the Administrative Agent, in its capacity as such.

Each Affiliated Lender agrees to notify the Administrative Agent promptly (and in any event within ten (10) Business Days) if it acquires any Person who is also a Lender, and each Lender agrees to notify the Administrative Agent promptly (and in any event within ten (10) Business Days) if it becomes an Affiliated Lender. Such notice shall contain the type of information required and be delivered to the same addressee as set forth in Exhibit E-2.

Notwithstanding anything to the contrary contained herein, any Affiliated Lender that has purchased Term Loans pursuant to this subsection (k) and any Debt Fund Affiliate that has purchased Term Loans may, in their sole discretion, contribute, directly or indirectly, principal amount of such Term Loans, plus all accrued and unpaid interest thereon, to the Borrower for the purpose of cancelling and extinguished such Term Loans. Upon the date of such contribution, assignment or transfer, (x) the aggregate outstanding principal amount of Term Loans shall reflect such cancellation and extinguishing of the Term Loans then held by the Borrower and (y) the Borrower shall promptly provide notice to the Administrative Agent of such contribution of such Term Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Term Loans in the Register.

(l) Any Lender may, so long as no Default or Event of Default has occurred and is continuing, at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to Holdings or the Borrower through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis consistent with the procedures set forth in Section 2.05(a)(v) or (y) notwithstanding Sections 2.12 and 2.13 or any other provision in this Agreement, open market purchase on a non-pro rata basis; *provided that*:

(i) if Holdings is the assignee, upon such assignment, transfer or contribution, Holdings shall automatically be deemed to have contributed the principal amount of such Term Loans, plus all accrued and unpaid interest thereon, to the Borrower;

(ii) (a) the principal amount of such Term Loans, along with all accrued and unpaid interest thereon, so contributed, assigned or transferred to the Borrower shall be deemed automatically cancelled and extinguished on the date of such contribution, assignment or transfer, (b) the aggregate outstanding principal amount of Term Loans of the remaining Lenders shall reflect such cancellation and extinguishing of the Term Loans then held by the Borrower and (c) the Borrower shall promptly provide notice to the Administrative Agent of such contribution, assignment or transfer of such Term Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Term Loans in the Register; and

(iii) purchases of Term Loans shall not be funded with the proceeds of Revolving Credit Loans or Swing Line Loans.

(m) Notwithstanding anything in Section 10.01 or the definition of “Required Lenders” or “Required Class Lenders” to the contrary, for purposes of determining whether the Required Lenders and Required Class Lenders (in respect of a Class of Term Loans) have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, or subject to Section 10.07(n), any plan of reorganization pursuant to the U.S. Bankruptcy Code, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, no Affiliated Lender shall have any right to consent (or not consent), otherwise act or direct or require the Administrative Agent or any Lender to take (or refrain from taking) any such action, and all Term Loans held by any Affiliated Lenders shall be disregarded for all purposes of calculating whether the Required Lenders, Required Class Lenders (in respect of a Class of Term Loans) or all Lenders have taken any actions (and shall be deemed to have voted pro rata with other lenders that are not Affiliated Lenders), except that no amendment, modification or waiver of any Loan Document shall, without the consent of the applicable Affiliated Lender, deprive any Affiliated Lender of its Pro Rata Share of any payment to which all Lenders of the applicable Class of Term Loans are entitled or affect an Affiliated Lender in a manner that is disproportionate to the effect on any Lender of the same Class of Term Loans.

(n) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, each Affiliated Lender hereby agrees that (and each Affiliated Lender Assignment and Assumption shall provide a confirmation that) if a proceeding under any Debtor Relief Law shall be commenced by or against the Borrower or any other Loan Party at a time when such Lender is an Affiliated Lender, such Affiliated Lender irrevocably authorizes and empowers the Administrative Agent to vote on behalf of such Affiliated Lender with respect to the Term Loans held by such Affiliated Lender in a manner such that all Affiliated Lenders will be deemed to vote in the same proportion as Lenders that are not Affiliated Lenders, unless the Administrative Agent instructs such Affiliated Lender to vote, in which case such Affiliated Lender shall vote with respect to the Term Loans held by it in order to provide that all Affiliated Lenders will be deemed to vote in the same proportion as Lenders that are not Affiliated Lenders; *provided* that such Affiliated Lender shall be entitled to vote in accordance with its sole discretion (and not in accordance with the direction of the Administrative Agent) in connection with any plan of reorganization to the extent any such plan of reorganization proposes to treat any Obligations held by such Affiliated Lender in a manner that has a disproportionate effect on such Affiliated Lender as compared to the proposed treatment of similar Obligations held by Term Lenders that are not Affiliated Lenders.

(o) Although Debt Fund Affiliates shall be Eligible Assignees and shall not be subject to the provisions of Section 10.07(m) or (n), any Lender may, at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to a Person who is or will become, after such assignment, a Debt Fund Affiliate only through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis consistent with the procedures set forth in Section 2.05(a)(v) (for the avoidance of doubt, without requiring any representation as to

the possession of material non-public information by such Affiliate and without regard to whether a Default or an Event of Default has occurred and is continuing) or (y) open market purchase on a non-pro rata basis. Notwithstanding anything in Section 10.01 or the definition of "Required Lenders" to the contrary, for purposes of determining whether the Required Lenders have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, (ii) otherwise acted on any matter related to any Loan Document or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, all Term Loans, Revolving Credit Commitments and Revolving Credit Loans held by Debt Fund Affiliates, in the aggregate, may not account for more than 49.9% of the Term Loans, Revolving Credit Commitments and Revolving Credit Loans of Lenders included in determining whether the Required Lenders have consented to any action pursuant to Section 10.01.

(p) The aggregate outstanding principal amount of the Term Loans of the applicable Class shall be deemed reduced by the full par value of the aggregate principal amount of the Term Loans purchased by, or contributed to (in each case, and subsequently cancelled hereunder), the Borrower pursuant to Section 10.07(k) or (l) and the principal repayment installments with respect to the Term Loans of such Class pursuant to Section 2.07(a)(i) shall be reduced pro rata by the par value of the aggregate principal amount of Term Loans so purchased or contributed (and subsequently cancelled), with such reduction being applied solely to the Term Loans of the Lenders which sold such Term Loans.

Section 10.08 Confidentiality.

Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and its and its Affiliates' managers, administrators, directors, officers, employees, trustees, partners, investors, investment advisors and agents, including accountants, legal counsel, service providers and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any Governmental Authority or self-regulatory authority having or asserting jurisdiction over such Person (including any Governmental Authority regulating any Lender or its Affiliates), *provided* that the Administrative Agent or such Lender, as applicable, agrees that it will notify the Borrower prior to any such disclosure by such Person to the extent practicable (other than at the request of a regulatory authority or any self-regulatory authority having or asserting jurisdiction over such Person) unless such notification is prohibited by law, rule or regulation; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, *provided* that the Administrative Agent or such Lender, as applicable, agrees that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority or any self-regulatory authority having or asserting jurisdiction over such Person) unless such notification is prohibited by law, rule or regulation; (d) to any other party to this Agreement; (e) subject to an agreement containing provisions at least as restrictive as those of this Section 10.08 (or as may otherwise be reasonably acceptable to the Borrower), to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be an Additional Lender,

any pledgee referred to in Section 10.07(g), or any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations; (f) with the written consent of the Borrower; (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.08 or becomes available to the Administrative Agent, any Arranger, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than a Loan Party or any Sponsor or their respective related parties (so long as such source is not known to the Administrative Agent, such Arranger, such Lender, the L/C Issuer or any of their respective Affiliates to be bound by confidentiality obligations to any Loan Party); (h) to any rating agency when required by it on a customary basis and after consultation with the Borrower (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to Loan Parties and their Subsidiaries received by it from such Lender); (i) in connection with the exercise of any remedies hereunder, under any other Loan Document or the enforcement of its rights hereunder or thereunder; or (j) to the extent such Information is independently developed by such Person or its Affiliates so long as not based on Information obtained in a manner that would otherwise violate this Section 10.08.

For purposes of this Section 10.08, “**Information**” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof other than as a result of a breach of this Section 10.08; *provided* that all information received after the Closing Date from Holdings, the Borrower or any of its Subsidiaries shall be deemed confidential unless such information is clearly identified at the time of delivery as not being confidential.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower or any of its Subsidiaries, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

Section 10.09 Setoff.

In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates (and the Administrative Agent, in respect of any unpaid fees, costs and expenses payable hereunder) is authorized at any time and from time to time, without prior notice to the Borrower, any such notice being waived by the Borrower (on its own behalf and on behalf of each Loan Party and each of its Subsidiaries) to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates or the Administrative Agent to or for the credit or the account of the respective Loan Parties and their Subsidiaries against any and all Obligations (other than, with respect to any Guarantor, Excluded Swap Obligations of such Guarantor) owing to such Lender and its Affiliates or the Administrative Agent hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand

under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuers, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; *provided* that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent and each Lender under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent and such Lender may have at Law.

Section 10.10 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "**Maximum Rate**"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.11 Counterparts; Electronic Execution of Assignments and Certain Other Documents.

This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier, .pdf or other electronic imaging means of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Agents may also require that any such documents and signatures delivered by telecopier, .pdf or other electronic imaging means be confirmed by a manually signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by telecopier, .pdf or other electronic imaging means.

The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records

in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.12 Integration; Termination.

This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements (other than the Fee Letter) written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided* that the inclusion of supplemental rights or remedies in favor of the Agents or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof. Notwithstanding anything contained herein or in any Loan Document or any other agreement among the parties or anything else to the contrary, the Fee Letter and all obligations thereunder shall survive the execution, delivery and performance of the Loan Documents and the occurrence of the Closing Date.

Section 10.13 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied (other than Obligations under Secured Hedge Agreements, Treasury Services Agreements or contingent indemnification obligations, in any such case, not then due and payable) or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or such Letter of Credit has been deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer).

Section 10.14 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any

other jurisdiction. Without limiting the foregoing provisions of this Section 10.14, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 10.15 GOVERNING LAW.

(a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY (BOROUGH OF MANHATTAN) OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY, EACH AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS AND AGREES THAT IT WILL NOT COMMENCE OR SUPPORT ANY SUCH ACTION OR PROCEEDING IN ANOTHER JURISDICTION. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN OR IN ANY OTHER LOAN DOCUMENT WILL PREVENT ANY LENDER OR THE ADMINISTRATIVE AGENT FROM BRINGING ANY ACTION TO ENFORCE ANY AWARD OR JUDGMENT OR EXERCISE ANY RIGHT UNDER THE SECURITY DOCUMENTS OR AGAINST ANY COLLATERAL OR ANY OTHER PROPERTY OF ANY LOAN PARTY IN ANY OTHER FORUM IN WHICH JURISDICTION CAN BE ESTABLISHED. EACH LOAN PARTY, EACH AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS IN THE MANNER PROVIDED FOR NOTICES (OTHER THAN TELECOPIER) IN SECTION 10.02. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.16 WAIVER OF RIGHT TO TRIAL BY JURY.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF

OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.16.

Section 10.17 Binding Effect.

This Agreement shall become effective when (i) it shall have been executed by the Loan Parties and the Administrative Agent and (ii) the Administrative Agent shall have been notified by each Lender, Swing Line Lender and L/C Issuer that each such Lender, Swing Line Lender and L/C Issuer has executed it and thereafter shall be binding upon and inure to the benefit of the Loan Parties, each Agent and each Lender and their respective successors and assigns, in each case in accordance with Section 10.07 (if applicable) and except that no Loan Party shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders except as permitted by Section 7.04.

Section 10.18 USA Patriot Act.

Each Lender that is subject to the USA Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name, address and tax identification number of such Loan Party and other information regarding such Loan Party that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the USA Patriot Act. This notice is given in accordance with the requirements of the USA Patriot Act and is effective as to the Lenders and the Administrative Agent. The Borrower shall, promptly following a written request by the Administrative Agent (or the Administrative Agent on behalf of any Lender), provide all documentation, including a Beneficial Ownership Certification, and other information that the Administrative Agent reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act and the Beneficial Ownership Regulation.

Section 10.19 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the other Arrangers are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Administrative

Agent, the other Arrangers and the Lenders, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, each other Arranger and each Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for each Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, any other Arranger nor any Lender has any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the other Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Administrative Agent nor any other Arranger nor any Lender has any obligation to disclose any of such interests to the Loan Parties or any of their respective Affiliates. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the other Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.20 INTERCREDITOR AGREEMENTS.

(a) PURSUANT TO THE EXPRESS TERMS OF EACH INTERCREDITOR AGREEMENT, IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE TERMS OF THE RELEVANT INTERCREDITOR AGREEMENT AND ANY OF THE LOAN DOCUMENTS, THE PROVISIONS OF THE RELEVANT INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL.

(b) EACH LENDER AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT TO ENTER INTO THE RELEVANT INTERCREDITOR AGREEMENT ON BEHALF OF SUCH LENDER, AND TO TAKE ALL ACTIONS (AND EXECUTE ALL DOCUMENTS) REQUIRED (OR DEEMED ADVISABLE) BY IT IN ACCORDANCE WITH THE TERMS OF SUCH INTERCREDITOR AGREEMENT(S). EACH LENDER AGREES TO BE BOUND BY AND WILL TAKE NO ACTIONS CONTRARY TO THE PROVISIONS OF THE RELEVANT INTERCREDITOR AGREEMENT.

(c) THE PROVISIONS OF THIS SECTION 10.20 ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF THE RELEVANT INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO THE RELEVANT INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF THE RELEVANT INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NO AGENT (AND NONE OF ITS AFFILIATES) MAKES ANY REPRESENTATION TO ANY LENDER AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN THE RELEVANT INTERCREDITOR AGREEMENT.

(d) THE PROVISIONS OF THIS SECTION 10.20 SHALL APPLY WITH EQUAL FORCE, MUTATIS MUTANDIS, TO THE FIRST LIEN INTERCREDITOR AGREEMENT, THE SECOND LIEN INTERCREDITOR AGREEMENT, THE SUBORDINATION AGREEMENT AND ANY OTHER INTERCREDITOR AGREEMENT OR ARRANGEMENT PERMITTED BY THIS AGREEMENT.

Section 10.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 10.22 Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**", and each such QFC, a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support

(and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.22, the following terms have the following meanings:

“**BHC Act Affiliate**” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“**Covered Entity**” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

ARTICLE XI. GUARANTEE

Section 11.01 The Guarantee.

Each Guarantor hereby jointly and severally with the other Guarantors guarantees, as a primary obligor and not as a surety, to each Secured Party and their respective successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest

(including any interest, fees, costs or charges that would accrue but for the provisions of (i) the Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code and (ii) any other Debtor Relief Laws) on the Loans made by the Lenders to, and the Notes held by each Lender of, the Borrower, and all other Obligations (excluding, with respect to any Guarantor, any Excluded Swap Obligations of such Guarantor) from time to time owing to the Secured Parties by any Loan Party under any Loan Document or any Secured Hedge Agreement or any Treasury Services Agreement, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the “**Guaranteed Obligations**”). The Guarantors hereby jointly and severally agree that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Section 11.02 Obligations Unconditional.

The obligations of the Guarantors under Section 11.01 shall constitute a guaranty of payment and to the fullest extent permitted by applicable Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower under this Agreement, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(i) at any time or from time to time, without notice to the Guarantors, to the extent permitted by Law, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;

(iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or except as permitted pursuant to Section 11.09, any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien or security interest granted to, or in favor of, an L/C Issuer or any Lender or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or

(v) the release of any other Guarantor pursuant to Section 11.09.

The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and, to the extent permitted by Law, all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive, to the extent permitted by Law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other Person at any time of any right or remedy against the Borrower or against any other Person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Lenders, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

Section 11.03 Reinstatement.

The obligations of the Guarantors under this Article XI shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

Section 11.04 Subrogation; Subordination.

Each Guarantor hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 11.01, whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party to any Non-Loan Party permitted pursuant to Section 7.03(b)(ii) or 7.03(d) shall be subordinated to such Loan Party's Obligations in the manner set forth in the Intercompany Note evidencing such Indebtedness.

Section 11.05 Remedies.

The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in Section 8.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 8.02) for purposes of Section 11.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 11.01.

Section 11.06 Instrument for the Payment of Money.

Each Guarantor hereby acknowledges that the guarantee in this Article XI constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

Section 11.07 Continuing Guarantee.

The guarantee in this Article XI is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

Section 11.08 General Limitation on Guarantee Obligations.

In any action or proceeding involving any state corporate limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under Section 11.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, any Loan Party or any other Person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 11.10) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

Section 11.09 Release of Guarantors.

If, in compliance with the terms and provisions of the Loan Documents, (i) all or substantially all of the Equity Interests or property of any Subsidiary Guarantor are sold or otherwise transferred to a Person or Persons none of which is a Loan Party or (ii) any Subsidiary Guarantor becomes an Excluded Subsidiary (any such Subsidiary Guarantor, and any Subsidiary Guarantor referred to in clause (i), a “**Transferred Guarantor**”), such Transferred Guarantor shall, upon the consummation of such sale or transfer or other transaction, be automatically released from its obligations under this Agreement (including under Section 10.05 hereof) and its

obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and, in the case of a sale of all or substantially all of the Equity Interests of the Transferred Guarantor, the pledge of such Equity Interests to the Administrative Agent pursuant to the Collateral Documents shall be automatically released, and, so long as the Borrower shall have provided the Agents such certifications or documents as any Agent shall reasonably request, the Administrative Agent shall take such actions as are necessary to effect each release described in this Section 11.09 in accordance with the relevant provisions of the Collateral Documents; *provided further*, that notwithstanding the foregoing, if any Subsidiary Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of Excluded Subsidiary, such Guarantor shall not be released from its obligations under the Guaranty or any other Loan Document unless (x) such Subsidiary Guarantor would no longer be a direct or indirect Subsidiary of the Borrower or (y) after giving pro forma effect to such release and the consummation of the relevant transaction, the Borrower would be permitted to make an Investment in such Person to be so released pursuant to clause (1) of the definition of "Permitted Investments" (and, if this clause (y) shall be applicable, Borrower shall be deemed to have made such an Investment in such Person pursuant to such clause (1)).

Subject to the immediately preceding paragraph of this Section 11.09, the Guarantees made herein shall remain in full force and effect so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements as to which arrangements reasonably satisfactory to the applicable Hedge Bank have been made) hereunder which is accrued and payable shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the applicable L/C Issuer or such Letter of Credit has been deemed reissued under another agreement reasonably acceptable to the applicable L/C Issuer).

Section 11.10 Right of Contribution.

Each Guarantor hereby agrees that to the extent that a Subsidiary Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Subsidiary Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Subsidiary Guarantor's right of contribution shall be subject to the terms and conditions of Section 11.04. The provisions of this Section 11.10 shall in no respect limit the obligations and liabilities of any Subsidiary Guarantor to the Administrative Agent, the L/C Issuer, the Swing Line Lender and the Lenders, and each Subsidiary Guarantor shall remain liable to the Administrative Agent, the L/C Issuer, the Swing Line Lender and the Lenders for the full amount guaranteed by such Subsidiary Guarantor hereunder.

Section 11.11 Keepwell.

Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally, and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guaranty in respect of any

Swap Obligation (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 11.11 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 11.11, or otherwise under this Guaranty, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 11.11 shall remain in full force and effect until the payment in full and discharge of the Guaranteed Obligations. Each Qualified ECP Guarantor intends that this Section 11.11 constitute, and this Section 11.11 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Guarantor for all purposes of section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

[SIGNATURE PAGES INTENTIONALLY OMITTED]



SECOND LIEN CREDIT AGREEMENT

Dated as of August 1, 2014

Among

PHD INTERMEDIATE LLC,
as Holdings,

PHD MERGER SUB LLC
(to be merged with and into PORTILLO'S HOLDINGS, LLC),
as the Borrower,

UBS AG, STAMFORD BRANCH,
as Administrative Agent,

and

THE OTHER LENDERS PARTY HERETO FROM TIME TO TIME

UBS SECURITIES LLC and
JEFFERIES FINANCE LLC,
as Joint Arrangers,

UBS SECURITIES LLC and
JEFFERIES FINANCE LLC,
as Joint Lead Bookrunners,

and

JEFFERIES FINANCE LLC,
as Syndication Agent

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SECOND LIEN CREDIT AGREEMENT

This SECOND LIEN CREDIT AGREEMENT is entered into as of August 1, 2014, among PHD INTERMEDIATE LLC, a Delaware limited liability company ("**Holdings**"), PHD MERGER SUB LLC, a Delaware limited liability company ("**Merger Sub**"), to be merged with and into PORTILLO'S HOLDINGS, LLC, a Delaware limited liability company (the "**Company**"), the other Guarantors party hereto from time to time, UBS AG, STAMFORD BRANCH, as Administrative Agent, and each lender from time to time party hereto (collectively, the "**Lenders**" and individually, a "**Lender**").

PRELIMINARY STATEMENTS

Pursuant to the Agreement and Plan of Merger, dated as of June 27, 2014 (the "**Merger Agreement**"), by and among Holdings, Merger Sub, the Company, and RP & SP Holdings, Inc., a Delaware corporation, Merger Sub will, immediately following the initial funding hereunder, be merged with and into the Company with the Company surviving (the "**Merger**").

The Borrower has requested that, substantially simultaneously with the consummation of (and in order to fund a portion of the consideration for) the Merger, the Lenders extend credit to the Borrower in the form of the Initial Loans (as this and other capitalized terms used in these preliminary statements are defined in Section 1.01 below) on the Closing Date in an initial aggregate principal amount of \$80,000,000.

The proceeds of the Initial Loans, together with (i) the proceeds of the First Lien Initial Term Loans, (ii) the proceeds of the First Lien Initial Revolving Borrowing, (iii) the proceeds from the issuance of the Superholdco Preferred Stock and (iv) the proceeds of the Equity Contribution, will be used by the Borrower to pay the Merger Consideration and Transaction Expenses and to refinance certain Indebtedness.

The Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

"**Acceptable Discount**" has the meaning set forth in Section 2.05(a)(v)(D)(2).

"**Acceptable Prepayment Amount**" has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Acceptance and Prepayment Notice**” means a notice of the Borrower’s acceptance of the Acceptable Discount in substantially the form of Exhibit E-3.

“**Acceptance Date**” has the meaning set forth in Section 2.05(a)(v)(D)(2).

“**Acquired Indebtedness**” means, with respect to any specified Person,

(a) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

(b) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“**Acquisition**” means the acquisition of the Company pursuant to the Merger Agreement.

“**Additional Lender**” means any Person that is not an existing Lender and has agreed to provide Incremental Commitments pursuant to Section 2.14 or Refinancing Commitments pursuant to Section 2.15.

“**Administrative Agent**” means UBS, in its capacity as administrative agent and collateral agent under any of the Loan Documents, or any successor administrative agent and collateral agent.

“**Administrative Agent’s Office**” means the Administrative Agent’s address and account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. “**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Affiliated Lender**” means, at any time, any Lender that is the Sponsor or an Affiliate of the Sponsor, but in any event excluding (1) Holdings, the Borrower or any of their respective Subsidiaries and (2) any Debt Fund Affiliate.

“**Affiliated Lender Assignment and Assumption**” has the meaning set forth in Section 10.07(k)(i).

“**Affiliated Lender Cap**” has the meaning set forth in Section 10.07(k)(iv).

“**Agent Parties**” has the meaning specified in Section 10.02(b).

“**Agent-Related Distress Event**” means, with respect to the Administrative Agent or any Person that directly or indirectly Controls the Administrative Agent (each, a “**Distressed Agent-Related Person**”), a voluntary or involuntary case with respect to such Distressed Agent-Related Person under any Debtor Relief Law, or a custodian, conservator, receiver or similar official is appointed for such Distressed Agent-Related Person or any substantial part of such Distressed Agent-Related Person’s assets, or such Distressed Agent-Related Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Agent-Related Person to be, insolvent or bankrupt; *provided* that an Agent-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in the Administrative Agent or any Person that directly or indirectly Controls the Administrative Agent by a Governmental Authority or an instrumentality thereof.

“**Agent-Related Persons**” means the Agents, together with their respective Affiliates, officers, directors, employees, partners, agents, advisors and other representatives.

“**Agents**” means, collectively, the Administrative Agent, the Syndication Agent, the Arrangers and the Bookrunners.

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” means this Second Lien Credit Agreement, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“**All-In Yield**” means, as to any Indebtedness, the yield thereof, whether in the form of interest rate, margin, OID, upfront fees, a Eurocurrency Rate or Base Rate floor, or otherwise, in each case, incurred or payable by the Borrower generally to all lenders of such Indebtedness; *provided* that OID and upfront fees shall be equated to interest rate assuming a four (4)-year life to maturity (e.g. 100 basis points of original issue discount equals 25 basis points of interest rate margin for a four (4) year average life to maturity); and *provided, further*, that “**All-In Yield**” shall not include amendment fees, arrangement fees, structuring fees, ticking fees, unused line fees, commitment fees, underwriting fees and similar fees or other fees not paid generally to all lenders in the primary syndication of such Indebtedness.

“**Anti-Corruption Laws**” means all laws, rules, and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption applicable to Holdings or its Subsidiaries by virtue of such Person being organized or operating in such jurisdiction.

“**Applicable Discount**” has the meaning set forth in Section 2.05(a)(v)(C)(2).

“**Applicable ECF Percentage**” means, for any fiscal year, (a) 50% if the Secured Net Leverage Ratio as of the last day of such fiscal year is greater than 5.50 to 1.00, (b) 25% if the Secured Net Leverage Ratio as of the last day of such fiscal year is less than or equal to 5.50 to 1.00 and greater than 5.00 to 1.00 and (c) 0% if the Secured Net Leverage Ratio as of the last day of such fiscal year is less than or equal to 5.00 to 1.00.

“**Applicable Rate**” means with respect to the Initial Loans, a percentage per annum equal to (A) for Eurocurrency Rate Loans, 7.00% and (B) for Base Rate Loans, 6.00%.

“**Appropriate Lender**” means, at any time, with respect to Loans of any Class, the Lenders of such Class of Loans.

“**Approved Bank**” has the meaning set forth in clause (c) of the definition of “Cash Equivalents.”

“**Approved Fund**” means any Fund that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

“**Arrangers**” means each of UBS Securities LLC and Jefferies Finance LLC, each in its capacity as a joint lead arranger under this Agreement.

“**Assignees**” has the meaning set forth in Section 10.07(b)(i).

“**Assignment and Assumption**” means an Assignment and Assumption substantially in the form of Exhibit E-1 hereto.

“**Assignment Taxes**” has the meaning set forth in Section 3.01(b).

“**Attorney Costs**” means all reasonable and documented fees, expenses and disbursements of any law firm or other external legal counsel.

“**Attributable Indebtedness**” means, subject to the second paragraph of Section 1.03, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“**Auction Agent**” means (a) the Administrative Agent or (b) any other financial institution or advisor employed by the Borrower (whether or not an Affiliate of the Administrative Agent) with the consent of the Administrative Agent (not to be unreasonably withheld or delayed) to act as an arranger in connection with any Discounted Loan Prepayment pursuant to Section 2.05(a)(v); *provided* that the Borrower shall not designate the Administrative Agent as the Auction Agent without the prior written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Agent); *provided, further*, that neither the Borrower nor any of its Affiliates may act as the Auction Agent.

“**Audited Financial Statements**” has the meaning specified in the Merger Agreement (as in effect on the date hereof).

“**Base Rate**” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as the Administrative Agent’s “prime rate” and (c) the Eurocurrency Rate plus 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day); *provided* that in no event shall

the Base Rate with respect to Initial Loans be less than 2.00% per annum. The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate made by the Administrative Agent shall take effect at the opening of business on the day of such change.

“**Base Rate Loan**” means a Loan that bears interest based on the Base Rate.

“**Big Boy Letter**” means a letter from a Lender (i) acknowledging that (1) an Affiliated Lender may have information regarding Holdings and its Subsidiaries that has not previously been disclosed to the Administrative Agent and the Lenders (“**Excluded Information**”), (2) the Excluded Information may not be available to such Lender, (3) such Lender has independently and without reliance on any other party made its own analysis and determined to assign Loans to an Affiliated Lender pursuant to Section 10.07(k) notwithstanding its lack of knowledge of the Excluded Information and (4) such Lender waives and releases any claims it may have against the Administrative Agent, such Affiliated Lender, Holdings and its Subsidiaries with respect to the nondisclosure of the Excluded Information; or (ii) otherwise in form and substance reasonably satisfactory to the Administrative Agent, such Affiliated Lender and the assigning Lender.

“**Board of Directors**” means, for any Person, the board of directors or managers, the managing member or other governing body of such Person or, if such Person does not have such governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, “**Board of Directors**” means the Board of Directors of the Borrower.

“**Bookrunner**” means each of UBS Securities LLC and Jefferies Finance LLC, each in its capacity as a joint bookrunner.

“**Borrower**” means (a) prior to the consummation of the Merger, Merger Sub and (b) upon and after the consummation of the Merger, the Company.

“**Borrower Materials**” has the meaning specified in Section 6.01.

“**Borrower Offer of Specified Discount Prepayment**” means the offer by any Company Party to make a voluntary prepayment of Loans at a Specified Discount to par pursuant to Section 2.05(a)(v)(B).

“**Borrower Retained Prepayment Amounts**” has the meaning specified in Section 2.05(b)(vii).

“**Borrower Solicitation of Discount Range Prepayment Offers**” means the solicitation by any Company Party of offers for, and the corresponding acceptance by a Lender of, a voluntary prepayment of Loans at a specified range of discounts to par pursuant to Section 2.05(a)(v)(C).

“Borrower Solicitation of Discounted Prepayment Offers” means the solicitation by any Company Party of offers for, and the subsequent acceptance, if any, by a Lender of, a voluntary prepayment of Loans at a discount to par pursuant to Section 2.05(a)(v)(D).

“Borrowing” means a borrowing under a Facility consisting of Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Lenders under such Facility.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, New York City, and if such day relates to any Eurocurrency Rate Loan, means any such day that is also a London Banking Day.

“Capital Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Leases) by the Borrower and its Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries.

“Capitalized Lease Obligation” means, subject to the second paragraph of Section 1.03, at the time any determination thereof is to be made, the amount of the liability in respect of a Capitalized Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

“Capitalized Leases” means, subject to the second paragraph of Section 1.03, all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; *provided* that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“Capitalized Software Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and the Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries.

“Captive Insurance Subsidiary” means any Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

“Cash Collateral Account” means a blocked account at the Administrative Agent (or another commercial bank selected by the Administrative Agent) in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

“Cash Equivalents” means to the extent owned by Holdings, the Borrower or any Restricted Subsidiary:

(a) (1) Dollars, pound sterling, Canadian dollars, yen or euros or any national currency of any Participating Member State of the EMU; and

(2) in the case of any Foreign Subsidiary that is a Restricted Subsidiary or any jurisdiction in which the Borrower and its Restricted Subsidiaries conducts business, such local currencies held by it from time to time in the ordinary course of business and not for speculation;

(b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of the United States having average maturities of not more than twenty-four (24) months from the date of acquisition thereof; *provided* that the full faith and credit of the United States is pledged in support thereof;

(c) time deposits or eurodollar time deposits with, insured certificates of deposit, bankers' acceptances or overnight bank deposits of, or letters of credit issued by, any commercial bank that (i) is a Lender or (ii) (A) is organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development or is the principal banking Subsidiary of a bank holding company organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development and is a member of the Federal Reserve System, and (B) has combined capital and surplus of not less than \$250,000,000 in the case of U.S. domestic banks and \$100,000,000 (or the Dollar equivalent as of the date of determination) in the case of foreign banks (any such bank in the foregoing clause (i) or (ii) being an "**Approved Bank**"), in each case with maturities not exceeding twenty four (24) months from the date of acquisition thereof;

(d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation (other than structured investment vehicles and other than corporations used in structured financing transactions) rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody's, in each case with average maturities of not more than twenty-four (24) months from the date of acquisition thereof;

(e) marketable short-term money market and similar funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower);

(f) repurchase obligations for underlying securities of the types described in clauses (b), (c) and (e) above entered into with any Approved Bank;

(g) securities with average maturities of twenty-four (24) months or less from the date of acquisition issued or fully guaranteed (i) by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by (ii) any foreign government, in each case, having an investment grade rating from either S&P or Moody's (or the equivalent thereof);

(h) Investments (other than in structured investment vehicles and structured financing transactions) with average maturities of twelve (12) months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;

(i) securities with maturities of twelve (12) months or less from the date of acquisition backed by standby letters of credit issued by any Approved Bank;

(j) instruments equivalent to those referred to in clauses (a) through (i) above denominated in euros or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized in such jurisdiction;

(k) Investments, classified in accordance with GAAP as Current Assets of the Borrower or any Restricted Subsidiary, in money market investment programs which are registered under the Investment Company Act of 1940 or which are administered by financial institutions having capital of not less than \$250,000,000 in the case of U.S. domestic banks and \$100,000,000 (or the Dollar equivalent as of the date of determination) in the case of foreign banks, and, in either case, the portfolios of which are limited such that substantially all of such Investments are of the character, quality and maturity described in clauses (a) through (i) of this definition; and

(l) investment funds investing at least 90% of their assets in securities of the types described in clauses (a) through (k) above.

In the case of Investments by any Foreign Subsidiary that is a Restricted Subsidiary or Investments made in a country outside the United States, Cash Equivalents shall also include (i) investments of the type and maturity described in clauses (a) through (l) (other than clause (g)(ii) above) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries that are Restricted Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (a) through (l) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those specified in clause (a) above; *provided* that such amounts are converted into any currency listed in clause (a) above as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

“Cash Management Obligations” means obligations owed by the Borrower or any Restricted Subsidiary to any Lender, any Agent or any Affiliate of a Lender or an Agent and to any Person that was a Lender, an Agent or an Affiliate of a Lender or an Agent at the time of entering into any such services in respect of any overdraft and related liabilities arising from treasury, depository and cash management services or any automated clearing house transfers of funds.

“**Casualty Event**” means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or Real Property (including any improvements thereon) to replace or repair such equipment, fixed assets or Real Property.

“**CFC**” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“**CFC Holdco**” means any Domestic Subsidiary that has no material assets other than equity interests (or equity interests and indebtedness) of one or more Foreign Subsidiaries that are CFCs or any other Domestic Subsidiary that itself is a CFC Holdco.

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. It is understood and agreed that (i) the Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173), all Laws relating thereto, all interpretations and applications thereof and any request, rule, guideline or directive relating thereto and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall, in each case, for the purposes of this Agreement, be deemed to be adopted and taking effect subsequent to the date of this Agreement; *provided* that a Lender shall be entitled to compensation with respect to any such adoption or taking effect, change, administration, interpretation or application, making or issuance, in each case, becoming effective after the date of this Agreement only if it is the applicable Lender’s general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

“**Change of Control**” shall be deemed to occur if:

(a) (i) at any time prior to a Qualified IPO, the Permitted Holders cease to own, in the aggregate, directly or indirectly, beneficially, Equity Interests representing at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings, or

(ii) at any time upon or after the consummation of a Qualified IPO (1) any person (other than a Permitted Holder) or (2) Persons (other than one or more Permitted Holders) constituting a “**group**” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended, but excluding any employee benefit plan of such person and its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any

such plan), becomes the “**beneficial owner**” (as defined in Rules 13(d)-3 and 13(d)-5 under such Act), directly or indirectly, of Equity Interests representing more than 40% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of Holdings beneficially owned, directly or indirectly, in the aggregate by the Permitted Holders; unless, in the case of either clause (a)(i) or (a)(ii) above, the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the Board of Directors of Holdings;

(b) a “**change of control**” (or similar event) shall occur in any document pertaining to the First Lien Credit Agreement, any Incremental Equivalent Debt, any Refinancing Equivalent Debt, any First Lien Incremental Equivalent Debt, any First Lien Refinancing Equivalent Debt or, in each case, any Permitted Refinancing thereof and, in the case of any such Indebtedness which is unsecured or secured by a Lien on the Collateral which is junior to the Lien securing the Initial Loans, such Indebtedness is in an aggregate outstanding principal amount in excess of the Threshold Amount; or

(c) Holdings shall cease to own 100% of the Equity Interests of the Borrower free of Liens (other than nonconsensual Liens permitted under Section 7.01 and Liens permitted under Sections 7.01(a), (bb) (solely to the extent the Obligations under the Initial Loans shall be secured on a *pari passu* or senior basis with such Liens), (dd) and (gg)).

“**Class**” means (i) with respect to Commitments or Loans, those of such Commitments or Loans that have the same terms and conditions (without regard to differences in the Type of Loan, Interest Period, upfront fees, OID or similar fees paid or payable in connection with such Commitments or Loans, or differences in tax treatment (e.g., “fungibility”)); *provided* that such Commitments or Loans may be designated in writing by the Borrower and Lenders holding such Commitments or Loans as a separate Class from other Commitments or Loans that have the same terms and conditions and (ii) with respect to Lenders, those of such Lenders that have Commitments or Loans of a particular Class.

“**Closing Date**” means August 1, 2014.

“**Closing Fee**” has the meaning set forth in Section 2.09(c).

“**Co-Investor**” means (a) any Person (other than any Sponsor or Management Stockholder) who becomes a holder of Equity Interests in Holdings (or any of the direct or indirect parent companies of Holdings) on the Closing Date in connection with the Acquisition, (b) a Person, if any, that acquires, within sixty (60) days of the Closing Date, any Equity Interests in Holdings (or any of the direct or indirect parent companies of Holdings) held by any Sponsor as of the Closing Date, and (c) in each of clauses (a) and (b), an Affiliate of any such Person; *provided*, that, for purposes of the definition of “Permitted Holder”, Co-Investors shall only include for purposes of clauses (a) and (b) those Persons that have been disclosed in writing prior to the Closing Date to (and, solely in the case of clause (b) above, are reasonably acceptable to) the Arrangers.

“Code” means the U.S. Internal Revenue Code of 1986, and the United States Treasury Department regulations promulgated thereunder, as amended from time to time.

“Collateral” means the “Collateral” as defined in the Security Agreement and all the “Collateral” or “Pledged Assets” as defined in any other Collateral Document and any other assets pledged pursuant to any Collateral Document.

“Collateral and Guarantee Requirement” means, at any time, the requirement that:

(a) the Administrative Agent shall have received each Collateral Document required to be delivered (i) on the Closing Date, pursuant to Section 4.01(a)(iv) and (ii) at such time as may be designated therein, pursuant to the Collateral Documents, Section 6.11 or 6.13, subject, in each case, to the limitations and exceptions of this Agreement and the Collateral Documents, duly executed by each Loan Party thereto;

(b) all Obligations (other than, with respect to any Guarantor, any Excluded Swap Obligations of such Guarantor) shall have been unconditionally guaranteed by Holdings and each Restricted Subsidiary of the Borrower that is a wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) including those that are listed on Schedule I hereto (each, a “Guarantor”);

(c) the Obligations and the Guaranty shall have been secured by a second-priority security interest (subject to Liens permitted by Section 7.01) in (i) all the Equity Interests of the Borrower, (ii) all Equity Interests of each Restricted Subsidiary that is a Domestic Subsidiary (other than a Domestic Subsidiary described in the following clause (iii)(A) or (B)) that is directly owned by the Borrower or any Subsidiary Guarantor and (iii) 65% of the issued and outstanding Equity Interests directly owned by the Borrower or any Subsidiary Guarantor of (A) each Restricted Subsidiary that is a CFC Holdco, (B) each Restricted Subsidiary that is a Disregarded Domestic Person and (C) each Restricted Subsidiary that is a Foreign Subsidiary that is a CFC;

(d) except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 7.01, or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected second-priority security interest (to the extent such security interest may be perfected by delivering Mortgages, certificated securities or instruments, filing financing statements under the Uniform Commercial Code or making any necessary filings with the United States Patent and Trademark Office or United States Copyright Office or to the extent required in the Security Agreement) in substantially all tangible and intangible assets of the Borrower and each Guarantor (including accounts receivable, inventory, equipment, investment property, contract rights, applications and registrations of intellectual property filed in the United States, other general intangibles, Material Real Property, intercompany notes and proceeds of the foregoing), in each case, with the priority required by the Collateral Documents, in each case subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents; and

(e) the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Material Real Property required to be delivered pursuant to Section 6.11 and Section 6.13 (the “**Mortgaged Properties**”) duly executed and delivered by the applicable Loan Party, (ii) a title insurance policy or a marked-up commitment or signed pro forma thereof for such property available in each applicable jurisdiction (the “**Mortgage Policies**”) insuring the Lien of each such Mortgage as a valid second-priority Lien on the property described therein, free of any other Liens except as expressly permitted by Section 7.01, together with such endorsements, coinsurance and reinsurance and in such amounts as the Administrative Agent may reasonably request and which are available at commercially reasonable rates in the jurisdiction where the Mortgaged Property is located, (iii) a completed Life-of-Loan Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and the applicable Loan Party if any improvements on any Mortgaged Property are located within an area designated a “special flood hazard area”) and if any improvements on such Mortgaged Property are so located in a “special flood hazard area,” copy of, or a certificate as to coverage under, and a copy of the flood insurance policy and a declaration page relating to, the insurance policies required by Section 6.07 and the applicable provisions of the Collateral Documents and shall be in form and substance reasonably satisfactory to the Administrative Agent, (iv) either ALTA surveys in form and substance reasonably acceptable to the Administrative Agent or such existing surveys together with no change affidavits sufficient for the title company to remove all standard survey exceptions from the Mortgage Policies and issue the endorsements required in (ii) above to the extent such coverage and endorsements are available in the applicable jurisdictions and at commercially reasonable rates, (v) copies of any existing abstracts and existing appraisals, (vi) opinions, addressed to the Administrative Agent and the Lenders, from local counsel in each jurisdiction (i) where a Mortgaged Property is located regarding the enforceability of the Mortgage and (ii) where the applicable Loan Party granting the Mortgage on said Mortgaged Property is organized, regarding the due authorization, execution and delivery of such Mortgage, and in each case, such other matters as may be in form and substance reasonably satisfactory to the Administrative Agent, (vii) evidence reasonably acceptable to the Administrative Agent of payment by Obligors of all Mortgage Policy premiums, search and examination charges, escrow charges and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgage and issuance of the Mortgage Policies referred to above and (viii) such other documents as the Administrative Agent may reasonably request with respect to any such Mortgaged Property;

provided, however, that the foregoing definition shall not require and the Loan Documents shall not contain any requirements as to the creation or perfection of pledges of, security interests in, Mortgages on, or the obtaining of title insurance, surveys, abstracts or appraisals or taking other actions with respect to any Excluded Assets.

The Administrative Agent may grant extensions of time for the perfection of security interests in, or the delivery of the Mortgages and the obtaining of title insurance and surveys with respect to, particular assets and the delivery of assets (including extensions beyond the Closing Date for the perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents. Notwithstanding any provision of any Loan Document to the contrary, if a mortgage tax or any similar tax or charge will be owed on the entire amount of the Obligations evidenced hereby, then the amount secured by the applicable Mortgage shall be limited to 100% of the fair market value of the Mortgaged Property at the time the Mortgage is entered into if such limitation results in such mortgage tax or similar tax or charge being calculated based upon such fair market value.

No actions in any non-U.S. jurisdiction or required by the Laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the U.S. or to perfect such security interests, including any intellectual property registered in any non-U.S. jurisdiction (it being understood that there shall be no security agreements or pledge agreements governed under the Laws of any non-U.S. jurisdiction). No actions shall be required with respect to Collateral requiring perfection through control agreements or perfection by "control" (as defined in the UCC) (including deposit accounts or other bank accounts or securities accounts) or possession, other than in respect of (i) certificated Equity Interests of the Borrower and wholly owned Restricted Subsidiaries that are Material Subsidiaries directly owned by the Borrower or by any Subsidiary Guarantor otherwise required to be pledged pursuant to the provisions of clause (c) of this definition of "Collateral and Guarantee Requirement" and not otherwise constituting an Excluded Asset and (ii) Pledged Debt (as defined in the Security Agreement) to the extent required to be delivered to the Administrative Agent pursuant to the terms of the Security Agreement.

It is understood and agreed that to the extent the First Lien Administrative Agent is satisfied with or agrees to any deliveries of possessory collateral in respect of Collateral, the Administrative Agent shall be deemed to be satisfied with such deliveries. So long as the Second Lien Intercreditor Agreement is in effect, (A) a Loan Party may satisfy its obligations to deliver Collateral to the Administrative Agent by delivering such Collateral to (x) prior to the First Lien Termination Date, the Designated Senior Representative (as defined in the Second Lien Intercreditor Agreement) or its agent, designee or bailee, and on or after the First Lien Termination Date, the Designated Second Priority Representative (as defined in the Second Lien Intercreditor Agreement), in each case, in accordance with the terms of the Second Lien Intercreditor Agreement and (B) if the First Lien Administrative Agent grants an extension of time pursuant to a provision in the First Lien Loan Documents that is substantially similar to the second preceding paragraph or exercises its discretion under the First Lien Loan Documents to determine that any Subsidiary of the Borrower shall be excluded from the requirements of the Collateral and Guarantee Requirement or that any property shall be an "Excluded Asset" (in each case as defined in the First Lien Credit Agreement), the Administrative Agent shall automatically be deemed to accept such determination hereunder and shall execute any documentation, if applicable, in connection therewith.

“**Collateral Documents**” means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Mortgages, collateral assignments, Security Agreement Supplements, security agreements, pledge agreements, intellectual property security agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 4.01(a)(iv), Section 6.11 or Section 6.13, the Intercreditor Agreements (if any) and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“**Commitment**” means, as to each Lender, its obligation to make Loans to the Borrower hereunder, as such commitment may be reduced or increased from time to time pursuant to (i) assignments by or to such Lender pursuant to an Assignment and Assumption, (ii) an Incremental Amendment, (iii) a Refinancing Amendment or (iv) an Extension. The amount of each Lender’s Commitment is set forth in Schedule 1.01A under the caption “Initial Commitment” or in the Assignment and Assumption, Incremental Amendment, Extension Amendment or Refinancing Amendment pursuant to which such Lender shall have assumed, increased or decreased its Commitment, as the case may be.

“**Committed Loan Notice**” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A hereto.

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**Company**” has the meaning specified in the introductory paragraph to this Agreement.

“**Company Parties**” means the collective reference to Holdings and its Subsidiaries, including the Borrower, and “**Company Party**” means any one of them.

“**Compensation Period**” has the meaning set forth in Section 2.12(c)(ii).

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit D-1 hereto.

“**Consolidated Cash Interest Coverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated EBITDA to (b) Consolidated Interest Expense.

“**Consolidated EBITDA**” means, for any period, the Consolidated Net Income for such period, plus:

(a) without duplication and, except with respect to clauses (viii), (x) and, to the extent consisting of “run-rate” cost savings, (xiv) below, to the extent deducted (and not added back or excluded) in arriving at such Consolidated Net Income, the sum of the following amounts for such period with respect to the Borrower and its Restricted Subsidiaries:

(i) total interest expense determined in accordance with GAAP and, to the extent not reflected in such total interest expense, any expense or loss on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations, and costs of surety bonds in connection with financing activities (whether amortized or immediately expensed),

(ii) provision for taxes and Tax Distributions based on income, profits or capital gains of the Borrower and the Restricted Subsidiaries, including, without limitation, federal, state, local, franchise and similar taxes and foreign withholding taxes paid or accrued during such period including penalties and interest related to such taxes or arising from any tax examinations,

(iii) depreciation and amortization (including amortization of intangible assets, including Capitalized Software Expenditures),

(iv) (A) duplicative running costs, relocation costs or expenses, integration costs, site acquisition costs, transition costs, pre-opening, opening, closing and consolidation costs for facilities, signing, retention and completion bonuses, costs associated with preparations for and implementation of compliance with the requirements of the Sarbanes-Oxley Act of 2002 and other Public Company Costs, costs incurred in connection with any strategic initiatives, costs incurred in connection with acquisitions and non-recurring product and intellectual property development, other business optimization expenses (including costs and expenses relating to business optimization programs and new systems design, retention charges, systems establishment costs (including information technology systems) and implementation costs), project start-up costs, severance and other restructuring charges representing cash items (including restructuring costs related to acquisitions and to closure of facilities, and excess pension charges), and litigation settlements or losses and related expenses,

(B) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses, compensation or otherwise) and adjustments thereof and purchase price adjustments, in each case in connection with acquisitions and

(C) Transaction Expenses,

(v) the amount of any expense or reduction of Consolidated Net Income consisting of Restricted Subsidiary income attributable to minority interests or non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary,

(vi) the amount of management, monitoring, consulting and advisory fees (including transaction and termination fees) and related expenses and indemnities paid or accrued to the Sponsor under the Sponsor Management Agreement,

(vii) any Equity Funded Employee Plan Costs,

(viii) (i) cost savings, operating expense reductions and synergies related to the Transactions that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within twenty-four (24) months after the Closing Date (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period) and (ii) cost savings, operating expense reductions and synergies related to mergers and other business combinations, acquisitions, divestitures, restructurings, cost savings initiatives and other similar initiatives and actions that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within twenty-four (24) months after a merger or other business combination, acquisition or divestiture is consummated or any other restructuring, cost savings initiative or other initiative or action (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period), net of the amount of actual benefits realized during such period from such actions; *provided* that no cost savings, operating expense reductions and synergies shall be added back pursuant to this clause (viii) to the extent duplicative of any expenses or charges otherwise added back to Consolidated EBITDA, whether through a *pro forma* adjustment or otherwise, for such period,

(ix) any expense or net loss from asset retirement obligations, disposed, abandoned or discontinued operations (excluding held-for-sale discontinued operations until actually disposed of),

(x) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (b) below for any previous period and not added back,

(xi) non-cash expenses (including the excess of GAAP rent expense over actual cash rent paid, including the benefit of lease incentives, during such period), charges and losses (including reserves, impairment charges or asset write-offs, write-offs of deferred financing fees, losses from investments recorded using the equity method, stock-based awards compensation expense), in each case other than (A) any non-cash charge representing amortization of a prepaid cash item that was paid and not expensed in a prior period and (B) any non-cash charge relating to write-offs, write-downs or reserves with respect to accounts receivable in the normal course or inventory; *provided* that if any non-cash charges referred to in this clause (xi) represents an accrual or reserve for potential cash items in any future period, (1) the Borrower may elect not to add back such non-cash charge in the current period and (2) to the extent the Borrower elects to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA in such future period to such extent paid,

(xii) pre-opening, opening, consolidation and closing costs, losses and expenses, in each case, for restaurants and other facilities, start-up losses, charges and expenses for new restaurants and other new facilities and losses, charges and expenses for closed restaurants and other closed facilities,

(xiii) the amount of loss on sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Financing, and

(xiv) other adjustments and add-backs of the type identified in the Quality of Earnings Analysis dated June 25, 2014,

less (b) without duplication and to the extent included in arriving at such Consolidated Net Income, (i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period or the amortization of income associated with a prior period cash receipt), (ii) any net gain from disposed, abandoned or discontinued operations (excluding held-for-sale discontinued operations until actually disposed of) and (iii) the amount of any minority interest income consisting of Restricted Subsidiary losses attributable to minority interests or non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary; *provided* that, for the avoidance of doubt, any gain representing the reversal of any non-cash charge referred to in clause (a) (xi)(B) above for a prior period shall be added (together with, without duplication, any amounts received in respect thereof to the extent not increasing Consolidated Net Income) to Consolidated EBITDA in any subsequent period to such extent so reversed (or received);

provided that:

(A) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA (x) currency translation or transaction gains and losses related to currency remeasurements of Indebtedness (including the net loss or gain (i) resulting from Swap Contracts for currency exchange risk and (ii) resulting from intercompany indebtedness) and (y) all other foreign currency translation or transaction gains or losses to the extent such gains or losses are non-cash items,

(B) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any adjustments resulting from the application of FASB Accounting Standards Codification 815 and International Accounting Standard No. 39 and their respective related pronouncements and interpretations,

(C) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any income (loss or expenses) for such period attributable to the early extinguishment of (i) Indebtedness, (ii) obligations under any Swap Contracts or (iii) other derivative instruments.

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated EBITDA under this Agreement for any period that includes any of the fiscal quarters ended June 30, 2014, March 31, 2014, December 31, 2013 and September 30, 2013, Consolidated EBITDA for such fiscal quarters shall be \$20,900,000, \$12,600,000, \$18,200,000 and \$18,100,000, respectively, in each case, as may be subject to addbacks and adjustments (without duplication) pursuant to clauses (a)(iv)(A) and (a)(viii) above and Section 1.09(c) for the applicable Test Period. For the avoidance of doubt, Consolidated EBITDA shall be calculated, including pro forma adjustments, in accordance with Section 1.09.

“Consolidated First Lien Net Leverage Ratio” means “Consolidated First Lien Net Leverage Ratio” as defined under, and calculated in accordance with, the First Lien Credit Agreement (as in effect on the date hereof).

“Consolidated Interest Expense” means, for any period, the sum, without duplication, of:

(i) the cash interest expense (including that attributable to Capitalized Leases), net of cash interest income, of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, with respect to all outstanding Indebtedness of the Borrower and its Restricted Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net cash costs under Swap Contracts, and

(ii) any cash payments made during such period in respect of obligations referred to in clause (b) below relating to Funded Debt that were amortized or accrued in a previous period;

provided that there shall be excluded from Consolidated Interest Expense for any period:

(a) deferred financing costs, debt issuance costs, commissions, fees (including amendment and contract fees) and expenses and, in each case, the amortization thereof, and any other amounts of non-cash interest,

(b) the accretion or accrual of discounted liabilities and any prepayment premium or penalty during such period,

(c) non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations under Swap Contracts or other derivative instruments pursuant to FASB Accounting Standards Codification 815,

(d) any cash costs associated with breakage in respect of hedging agreements for interest rates,

(e) all non-recurring cash interest expense consisting of liquidated damages for failure to timely comply with registration rights obligations and financing fees, all as calculated on a consolidated basis in accordance with GAAP,

(f) Transaction Expenses,

(g) annual agency fees paid to the Administrative Agent and the First Lien Administrative Agent,

(h) costs associated with obtaining Swap Contracts,

(i) any expense resulting from the discounting of any Indebtedness in connection with the application of recapitalization accounting or, if applicable, acquisition accounting in connection with the Transactions or any acquisition,

(j) the cash interest expense (or income) of all Unrestricted Subsidiaries for such period to the extent otherwise included in Consolidated Interest Expense, and

(k) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Qualified Securitization Financing.

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated Interest Expense (i) for any period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense shall be an amount equal to actual Consolidated Interest Expense from the Closing Date through the date of determination multiplied by a fraction the numerator of which is three hundred sixty-five (365) and the denominator of which is the number of days from the Closing Date through the date of determination and (ii) shall exclude the acquisition accounting effects described in the last sentence of the definition of Consolidated Net Income.

“Consolidated Net Income” means, for any period, the net income (loss) of the Borrower and the Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; *provided, however*, that, without duplication:

(a) any after-tax (including after Tax Distributions) effect of extraordinary, non-recurring or unusual items (including gains or losses and all fees and expenses relating thereto) for such period shall be excluded,

(b) the cumulative effect of a change in accounting principles during such period to the extent included in Consolidated Net Income shall be excluded,

(c) any fees and expenses incurred during such period (including, without limitation, any premiums, make-whole or penalty payments), or any amortization thereof for such period, in connection with any acquisition, investment, asset disposition, issuance or repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of any debt instrument (in each case, including any such transaction consummated on or prior to the Closing Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for the avoidance of doubt the effects of expensing all transaction related expenses in accordance with FASB Accounting Standards Codification 805 and gains or losses associated with FASB Accounting Standards Codification 460) shall be excluded,

(d) accruals and reserves that are established or adjusted within two (2) years after the Closing Date that are so required to be established as a result of the Transactions (or within two (2) years after the closing of any acquisition that are so required to be established as a result of such acquisition) in accordance with GAAP shall be excluded,

(e) any net after-tax (including after Tax Distributions) effect of gains or losses on disposed, abandoned or discontinued operations shall be excluded,

(f) any net after-tax (including after Tax Distributions) effect of gains or losses (less all fees, expenses and charges relating thereto) attributable to asset dispositions or abandonments or the sale or other disposition of any Equity Interests of any Person in each case other than in the ordinary course of business, as determined in good faith by the Borrower, shall be excluded,

(g) the net income (loss) for such period of any Person that is not a Subsidiary of the Borrower, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; *provided* that Consolidated Net Income of the Borrower shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent subsequently converted into cash or Cash Equivalents) to the Borrower or a Restricted Subsidiary thereof in respect of such period,

(h) any impairment charge or asset write-off or write-down, including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets, investments in debt and equity securities or as a result of a change in law or regulation, in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(i) any non-cash compensation charge or expense, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights or equity incentive programs or any other equity-based compensation shall be excluded, and any cash charges associated with the rollover, acceleration or payout of Equity Interests by management of the Borrower or any of its direct or indirect parents in connection with the Transactions, shall be excluded,

(j) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within three hundred sixty-five (365) days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such three hundred sixty-five (365) day period), shall be excluded,

(k) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is in fact reimbursed within three hundred sixty-five (365) days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such three hundred sixty-five (365) days), expenses, charges or losses with respect to liability or casualty events or business interruption shall be excluded,

(l) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of FASB Accounting Standards Codification 712 and 715, Statement on Financial Accounting Standards Nos. 87, 106 and 112, and any other items of a similar nature, shall be excluded,

(m) the income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary of Borrower or is merged into or consolidated with Borrower or any of its Subsidiaries or that Person's assets are acquired by Borrower or any of its Restricted Subsidiaries shall be excluded (except to the extent required for any calculation of Consolidated EBITDA on a Pro Forma Basis in accordance with Section 1.09),

(n) solely for the purpose of determining the Cumulative Credit pursuant to clause (a) of the definition thereof, the income of any Restricted Subsidiary of Borrower that is not a Guarantor to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary (which has not been waived) shall be excluded, except (solely to the extent permitted to be paid) to the extent of the amount of dividends or other distributions actually paid to Borrower or any of its Restricted Subsidiaries that are Guarantors by such Person during such period in accordance with such documents and regulations, and

(o) any gains or losses in connection with Sale Leaseback Transactions shall be excluded.

There shall be excluded from Consolidated Net Income for any period the acquisition accounting effects of adjustments in component amounts required or permitted by GAAP pursuant to FASB Accounting Standards Codification 805 (including, but not limited to, in the inventory, property and equipment, fair value of leased property, software, goodwill, intangible assets, in-process research and development, deferred revenue, deferred rent, contingent considerations and debt line items thereof) and related authoritative pronouncements (including the effects of such

adjustments pushed down to the Borrower and the Restricted Subsidiaries), as a result of the Transactions, any acquisition constituting an Investment permitted under this Agreement consummated prior to or after the Closing Date, or the amortization or write-off of any amounts thereof. For the avoidance of doubt, Consolidated Net Income shall be calculated, including pro forma adjustments, in accordance with Section 1.09.

“Consolidated Secured Net Debt” means, as of any date of determination, (1) any Indebtedness described in clause (a) of the definition of “Consolidated Total Net Debt” outstanding on such date that is secured by a Lien on Collateral minus (2) the aggregate amount of Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01, Liens permitted by Section 7.01(a), Section 7.01(b), clauses (ii) and (iii) of Section 7.01(k), Section 7.01(m), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(v), Section 7.01(w), Section 7.01(aa), Section 7.01(bb), Section 7.01(cc), Section 7.01(dd) and Section 7.01(gg)); *provided* that Consolidated Secured Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided further* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Secured Net Debt until three (3) Business Days after such amount is drawn, (ii) Unrestricted Subsidiaries and (iii) any Qualified Securitization Financing; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated Secured Net Debt.

“Consolidated Total Net Debt” means, as of any date of determination, (a) the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of acquisition accounting in connection with the Transactions or any acquisition constituting an Investment permitted under this Agreement) consisting of Indebtedness for borrowed money, Attributable Indebtedness, and debt obligations evidenced by promissory notes or similar instruments and all Guarantees of Indebtedness of such type that is owed by a Person that is not the Borrower or a Restricted Subsidiary, minus (b) the aggregate amount of Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01, Liens permitted by Section 7.01(a), Section 7.01(b), clauses (ii) and (iii) of Section 7.01(k), Section 7.01(m), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(v), Section 7.01(w), Section 7.01(aa), Section 7.01(bb), Section 7.01(cc), Section 7.01(dd) and Section 7.01(gg)); *provided* that Consolidated Total Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided further* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Total Net Debt until three (3) Business Days after such amount is drawn, (ii) Unrestricted Subsidiaries and (iii) any Qualified Securitization Financing; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated Total Net Debt.

“Consolidated Working Capital” means, with respect to the Borrower and its Restricted Subsidiaries on a consolidated basis at any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; *provided* that increases or decreases in Consolidated Working Capital shall be calculated without regard to (i) any changes in Current Assets or Current Liabilities as a result of any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent and (ii) the application of acquisition accounting.

“Contingent Obligations” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (**“primary obligations”**) of any other Person (for purposes of this definition, the **“primary obligor”**) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent,

(a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(b) to advance or supply funds

(i) for the purchase or payment of any such primary obligation, or

(ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“Contract Consideration” has the meaning set forth in the definition of “Excess Cash Flow.”

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control”, **“Controlled”** and **“Controlling”** have the meaning specified in the definition of “Affiliate.”

“Cumulative Credit” means, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

(a) (i) \$36,000,000 plus (ii) the Cumulative Retained Excess Cash Flow Amount at such time, plus

(b) (i) the cumulative amount of Cash Equivalent proceeds from the sale of Qualified Equity Interests of the Borrower or Equity Interests of any direct or indirect parent of the Borrower after the Closing Date and on or prior to such time (including upon exercise of warrants or options) (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of "Permitted Investments", (x) designated as a Cure Amount (as defined in the First Lien Credit Agreement), (y) used for Equity Funded Employee Plan Costs or (z) used to incur Indebtedness pursuant to Section 7.03(x)), which proceeds have been contributed as common equity to the capital of the Borrower and (ii) in the event that Qualified Equity Interests of the Borrower (or Equity Interests of any direct or indirect parent of Borrower) (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of "Permitted Investments", (x) designated as a Cure Amount (as defined in the First Lien Credit Agreement), (y) used for Equity Funded Employee Plan Costs or (z) used to incur Indebtedness pursuant to Section 7.03(x)) have been issued upon conversion of Indebtedness (other than Indebtedness that is contractually subordinated to the Obligations) of the Borrower or any Restricted Subsidiary of the Borrower owed to a Person other than a Loan Party or a Restricted Subsidiary of a Loan Party in satisfaction of such Indebtedness, the aggregate principal amount of such Indebtedness, plus

(c) 100% of the aggregate amount of contributions to the common capital of the Borrower received in Cash Equivalents after the Closing Date (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of "Permitted Investments", (x) designated as a Cure Amount (as defined in the First Lien Credit Agreement), (y) used for Equity Funded Employee Plan Costs or (z) used to incur Indebtedness pursuant to Section 7.03(x)), plus

(d) 100% of the aggregate amount received by the Borrower or any Restricted Subsidiary of the Borrower after the Closing Date in Cash Equivalents from:

(A) the sale (other than to the Borrower or any such Restricted Subsidiary) of the Equity Interests of an Unrestricted Subsidiary or any minority Investments, or

(B) any dividend or other distribution by an Unrestricted Subsidiary or received in respect of minority Investments, or

(C) any interest, returns of principal, repayments and similar payments by such Unrestricted Subsidiary or received in respect of any minority Investments;

provided that in the case of clauses (A), (B), and (C), in each case, to the extent that the Investment corresponding to the designation of such Subsidiary as an Unrestricted Subsidiary or any subsequent Investment in such Unrestricted Subsidiary or minority Investment, as applicable, was made pursuant to Section 7.06(g)(y), plus

(e) in the event any Unrestricted Subsidiary has been re-designated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary, the fair market value of the Investments of the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable) so long as such Investments were originally made pursuant to Sections 7.06(g)(y), plus

(f) an amount equal to any returns in Cash Equivalents (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received by the Borrower or any Restricted Subsidiary in respect of any Investments made pursuant to Section 7.06(g)(y), plus

(g) Borrower Retained Prepayment Amounts, plus

(h) the amount actually paid by the applicable Affiliated Lender or Debt Fund Affiliate in respect of Loans and First Lien Term Loans contributed, assigned or transferred by such Affiliated Lender or any Debt Fund Affiliate, directly or indirectly, to the Borrower and cancelled pursuant to the last paragraph of Section 10.07(k) (or pursuant to the last paragraph of Section 10.07(k) of the First Lien Credit Agreement), minus

(i) any amount of the Cumulative Credit used to make Restricted Payments pursuant to Section 7.06(f)(A) or 7.06(g) after the Closing Date and prior to such time, minus

(j) any amount of the Cumulative Credit used to make payments or distributions in respect of Junior Financings pursuant to Section 7.13 after the Closing Date and prior to such time.

“Cumulative Retained Excess Cash Flow Amount” means, at any time, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to the aggregate cumulative sum of the Retained Percentage of Excess Cash Flow for all Excess Cash Flow Periods ending after the Closing Date and prior to such date.

“Current Assets” means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all assets (other than cash and Cash Equivalents) that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current assets at such date of determination, other than amounts related to current or deferred Taxes based on income or profits, assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees and derivative financial instruments.

“Current Liabilities” means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current liabilities at such date of determination (including deferred revenue), other than (a) the current portion of any Funded Debt and derivative financial instruments, (b) the current portion of accrued interest, (c) liabilities relating to current or deferred Taxes based on income or profits, (d) accruals of any costs or expenses related to restructuring reserves or severance, (e) any other liabilities that are not Indebtedness and will not be settled in cash or Cash Equivalents during the next succeeding twelve (12) month period after such date, (f) any Revolving Credit Exposure, Revolving Credit Loans or any loans or letters of credit under any other revolving facility, (g) liabilities in respect of unpaid earn-outs, (h) accrued litigation settlement costs, (i) non-cash compensation costs and expenses and (j) the current portion of any other long-term liabilities.

“Debt Fund Affiliate” means any Sponsor that is a bona fide debt fund or an investment vehicle that is engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of business, in each case with respect to which the persons making investment decisions for such applicable affiliate are not primarily engaged in the making, acquiring or holding of equity investments in Holdings or any of its Subsidiaries.

“Debtor Relief Laws” means the Bankruptcy Code of the United States and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Declined Proceeds” has the meaning specified in Section 2.05(b)(vii).

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate, if any, applicable to Base Rate Loans plus (c) 2.0% per annum; *provided* that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2.0% per annum, in each case, to the fullest extent permitted by applicable Laws.

“Defaulting Lender” means, subject to Section 2.17(b), any Lender that, as reasonably determined by the Administrative Agent (a) has refused (which refusal may be given verbally or in writing and has not been retracted) or failed to perform any of its funding obligations hereunder, including in respect of its Loans, which refusal or failure is not cured within one (1) Business Day after the date of such refusal or failure, (b) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, after the date of this Agreement, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof

by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17(b)) upon delivery of written notice of such determination to the Borrower and each Lender.

“**Deferred Loan Party**” has the meaning set forth in Section 4.01(a).

“**Discount Prepayment Accepting Lender**” has the meaning set forth in Section 2.05(a)(v)(B)(2).

“**Discount Range**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Discount Range Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Discount Range Prepayment Notice**” means a written notice of a Borrower Solicitation of Discount Range Prepayment Offers made pursuant to Section 2.05(a)(v)(C) substantially in the form of Exhibit E-4.

“**Discount Range Prepayment Offer**” means the irrevocable written offer by a Lender, substantially in the form of Exhibit E-5, submitted in response to an invitation to submit offers following the Auction Agent’s receipt of a Discount Range Prepayment Notice.

“**Discount Range Prepayment Response Date**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Discount Range Proration**” has the meaning set forth in Section 2.05(a)(v)(C)(3).

“**Discounted Loan Prepayment**” has the meaning set forth in Section 2.05(a)(v)(A).

“**Discounted Prepayment Determination Date**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Discounted Prepayment Effective Date**” means in the case of a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offer or Borrower Solicitation of Discounted Prepayment Offer, five (5) Business Days following the Specified Discount Prepayment Response Date, the Discount Range Prepayment Response Date or the Solicited Discounted Prepayment Response Date, as applicable, in accordance with Section 2.05(a)(v)(B)(1), Section 2.05(a)(v)(C)(1) or Section 2.05(a)(v)(D)(1), respectively, unless a shorter period is agreed to between the Borrower and the Auction Agent.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any Sale Leaseback and any sale or issuance of Equity Interests in a Restricted Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, whether in a single transaction or a series of related transactions; provided that “Disposition” and “Dispose” shall not include any issuance by Holdings of any of its Equity Interests to another Person.

“Disqualified Equity Interests” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements) that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests and other than as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements) that are accrued and payable and the termination of the Commitments), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Latest Maturity Date at the time of issuance of such Equity Interests; *provided*, that if such Equity Interests are issued pursuant to a plan for the benefit of future, current or former employees, directors, officers, members of management or consultants of Holdings (or any direct or indirect parent thereof), the Borrower or the Restricted Subsidiaries or by any such plan to such employees, directors, officers, members of management or consultants, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be permitted to be repurchased by the Borrower or its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s, director’s, officer’s, management member’s or consultant’s termination of employment or service, as applicable, death or disability.

“Disqualified Institutions” means those Persons (the list of all such Persons, the “Disqualified Institutions List”) that are (i) identified in writing by the Borrower to the Administrative Agent prior to the initial allocation of the loans to be funded on the Closing Date, (ii) competitors of the Borrower and its Subsidiaries (other than bona fide fixed income investors or debt funds) that are identified in writing by the Borrower from time to time or (iii) Affiliates of such Persons set forth in clauses (i) and (ii) above (in the case of Affiliates of such Persons set forth in clause (ii) above, other than bona fide fixed income investors or debt funds) that are either (a) identified in writing by the Borrower or the Sponsor from time to time or (b) reasonably identifiable as an Affiliate thereof; *provided, that*, to the extent Persons are identified as Disqualified Institutions in writing by the Borrower to the Administrative Agent after the Closing Date pursuant to clauses (ii) or (iii)(a), the inclusion of such Persons as Disqualified

Institutions shall not retroactively apply to prior assignments or participations in respect of any Loan under this Agreement. Until the disclosure of the identity of a Disqualified Institution to the Lenders generally by the Administrative Agent, such Person shall not constitute a Disqualified Institution for purposes of a sale of a participation in a Loan (as opposed to an assignment of a Loan) by a Lender; *provided*, that no disclosure of the Disqualified Institutions List (or the identity of any Person that constitutes a Disqualified Institution) to the Lenders shall be made by the Administrative Agent without the prior written consent of the Borrower. Notwithstanding the foregoing, the Borrower, by written notice to the Administrative Agent, may from time to time in its sole discretion remove any entity from the Disqualified Institutions List (or otherwise modify such list to exclude any particular entity), and such entity removed or excluded from the Disqualified Institutions List shall no longer be a Disqualified Institution for any purpose under this Agreement or any other Loan Document.

“**Disqualified Institutions List**” has the meaning set forth in the definition of Disqualified Institutions.

“**Disregarded Domestic Person**” means any Domestic Subsidiary that is a “disregarded entity” for federal income tax purposes substantially all of whose assets consists of Equity Interests in one or more Foreign Subsidiaries that is a CFC.

“**Dollar**” and “**\$**” mean lawful money of the United States.

“**Domestic Subsidiary**” means any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“**Duly Authorized Documents**” has the meaning set forth in Section 4.01(a).

“**Eligible Assignee**” has the meaning set forth in Section 10.07(a)(i). For the avoidance of doubt, “Eligible Assignee” shall not include any Disqualified Institution.

“**EMU**” means the economic and monetary union as contemplated in the Treaty on European Union.

“**Environment**” means indoor air, ambient air, surface water, groundwater, drinking water, land surface, subsurface strata, and natural resources such as wetlands, flora and fauna.

“**Environmental Laws**” means any applicable Law relating to the prevention of pollution or the protection of the Environment and natural resources, and the protection of human health and safety as it relates to Hazardous Materials.

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of investigation and remediation, fines, penalties or indemnities), of the Loan Parties or any Restricted Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage or treatment of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Contribution” means, collectively, the direct or indirect contribution on the Closing Date by the Sponsor, Co-Investors and Management Stockholders to the Borrower of an aggregate amount of cash and rollover equity (which, in respect of any equity of the Borrower other than common equity, shall be on terms reasonably acceptable to the Arrangers) that represents not less than 30% of the sum of (1) the aggregate gross proceeds of Initial Loans, excluding the aggregate gross proceeds of any increase in the Initial Loans to fund OID or upfront fees, (2) the aggregate gross proceeds received from the First Lien Initial Revolving Borrowing to the extent funding the Transactions or fees and expenses related to the Transactions (excluding OID or upfront fees resulting from the exercise of “Market Flex” by the Arrangers as set forth in the Fee Letter), (3) the aggregate gross proceeds of the First Lien Initial Term Loans, excluding any increase in the gross proceeds of the First Lien Initial Term Loans to fund OID or upfront fees and (4) the amount of such cash and rollover equity contributed, in each case on the Closing Date (such sum, the **“Funded Capitalization”**).

“Equity Funded Employee Plan Costs” means cash costs or expenses, incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent funded with cash proceeds contributed to the capital of the Borrower or net cash proceeds of an issuance of Qualified Equity Interests of the Borrower or Equity Interests of any direct or indirect parent of the Borrower (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of “Permitted Investments”, (x) designated as a Cure Amount (under and as defined in the First Lien Credit Agreement), (y) used to make Investments, Restricted Payments or prepayments, redemptions, purchase, defeasance or other payments of Junior Financings in reliance on clause (b) or (c) of the definition of “Cumulative Credit” or (z) used to incur Indebtedness pursuant to Section 7.03(x)).

“Equity Interests” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is under common control with a Loan Party within the meaning of Section 414(b) or (c) of the Code or Section 4001 of ERISA (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by a Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by a Loan Party or any ERISA Affiliate from a Multiemployer Plan or written notification that a Multiemployer Plan is in reorganization (within the meaning of Section 4241 of ERISA) or insolvent (within the meaning of Section 4245 of ERISA) or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) a written determination that any Pension Plan is in “at risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (e) the filing of a notice of intent to terminate, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for, and that could reasonably be expected to result in, the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) with respect to a Pension Plan, the failure to satisfy the minimum funding standard of Section 412 of the Code, whether or not waived; (h) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to a Loan Party; or (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon a Loan Party or any ERISA Affiliate.

“Eurocurrency Rate” means:

(a) for any Interest Period with respect to a Eurocurrency Rate Loan, the rate per annum equal to (i) the ICE Benchmark Administration LIBOR Rate or such other rate per annum as is widely recognized as the successor thereto if the ICE Benchmark Administration is no longer making a LIBOR Rate available (“**LIBOR**”), as published by Bloomberg (or such other commercially available source providing quotations of LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (ii) if such published rate is not available at such time for any reason, then the “Eurocurrency Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the Eurocurrency Rate Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by the Administrative Agent’s London Branch to major banks in the London interbank Eurodollar market at their request at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to (i) LIBOR, at approximately 11:00 a.m., London time determined two (2) London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one (1) month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in Same Day Funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one (1) month would be offered by the Administrative Agent’s London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination;

provided that in the case of clause (a), the Eurocurrency Rate with respect to Initial Loans shall not be less than 1.00% per annum.

“**Eurocurrency Rate Loan**” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurocurrency Rate.”

“**Event of Default**” has the meaning specified in Section 8.01.

“**Excess Cash Flow**” means, for any period, an amount equal to:

(a) the sum, without duplication, of

(i) Consolidated Net Income for such period,

(ii) an amount equal to the amount of all non-cash charges (including depreciation and amortization) to the extent deducted in arriving at such Consolidated Net Income, but excluding any such non-cash charges representing an accrual or reserve for potential cash items in any future period,

(iii) decreases in Consolidated Working Capital for such period (other than any such decreases arising from acquisitions or Dispositions by the Borrower and its Restricted Subsidiaries completed during such period or the application of acquisition accounting),

(iv) an amount equal to the aggregate net non-cash loss on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income,

(v) an amount equal to all cash received for such period on account of any net non-cash gain or income from Investments deducted in a previous period pursuant to clause (b)(iv)(B) of this definition,

(vi) an amount deducted as tax expense in determining Consolidated Net Income to the extent in excess of cash taxes paid in such period,

(vii) cash payments received in respect of Swap Contracts during such period to the extent not included in arriving at such Consolidated Net Income, and

(viii) the aggregate net non-cash loss or expense on Dispositions in connection with Sale Leaseback Transactions,

minus

(b) the sum, without duplication, of

(i) an amount equal to (x) the amount of all non-cash credits (including, to the extent constituting non-cash credits, without limitation, amortization of deferred revenue acquired as a result of any Permitted Acquisition) included in arriving at such Consolidated Net Income (but excluding any non-cash credit to the extent representing the reversal of an accrual or reserve described in clause (a)(ii) above) and (y) cash charges, losses or expenses excluded in arriving at such Consolidated Net Income by virtue of clauses (a) through (m) of the definition of Consolidated Net Income,

(ii) without duplication of amounts deducted pursuant to clause (xi) below in prior periods, the amount of Capital Expenditures or acquisitions of intellectual property to the extent not expensed and Capitalized Software Expenditures accrued or made in cash during such period, to the extent financed with Internally Generated Cash,

(iii) the aggregate amount of all principal payments and repayments of Indebtedness of the Borrower and its Restricted Subsidiaries to the extent financed with Internally Generated Cash, but in any event excluding principal payments and repayments of (A) Revolving Credit Loans, Swing Line Loans and Letters of Credit (each term in this clause (A) as defined in the First Lien Credit Agreement) (unless there is a corresponding reduction in the aggregate Revolving Credit Commitments), (B) Indebtedness in respect of any other revolving credit facility (unless there is a corresponding reduction in commitments thereunder), (C) Loans pursuant to Section 2.05(b) and First Lien Term Loans pursuant to Section 2.05(b) of the First Lien Credit Agreement (other than pursuant to Section 2.05(b)(ii) or Section 2.05(b)(ii) of the First Lien Credit Agreement, as applicable, to the extent required due to a Disposition or Casualty Event that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase), (D) Indebtedness to the extent otherwise deducted from the Applicable ECF Percentage of Excess Cash Flow pursuant to Section 2.05(b)(i)(B) and (E) any Junior Financing to the extent not permitted to be made pursuant to Section 7.13(a),

(iv) an amount equal to the sum of (A) the aggregate net non-cash gain on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income, (B) the aggregate net non-cash gain or income from Investments (other than Investments made in the ordinary course of business) to the extent included in arriving at Consolidated Net Income and (C) the aggregate net non-cash gain or income on Dispositions in connection with Sale Leaseback Transactions,

(v) increases in Consolidated Working Capital for such period (other than any such increases arising from acquisitions or Dispositions by the Borrower and its Restricted Subsidiaries completed during such period or the application of acquisition accounting),

(vi) cash payments by the Borrower and its Restricted Subsidiaries during such period in respect of long-term liabilities (including pension, deferred compensation and other post-retirement obligations) of the Borrower and its Restricted Subsidiaries other than Indebtedness to the extent such payments are not expensed during such period or are not deducted (or were excluded) in calculating Consolidated Net Income and to the extent financed with Internally Generated Cash,

(vii) without duplication of amounts deducted pursuant to clause (xi) below in prior periods, the amount of Investments made pursuant to clauses (3), (13), (15), (16), (19) (to the extent not deducted in arriving at such Consolidated Net Income), (24) and (25) of the definition of "Permitted Investment" to the extent such Investments were financed with Internally Generated Cash,

(viii) the amount of Restricted Payments paid during such period pursuant to Sections 7.06(f), (g)(x), (h), (i), (j)(i) and (k) to the extent such Restricted Payments were financed with Internally Generated Cash,

(ix) the aggregate amount of expenditures actually made by the Borrower and its Restricted Subsidiaries from Internally Generated Cash of the Borrower and its Restricted Subsidiaries during such period (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such period or are not deducted (or were excluded) in calculating Consolidated Net Income,

(x) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and its Restricted Subsidiaries during such period that are required to be made in connection with any prepayment of Indebtedness,

(xi) without duplication of amounts deducted from Excess Cash Flow in prior periods and, at the option of the Borrower, the aggregate consideration required to be paid in cash by the Borrower and its Restricted Subsidiaries pursuant to binding contracts (the "**Contract Consideration**") entered into prior to or during such period relating to Permitted Acquisitions, Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property to the extent expected to be consummated or made, in each case during the period of four consecutive fiscal quarters of the Borrower following the end of such period provided that to the extent the aggregate amount of Internally Generated Cash actually utilized to finance such Permitted Acquisitions, Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property during such period of four consecutive fiscal quarters is less than the Contract Consideration, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive fiscal quarters,

(xii) the amount of cash taxes and Tax Distributions paid in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(xiii) cash expenditures in respect of Swap Contracts during such period to the extent not deducted in arriving at such Consolidated Net Income, and

(xiv) any payment of cash to be amortized or expensed over a future period and recorded as a long-term asset.

Notwithstanding anything in the definition of any term used in the definition of Excess Cash Flow to the contrary, all components of Excess Cash Flow shall be computed for the Borrower and its Restricted Subsidiaries on a consolidated basis.

“Excess Cash Flow Period” means (i) each fiscal year of the Borrower commencing with and including the fiscal year ending December 31, 2015 but in all cases for purposes of calculating the Cumulative Retained Excess Cash Flow Amount shall only include such fiscal years for which financial statements and a Compliance Certificate have been delivered in accordance with Sections 6.01(a) and 6.02(a) and for which any prepayments required by Section 2.05(b)(i) (if any) have been made (it being understood that the Retained Percentage of Excess Cash Flow for any Excess Cash Flow Period shall be included in the Cumulative Retained Excess Cash Flow Amount regardless of whether a prepayment is required by Section 2.05(b)(i)).

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Assets” means (i) any fee owned Real Property (other than Material Real Properties) and any leasehold rights and interests in Real Property (including landlord waivers, estoppels and collateral access letters), (ii) motor vehicles, aircraft and other assets subject to certificates of title, except to the extent a security interest therein can be perfected by the filing of a UCC financing statement, (iii) commercial tort claims where the amount of damages claimed by the applicable Loan Party is less than \$2,500,000, (iv) governmental licenses or state or local franchises, charters and authorizations and any other property and assets to the extent that the Administrative Agent may not validly possess a security interest therein under applicable Laws (including, without limitation, rules and regulations of any Governmental Authority or agency) or the pledge or creation of a security interest in which would require governmental consent, approval, license or authorization, other than to the extent such prohibition or limitation is rendered ineffective under the UCC or other applicable Law notwithstanding such prohibition, (v) any particular asset or right under contract, if the pledge thereof or the security interest therein is prohibited or restricted by applicable Law (including, without limitation, rules and regulations of any Governmental Authority or agency) or any third party (so long as any agreement with such third party that provides for such prohibition or restriction was not entered into in contemplation of the acquisition of such assets or entering into of such contract or for the purpose of creating such prohibition or restriction), other than to the extent such prohibition or restriction is rendered ineffective under the UCC or other applicable Law, notwithstanding such prohibition, (vi) any written agreement, license or lease or any property subject to a purchase money security interest, capital lease obligations or similar arrangement permitted hereunder, in

each case, to the extent the grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money or similar arrangement or would give rise to a termination right in favor of any other party thereto (other than Holdings or any of its Subsidiaries) after giving effect to the applicable anti-assignment provisions of the UCC or other applicable Laws, in each case, only to the extent that such limitation on such pledge or security interest is otherwise permitted under Section 7.09, other than proceeds and receivable thereof, the assignment of which is expressly deemed effective under the UCC or other applicable Laws, notwithstanding such prohibition, (vii) (A) Margin Stock, (B) Equity Interests in any Unrestricted Subsidiaries and (C) Equity Interests in any non-wholly owned Subsidiaries and any entities which do not constitute Subsidiaries, but only to the extent that (x) the Organizational Documents or other agreements with equity holders of such non-wholly owned Restricted Subsidiaries or other entities do not permit or restrict the pledge of such Equity Interests, or (y) the pledge of such Equity Interests (including any exercise of remedies) would result in a change of control, repurchase obligation or other adverse consequence to any of the Loan Parties or such non-wholly owned Restricted Subsidiary or other entity, (viii) any property or assets for which the creation or perfection of pledges of, or security interests in, pursuant to the Collateral Documents would result in material adverse tax consequences to Holdings, the Borrower or any of its Subsidiaries, as reasonably determined by the Borrower in consultation with the Administrative Agent, (ix) letter of credit rights, except as to which perfection of the security interest is accomplished by the filing of a UCC financing statement (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a UCC financing statement), (x) (A) payroll and other employee wage and benefit accounts, (B) tax accounts, including, without limitation, sales tax accounts, (C) escrow accounts, and (D) fiduciary or trust accounts and, in the case of clauses (A) through (D), the funds or other property held in or maintained in any such account (as long as the accounts described in clauses (A) through (D) are used solely for such purposes), (xi) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law and (xii) assets in circumstances where the cost of obtaining a security interest in such assets, including, without limitation, the cost of title insurance, surveys or flood insurance (if necessary) would be excessive in light of the practical benefit to the Lenders afforded thereby as reasonably determined by the Borrower and the Administrative Agent; *provided, however*, that Excluded Assets shall not include any Proceeds, substitutions or replacements of any Excluded Assets referred to in clause (i) through (xii) (unless such Proceeds, substitutions or replacements would independently constitute Excluded Assets referred to in clauses (i) through (xii)).

"Excluded Subsidiary" means (a) any Subsidiary that is not a wholly owned Subsidiary of the Borrower or a Guarantor, (b) any Subsidiary that is prohibited by applicable Law or by Contractual Obligations existing on the Closing Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from guaranteeing the Obligations or if guaranteeing the Obligation would require governmental (including regulatory) consent, approval, license or authorization, (c) any Subsidiary where the Administrative Agent and the Borrower agree that the cost of obtaining a Guarantee by such Subsidiary would be excessive in light of the practical benefit to the Lenders afforded thereby, (d) any Foreign Subsidiary, (e) any non-for-profit Subsidiaries, (f) any Unrestricted Subsidiaries,

(g) any special purpose securitization vehicle (or similar entity), including any Securitization Subsidiary or special purpose vehicle used to effectuate a Sale Leaseback Transaction, (h) any CFC Holdco, (i) any Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC, (j) any Disregarded Domestic Person, (k) any Subsidiary which holds no material assets other than the Sale Leaseback Properties that are the subject of any Sale Leaseback Transaction, (l) any Subsidiary, the obtaining of a Guarantee with respect to which would result in material adverse tax consequences as reasonably determined by the Borrower in consultation with the Administrative Agent and (m) any Captive Insurance Subsidiary.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, as applicable, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (a) by virtue of such Guarantor’s failure to constitute an “eligible contract participant,” as defined in the Commodity Exchange Act and the regulations thereunder, at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation or (b) in the case of a Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Guarantor is a “financial entity,” as defined in section 2(h)(7)(C) of the Commodity Exchange Act, at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such guarantee or security interest is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof).

“Existing Tranche” has the meaning provided in Section 2.16.

“Extended Commitment” means a Commitment to provide an Extended Loan.

“Extending Lender” has the meaning provided in Section 2.16(c).

“Extended Loans” has the meaning provided in Section 2.16(a).

“Extension” means the establishment of an Extension Series by amending a Loan pursuant to Section 2.16 and the applicable Extension Amendment.

“Extension Amendment” has the meaning provided in Section 2.16(d).

“Extension Election” has the meaning provided in Section 2.16(c).

“Extension Minimum Condition” means a condition to consummating any Extension that a minimum amount (to be determined and specified in the relevant Extension Request, in the Borrower’s sole discretion) of any or all applicable Classes be submitted for Extension.

“**Extension Request**” has the meaning provided in Section 2.16(a).

“**Extension Series**” has the meaning provided in Section 2.16(a).

“**Facility**” means a given Class of Loans, as the context may require.

“**fair market value**” means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Borrower in good faith.

“**FATCA**” means current Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version thereof that is substantively comparable) or any Treasury regulations or other administrative guidance promulgated thereunder and any intergovernmental or foreign financial institution agreement implementing the foregoing.

“**Federal Funds Rate**” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“**Fee Letter**” means the Amended and Restated Fee Letter, dated as of July 23, 2014, among Merger Sub, UBS AG, Stamford Branch, UBS Securities LLC, and Jefferies Finance LLC.

“**Financial Covenant**” has the meaning set forth in the First Lien Credit Agreement.

“**First Lien Administrative Agent**” means UBS AG, Stamford Branch, in its capacity as administrative agent and collateral agent under the First Lien Loan Documents, or any successor administrative agent and collateral agent under the First Lien Loan Documents.

“**First Lien Credit Agreement**” means the First Lien Credit Agreement dated as of August 1, 2014 by and among Holdings, the Borrower, and guarantors party thereto, the lenders party thereto in their capacities as lenders thereunder, the First Lien Administrative Agent, as agent and the other agents party thereto, as the same may be amended, restated, modified, supplemented, extended, renewed, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof, in each case as and to the extent not prohibited by this Agreement and the Second Lien Intercreditor Agreement.

“**First Lien Incremental Equivalent Debt**” has the meaning assigned to the term “Incremental Equivalent Debt” in the First Lien Credit Agreement.

“First Lien Incremental Revolving Commitments” means the “Incremental Revolving Commitments” as such term is defined in the First Lien Credit Agreement.

“First Lien Incremental Revolving Loans” means the “Incremental Revolving Loans” as such term is defined in the First Lien Credit Agreement.

“First Lien Incremental Usage Amount” means, at any time, the sum of (x) the aggregate principal amount of “Incremental Commitments” (as defined in the First Lien Credit Agreement) established at or before such time pursuant to Section 2.14(d)(iii)(B) of the First Lien Credit Agreement (as in effect as of the date hereof) and (y) the aggregate principal amount of “Incremental Equivalent Debt” (as defined in the First Lien Credit Agreement) incurred at or before such time pursuant to Section 2.14(h)(i)(B) of the First Lien Credit Agreement (as in effect as of the date hereof).

“First Lien Initial Revolving Borrowing” means the “Initial Revolving Borrowing” as such term is defined in the First Lien Credit Agreement.

“First Lien Initial Term Loans” has the meaning assigned to the term “Term B Loans” in the First Lien Credit Agreement.

“First Lien Loan Documents” means the First Lien Credit Agreement, the Second Lien Intercreditor Agreement and the other “Loan Documents” (or other equivalent term) (as defined in the First Lien Credit Agreement).

“First Lien Obligations” means the “Senior Obligations” as defined in the Second Lien Intercreditor Agreement.

“First Lien Refinancing Equivalent Debt” has the meaning assigned to the term “Refinancing Equivalent Debt” in the First Lien Credit Agreement.

“First Lien Revolving Credit Commitments” means the “Revolving Credit Commitments” as such term is defined in the First Lien Credit Agreement.

“First Lien Revolving Credit Loans” means “Revolving Credit Loans” as such term is defined in the First Lien Credit Agreement.

“First Lien Swing Line Loans” means “Swing Line Loans” as such term is defined in the First Lien Credit Agreement.

“First Lien Term Loans” has the meaning assigned to the term “Term Loans” in the First Lien Credit Agreement.

“First Lien Termination Date” means the date on which the Discharge of Senior Obligations (as such term is defined in the Second Lien Intercreditor Agreement) has occurred.

“**Flood Insurance Laws**” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“**Foreign Casualty Event**” has the meaning specified in Section 2.05(b)(viii).

“**Foreign Disposition**” has the meaning set forth in Section 2.05(b)(viii).

“**Foreign Subsidiary**” means any direct or indirect Restricted Subsidiary of the Borrower which is not a Domestic Subsidiary.

“**Fund**” means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

“**Funded Debt**” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one (1) year from the date of its creation or matures within one (1) year from such date that is renewable or extendable, at the option of such Person, to a date more than one (1) year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one (1) year from such date, including Indebtedness in respect of the Loans.

“**GAAP**” means generally accepted accounting principles in the United States of America, as in effect from time to time; *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof (including through conforming changes made consistent with IFRS) on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof (including through conforming changes made consistent with IFRS), then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Granting Lender**” has the meaning specified in Section 10.07(h).

“**Guarantee**” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the

purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“**Guaranteed Obligations**” has the meaning specified in Section 11.01.

“**Guarantors**” has the meaning set forth in the definition of “Collateral and Guarantee Requirement” and shall include each Restricted Subsidiary that shall have become a Guarantor pursuant to Section 6.11. For avoidance of doubt, the Borrower in its sole discretion may cause any Restricted Subsidiary that is not a Guarantor to Guarantee the Obligations by causing such Restricted Subsidiary to execute a joinder to this Agreement in form and substance reasonably satisfactory to the Administrative Agent, and any such Restricted Subsidiary shall be a Guarantor, Loan Party and Subsidiary Guarantor hereunder for all purposes. In addition, the Borrower shall be a Guarantor in respect of Secured Hedge Agreements and Treasury Services Agreements to which the Borrower is not party.

“**Guaranty**” means, collectively, the guaranty of the Obligations by the Guarantors pursuant to this Agreement.

“**Hazardous Materials**” means all materials, pollutants, contaminants, chemicals, compounds, constituents, substances or wastes, in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, mold, electromagnetic radio frequency or microwave emissions that are regulated pursuant to, or which could give rise to liability under, applicable Environmental Law.

“Hedge Bank” means any Person which is a party to a Secured Hedge Agreement or a Treasury Services Agreement and that is a Lender, an Agent or an Affiliate of a Lender or an Agent on the Closing Date or at the time it enters into such Secured Hedge Agreement or a Treasury Services Agreement, as applicable, in its capacity as a party thereto and that, in the case of a Secured Hedge Agreement is designated a “Hedge Bank” with respect to such Secured Hedge Agreement in a writing from the Borrower to the Administrative Agent, and (other than a Person already party hereto as a Lender) that delivers to the Administrative Agent a letter agreement reasonably satisfactory to it (i) appointing the Administrative Agent as its agent under the applicable Loan Documents and (ii) agreeing to be bound by Sections 10.05, 10.15 and 10.16 and Article IX as if it were a Lender.

“Holdings” has the meaning specified in the introductory paragraph to this Agreement.

“Identified Participating Lenders” has the meaning set forth in Section 2.05(a)(v)(C)(3).

“Identified Qualifying Lenders” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“IFRS” means international accounting standards as promulgated by the International Accounting Standards Board.

“Incremental Amendment” has the meaning set forth in Section 2.14(f).

“Incremental Amendment Date” has the meaning set forth in Section 2.14(d).

“Incremental Commitments” has the meaning set forth in Section 2.14(a).

“Incremental Equivalent Debt” has the meaning specified in Section 2.14(h).

“Incremental Facility Closing Date” has the meaning set forth in Section 2.14(b).

“Incremental Lenders” has the meaning set forth in Section 2.14(c).

“Incremental Loan” has the meaning set forth in Section 2.14(b).

“Incremental Loan Request” has the meaning set forth in Section 2.14(a).

“Incremental Revolving Loan” has the meaning set forth in the First Lien Credit Agreement.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all outstanding letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) any earn-out or similar obligation, unless such obligation has not been paid within thirty (30) days after becoming due and payable and becomes a liability on the balance sheet of such Person in accordance with GAAP and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Equity Interests; if and to the extent that the foregoing would constitute indebtedness or a liability in accordance with GAAP; and

(h) to the extent not otherwise included above, all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (A) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Net Debt and (B) in the case of the Borrower and its Subsidiaries, exclude all intercompany Indebtedness having a term not exceeding three hundred sixty-four (364) days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby.

"Indemnified Liabilities" has the meaning set forth in Section 10.05.

"Indemnified Taxes" means, with respect to any Agent or any Lender, all Taxes imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document, other than (i) any Taxes imposed on or measured by its income, however denominated, and franchise (and similar) Taxes imposed on it in lieu of net income Taxes, imposed, in each case, by a jurisdiction as a result of such recipient being organized in or having its principal office or applicable lending office in such jurisdiction, or as a result of any other connection between such Lender or Agent and such jurisdiction other than any connections arising solely from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, receiving payments under, receiving

or perfecting a security interest under, engaging in any other transaction pursuant to, and/or enforcing, any Loan Document, (ii) any Taxes (other than Taxes described in clause (i) above) imposed by a jurisdiction as a result of such recipient being organized in or having its principal office or applicable lending office in such jurisdiction, or as a result of any other connection between such Lender or Agent and such jurisdiction other than any connections arising from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, receiving payments under, receiving or perfecting a security interest under, engaging in any other transaction pursuant to, and/or enforcing, any Loan Document, (iii) any Taxes attributable to the failure by such Agent or Lender to comply with Section 3.01(d), (iv) any branch profits Taxes imposed by the United States under Section 884(a) of the Code or any similar Tax imposed by any other jurisdiction described in (i), (v) in the case of a Lender (other than an assignee pursuant to a request by Borrower under Section 3.07(a)), any U.S. federal Tax required to be withheld imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date (which, for the avoidance of doubt, is no earlier than the date hereof) on which such Lender (a) acquires such interest in the applicable Commitment or, if such Lender did not fund the applicable Loan pursuant to a prior Commitment, on the date such Lender acquires its interest in such Loan or (b) or designates a new Lending Office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender immediately before it designated a new Lending Office, (vi) any Taxes imposed under FATCA and (vii) for the avoidance of doubt, interest, penalties, and additions to tax on the amounts described in clauses (i) through (vi) hereof.

"Indemnitees" has the meaning set forth in Section 10.05.

"Independent Financial Advisor" means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Borrower, qualified to perform the task for which it has been engaged and that is independent of the Borrower and its Affiliates.

"Information" has the meaning set forth in Section 10.08.

"Initial Commitment" means, as to each Lender, its obligation to make an Initial Loan to the Borrower pursuant to Section 2.01(a) in an aggregate amount not to exceed the amount set forth opposite such Lender's name in Schedule 1.01A under the caption "Initial Commitment." The initial aggregate amount of the Initial Commitment is \$80,000,000.

"Initial Loans" means the term loans made by the Lenders on the Closing Date to the Borrower pursuant to Section 2.01(a).

"Intellectual Property Security Agreement" has the meaning set forth in the Security Agreement.

"Intercompany Note" means a promissory note substantially in the form of Exhibit G.

“Intercreditor Agreements” means the Second Lien Intercreditor Agreement, the Third Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement and the Subordination Agreement, collectively, in each case to the extent in effect.

“Interest Payment Date” means, (a) as to any Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; *provided* that if any Interest Period for a Eurocurrency Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made.

“Interest Period” means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two, three or six (6) months thereafter or, to the extent agreed by each Lender of such Eurocurrency Rate Loan, twelve (12) months or less than one (1) month thereafter, as selected by the Borrower in its Committed Loan Notice; *provided* that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period (other than an Interest Period having a duration of less than one (1) month) that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the applicable Maturity Date.

“Internally Generated Cash” means, with respect to any Person, funds of such Person and its Restricted Subsidiaries not constituting (x) proceeds of the issuance of (or contributions in respect of) Equity Interests of or a capital contribution to such Person, (y) proceeds of the incurrence of Indebtedness (other than the incurrence of First Lien Revolving Credit Loans or extensions of credit under any other revolving credit or similar facility) by such Person or any of its Restricted Subsidiaries or (z) proceeds of Dispositions and Casualty Events.

“Investment” means, as to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, manufacturers and consultants, in each case made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person (excluding, in the case of the Borrower and its Subsidiaries, intercompany loans, advances or Indebtedness having a term not exceeding three hundred sixty-four (364) days (inclusive of any roll over or extensions of terms) and made in the ordinary course of business). For purposes of the definition of “Unrestricted Subsidiary” and the covenants described under Sections 6.14 and 7.06:

(1) “Investments” shall include the portion (proportionate to the Borrower’s Equity Interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Borrower at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Borrower shall be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Borrower’s “Investment” in such Subsidiary at the time of such redesignation; less

(b) the portion (proportionate to the Borrower’s Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Borrower or a Restricted Subsidiary in respect of such Investment.

“**IP Rights**” has the meaning set forth in Section 5.15.

“**Junior Financing**” has the meaning set forth in Section 7.13(a).

“**Junior Financing Documentation**” means any documentation governing any Junior Financing.

“**Junior Lien Intercreditor Agreement**” means an intercreditor agreement among the Administrative Agent and one or more Senior Representatives for the holders of Indebtedness secured on a *pari passu* basis to the Obligations under the Initial Loans, in form and substance reasonably acceptable to the Administrative Agent and the Borrower. Wherever in this Agreement a Senior Representative is required to become party to the Junior Lien Intercreditor Agreement, if the related Indebtedness is the initial Indebtedness incurred by the Borrower or any Restricted Subsidiary to be secured by a Lien *pari passu* to the Liens securing the Obligations under the Initial Loans, then the Borrower, Holdings, the Subsidiary Guarantors, the Administrative Agent, the Senior Representative for such Indebtedness shall execute and deliver the Junior Lien Intercreditor Agreement and the Administrative Agent shall be authorized to execute and deliver the Junior Lien Intercreditor Agreement.

“**Latest Maturity Date**” means, at any date of determination and with respect to the specified Loans or Commitments (or in the absence of any such specification, all outstanding Loans and Commitments hereunder), the latest Maturity Date applicable to any Loan hereunder at such time, including the latest maturity date of any Extended Loan, any Incremental Loans, or any Refinancing Loans, in each case as extended in accordance with this Agreement from time to time.

“**Laws**” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“**Lender**” has the meaning specified in the introductory paragraph to this Agreement and, as to any Lender, its successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender.”

“**Lending Office**” means, as to any Lender, such office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“**LIBOR**” has the meaning set forth in clause (a) of the definition of “Eurocurrency Rate”.

“**Lien**” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing); provided that in no event shall an operating lease in and of itself be deemed a Lien.

“**Limited Condition Transaction**” means (i) any Permitted Acquisition whose consummation is not conditioned on the availability of, or on obtaining, third party financing and (ii) any redemption or repayment of Indebtedness requiring irrevocable notice in advance of such redemption or repayment.

“**Limited Originator Recourse**” means a letter of credit, cash collateral account or other such credit enhancement issued in connection with the incurrence of Indebtedness by a Securitization Subsidiary under a Qualified Securitization Financing.

“**Loan**” means any Initial Loan, Incremental Loan, Refinancing Loan or Extended Loan, as the context may require.

“**Loan Documents**” means, collectively, (i) this Agreement, (ii) the Notes, (iii) the Collateral Documents and (iv) any Refinancing Amendment, Incremental Amendment or Extension Amendment.

“**Loan Increase**” has the meaning set forth in Section 2.14(a).

“**Loan Parties**” means, collectively, the Borrower and each Guarantor.

“**London Banking Day**” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“**Management Stockholders**” means the members of management of Holdings, the Borrower or any of its Subsidiaries who are investors in Holdings or any direct or indirect parent thereof.

“**Margin Stock**” shall have the meaning assigned to such term in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“**Master Agreement**” has the meaning specified in the definition of “Swap Contract.”

“**Material Adverse Effect**” means a (a) material adverse effect on the business, operations, assets or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole; (b) material adverse effect on the ability of the Loan Parties (taken as a whole) to fully and timely perform any of their payment obligations under any Loan Document to which the Borrower or any of the Loan Parties is a party; or (c) material adverse effect on the rights and remedies available to the Lenders or the Administrative Agent under any Loan Document.

“**Material Domestic Subsidiary**” means, at any date of determination, each of the Borrower’s Domestic Subsidiaries (a) whose total assets (when combined with the assets of such Subsidiary’s Subsidiaries after eliminating intercompany obligations) at the last day of the most recent Test Period were equal to or greater than 2.5% of Total Assets at such date or (b) whose gross revenues (when combined with the revenues of such Subsidiary’s Subsidiaries, after eliminating intercompany obligations) for such Test Period were equal to or greater than 2.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; provided that if, at any time and from time to time after the Closing Date, Domestic Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in clause (a) or (b) comprise in the aggregate more than 5% of Total Assets as of the end of the most recently ended fiscal quarter of the Borrower for which financial statements have been delivered pursuant to Section 6.01 or more than 5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such quarter are required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Domestic Subsidiaries as “Material Domestic Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 applicable to such Subsidiary.

“**Material Foreign Subsidiary**” means, at any date of determination, each of the Borrower’s Foreign Subsidiaries (a) whose total assets (when combined with the assets of such Subsidiary’s Subsidiaries after eliminating intercompany obligations) at the last day of the most recent Test Period were equal to or greater than 2.5% of Total Assets at such date or (b) whose gross revenues (when combined with the revenues of such Subsidiary’s Subsidiaries, after eliminating intercompany obligations) for such Test Period were equal to or greater than 2.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; *provided* that if, at any time and from time to

time after the Closing Date, Foreign Subsidiaries not meeting the thresholds set forth in clause (a) or (b) comprise in the aggregate more than 5% of Total Assets as of the end of the most recently ended fiscal quarter of the Borrower for which financial statements have been delivered pursuant to Section 6.01 or more than 5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such quarter are required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Foreign Subsidiaries as “Material Foreign Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of the definition of “Collateral and Guarantee Requirement.”

“**Material Real Property**” means any fee-owned Real Property (other than any Sale Leaseback Properties) located in the United States that is owned by any Loan Party and that has a fair market value in excess of \$5,000,000 (at the Closing Date or, with respect to fee-owned Real Property located in the United States acquired after the Closing Date, at the time of acquisition).

“**Material Subsidiary**” means any Material Domestic Subsidiary or any Material Foreign Subsidiary.

“**Maturity Date**” means (i) with respect to the Initial Loans, the eighth anniversary of the Closing Date; (ii) with respect to any Class of Extended Loans, the final maturity date as specified in the applicable Extension Request accepted by the respective Lender or Lenders, (iii) with respect to any Refinancing Loans, the final maturity date as specified in the applicable Refinancing Amendment and (iv) with respect to any Incremental Loans, the final maturity date as specified in the applicable Incremental Amendment; *provided* that, in each case, if such day is not a Business Day, the Maturity Date shall be the Business Day immediately succeeding such day.

“**Maximum Rate**” has the meaning specified in Section 10.10.

“**Merger**” has the meaning specified in the preliminary statements to this Agreement.

“**Merger Agreement**” has the meaning specified in the preliminary statements to this Agreement.

“**Merger Consideration**” means the total funds required to consummate the Acquisition.

“**Merger Sub**” has the meaning specified in the preliminary statements to this Agreement.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor thereto.

“**Mortgage Policies**” has the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“**Mortgaged Properties**” has the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“**Mortgages**” means, collectively, the deeds of trust, trust deeds, hypothecs and mortgages made by the Loan Parties in favor or for the benefit of the Administrative Agent on behalf of the Secured Parties creating and evidencing a Lien on a Mortgaged Property in form and substance reasonably satisfactory to the Administrative Agent (taking account of relevant local Law matters), and any other mortgages executed and delivered pursuant to Section 6.11, in each case, as the same may from time to time be amended, restated, supplemented or otherwise modified.

“**Multiemployer Plan**” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which a Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding six (6) plan years, has made or been obligated to make contributions.

“**Net Proceeds**” means:

(a) 100% of the cash proceeds actually received by the Borrower or any of the Restricted Subsidiaries (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation awards, but in each case only as and when received) from any Disposition or Casualty Event, net of (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith, (ii) the principal amount of any Indebtedness that is secured by a Lien (other than a Lien that ranks *pari passu* with or is subordinated to the Liens securing the Obligations) on the asset subject to such Disposition or Casualty Event and that is required to be repaid in connection with such Disposition or Casualty Event (other than Indebtedness under the Loan Documents), together with any applicable premium, penalty, interest and breakage costs, (iii) in the case of any Disposition or Casualty Event by a non-wholly owned Restricted Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (iii)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Restricted Subsidiary as a result thereof, (iv) taxes and Tax Distributions paid or reasonably estimated to be payable, directly or indirectly, as a result thereof (including taxes that are or would be imposed on the distribution or repatriation of any such Net Proceeds), and (v) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of the Restricted Subsidiaries including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (*provided, however*, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition or Casualty

Event occurring on the date of such reduction); *provided* that, at the option of the Borrower, the Borrower may use all or any portion of such proceeds to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Borrower or its Restricted Subsidiaries or to make Permitted Acquisitions (or any subsequent Investment made in a Person, division or line of business previously acquired), in each case within twelve (12) months of such receipt, and such proceeds shall not constitute Net Proceeds except to the extent not, within twelve (12) months of such receipt, so used or contractually committed to be so used (it being understood that if any portion of such proceeds are not so used within such twelve (12) month period but within such twelve (12) month period are contractually committed to be used, then upon the termination of such contract or if such Net Proceeds are not so used within such twelve (12) month period or, if later, one hundred eighty (180) days from the entry into such contractual commitment, then such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso); *provided, further*, that no proceeds realized in a single transaction or series of related transactions shall constitute Net Proceeds unless (x) such proceeds shall exceed \$12,000,000 or (y) the aggregate net proceeds exceed \$24,000,000 in any fiscal year (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (a)), and

(b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any of the Restricted Subsidiaries of any Indebtedness, net of all taxes and Tax Distributions paid or reasonably estimated to be payable, directly or indirectly, as a result thereof and fees (including investment banking fees, underwriting fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to the Borrower shall be disregarded.

“**Non-Consenting Lender**” has the meaning set forth in Section 3.07.

“**Non-Defaulting Lender**” means, at any time, a Lender that is not a Defaulting Lender.

“**Non-Loan Party**” means any Restricted Subsidiary of the Borrower that is not a Loan Party.

“**Note**” means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit C hereto, evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the Loans made by such Lender.

“**Obligations**” means all (x) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party and its Restricted Subsidiaries arising under any Loan Document or otherwise with respect to any Loan or, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or Restricted Subsidiary of any proceeding under any Debtor Relief Laws naming such Person as

the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding and (y) obligations of any Loan Party arising under any Secured Hedge Agreement or any Treasury Services Agreement. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and of their Restricted Subsidiaries to the extent they have obligations under the Loan Documents) include (a) the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

“**Offered Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Offered Discount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**OID**” means original issue discount. “**Organization Documents**” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Other Applicable Indebtedness**” has the meaning specified in Section 2.05(b)(ii).

“**Other Taxes**” has the meaning specified in Section 3.01(b).

“**Outstanding Amount**” means with respect to the Loans on any date, the outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

“**Overnight Rate**” means, for any day, the greater of the Federal Funds Rate and an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

“**Participant**” has the meaning specified in Section 10.07(e).

“**Participant Register**” has the meaning specified in Section 10.07(e).

“**Participating Lender**” has the meaning set forth in Section 2.05(a)(v)(C)(2).

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA or Section 412 of the Code and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five (5) plan years.

“Perfection Certificate” means a certificate in the form of Exhibit II to the Security Agreement or any other form reasonably approved by the Administrative Agent, as the same shall be supplemented from time to time.

“Permitted Acquisition” means any Investment of the type described in clause (3) of the definition of “Permitted Investments” and any Investment or other acquisition by Borrower or a Restricted Subsidiary of assets constituting a business unit, line of business or division of, or all or substantially all of the Equity Interests of, another Person.

“Permitted Holder” means the Sponsor, any Management Stockholders and any of the Co-Investors; *provided* that if Management Stockholders own beneficially or of record more than 20% of the outstanding voting stock of Holdings in the aggregate, they shall be treated as Permitted Holders of only 20% of the outstanding voting stock of Holdings at such time.

“Permitted Holdings Debt” means unsecured Indebtedness of Holdings (A) that is not subject to any Guarantee by any Subsidiary of Holdings, (B) that will not mature until after the Latest Maturity Date in effect on the date of issuance or incurrence thereof, (C) that is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligation (other than customary offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) prior to the Latest Maturity Date (it being understood that such Indebtedness may have mandatory prepayment, repurchase or redemption provisions satisfying the requirements of clause (D) below prior to such date), (D) that does not require any payments in cash of interest or other amounts in respect of the principal thereof prior to the earlier to occur of (1) a date that is four (4) years from the date of the issuance or incurrence thereof and (2) a date that is after the Latest Maturity Date in effect on the date of such issuance or incurrence, and (E) that has covenant, default and remedy provisions no more restrictive (taken as a whole) than those set forth in this Agreement (taken as a whole) (except in a manner customary for holding company debt securities, including senior discount notes), as reasonably determined by the Borrower.

“Permitted Investments” means:

(1) any Investment in the Borrower or any of its Restricted Subsidiaries; *provided* that, other than with respect to Investments in the form of cash or Cash Equivalents, the aggregate fair market value of Investments resulting from Dispositions by a Loan Party to a Non-Loan Party (including by way of merger or consolidation or otherwise) pursuant to clause (a), (c) or (e) of Section 7.04 or Section 7.05(d) shall not exceed an aggregate amount outstanding from time to time equal to the greater of (x) \$30,000,000 and (y) 2.65% of Total Assets (with the amount of each Investment and Total Assets being measured at the time of each such Disposition and without giving effect to subsequent changes in value of the resulting Investment, but subject to adjustment as set forth in the definition of Investment);

(2) any Investment in Cash Equivalents;

(3) any Investment by the Borrower or any of its Restricted Subsidiaries in a Person (including, to the extent constituting an Investment, in assets of a Person that represent substantially all of its assets or a division, business unit or product line, including research and development and related assets in respect of any product) that is engaged in a business permitted pursuant to Section 7.07 if as a result of such Investment:

(i) such Person becomes a Restricted Subsidiary; or

(ii) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets (or such division, business unit or product line) to, or is liquidated into, the Borrower or a Restricted Subsidiary;

and, in each case, any Investment held by such Person; *provided*, that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation consolidation or transfer;

(4) any Investment in securities or other assets not constituting Cash Equivalents and received in connection with a Disposition made pursuant to Section 7.05 hereof or any other disposition of assets not constituting a Disposition;

(5) any Investment existing on the Closing Date or made pursuant to binding commitments in effect on the Closing Date, in each case as listed on Schedule II, or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any such Investment or binding commitment existing on the Closing Date; *provided*, that the amount of any such Investment or binding commitment may be increased (a) as required by the terms of such Investment or binding commitment as in existence on the Closing Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted under this Agreement;

(6) any Investment acquired by the Borrower or any of its Restricted Subsidiaries:

(i) consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business; or

(ii) in exchange for any other Investment, accounts receivable or endorsements for collection or deposit held by the Borrower or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts of the issuer of such other Investment or accounts receivable (including any trade creditor or customer); or

(iii) in satisfaction of judgments against other Persons; or

(iv) as a result of a foreclosure by the Borrower or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(7) Swap Contracts permitted under Section 7.03(f) hereof;

(8) distributions or payments of Securitization Fees;

(9) Investments the payment for which consists of Equity Interests (other than Disqualified Equity Interests) of the Borrower or any of its direct or indirect parent companies; *provided*, that such Equity Interests will not increase the Cumulative Credit;

(10) guarantees of Indebtedness permitted under Section 7.03, performance guarantees and Contingent Obligations incurred in the ordinary course of business (as long as the primary obligor with respect to such Contingent Obligation is the Borrower or any Restricted Subsidiary) and the creation of Liens on the assets of the Borrower or any Restricted Subsidiary in compliance with Section 7.01;

(11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 7.08 (except transactions described in clauses (f), (g), (l), (n), (q) and (r) of such Section);

(12) Investments consisting of purchases or other acquisitions of inventory, supplies, services, material or equipment or the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(13) Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding, not to exceed the greater of (i) \$48,000,000 and (ii) 5.5% of Total Assets (with the amount of each Investment and Total Assets being measured at the time such Investment is made and without giving effect to subsequent changes in value but subject to adjustment as set forth in the definition of Investment);

(14) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Borrower are necessary or advisable to effect any Qualified Securitization Financing or any repurchase obligation in connection therewith;

(15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants and members of management not in excess of \$6,000,000 outstanding at any one time, in the aggregate (excluding, for the avoidance of doubt, loans and advances described in clause (16) of this definition);

(16) loans and advances to employees, directors, officers, managers and consultants (i) for business-related travel expenses, entertainment expenses, moving expenses and other similar expenses or payroll advances, in each case incurred in the ordinary course of business or consistent with past practices or (ii) to fund such Person's purchase of Equity Interests of the Borrower or any direct or indirect parent company thereof;

(17) advances, loans or extensions of trade credit in the ordinary course of business by the Borrower or any of its Restricted Subsidiaries;

(18) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business;

(19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business;

(20) [Reserved];

(21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business;

(22) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

(23) Investments consisting of promissory notes issued by the Borrower or any Guarantor to future, present or former officers, directors and employees, members of management, or consultants of the Borrower or any of its Subsidiaries or their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower or any direct or indirect parent thereof, to the extent the applicable Restricted Payment is permitted by Section 7.06 hereof;

(24) any Investment by any Captive Insurance Subsidiary in connection with its provision of insurance to the Borrower or any of its Subsidiaries, which Investment is made in the ordinary course of business of such Captive Insurance Subsidiary, or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable; and

(25) loans and advances to any direct or indirect parent of the Borrower not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made to such parent in accordance with Sections 7.06(f), (g) or (h), such Investment being treated for purposes of the applicable clause of Section 7.06, including any limitations, as a Restricted Payment made pursuant to such clause.

For purposes of determining whether an Investment is a Permitted Investment or is otherwise a Restricted Investment permitted to be made pursuant to Section 7.06, in the event that an Investment (or any portion thereof) at any time, whether at the time of making of such Investment or upon or subsequently, meets the criteria of more than one of the categories of Permitted Investments described in clauses (1) through (25) above or any other provision of

Section 7.06, the Borrower, in its sole discretion, will classify and may subsequently reclassify such Investment (or any portion thereof) in any one or more of the types of Investments described in clauses (1) through (25) above or any other applicable clause in Section 7.06 and will only be required to include the amount and type of such Investment in such of the above clauses or clauses in Section 7.06 as determined by the Borrower at such time.

“Permitted Junior Secured Refinancing Debt” has the meaning set forth in Section 2.15(h)(i).

“Permitted Pari Passu Secured Refinancing Debt” has the meaning set forth in Section 2.15(h)(i).

“Permitted Ratio Debt” means Indebtedness (including Acquired Indebtedness) incurred or assumed by the Borrower and any Restricted Subsidiary if and to the extent the Consolidated Cash Interest Coverage Ratio of the Borrower for the Borrower’s most recently ended Test Period preceding the date on which such Indebtedness is incurred or assumed would have been equal to or greater than 2.0 to 1.0, determined on a Pro Forma Basis giving effect to such assumption or incurrence and the use of proceeds thereof; *provided*, that (i) immediately after the incurrence or assumption of such Indebtedness and the use of proceeds thereof, no Event of Default shall be continuing or result therefrom, (ii) such Indebtedness that is incurred (but not assumed) to finance any Permitted Acquisition and any Permitted Refinancing thereof does not mature or have scheduled amortization or payments of principal (other than customary “AHYDO catch-up payments”, customary offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) prior to the Maturity Date of the Initial Loans at the time such Indebtedness is incurred or issued and (iii) Non-Loan Parties may not incur Indebtedness pursuant to this definition if, after giving Pro Forma Effect to such incurrence, the aggregate amount of Indebtedness of Non-Loan Parties incurred pursuant to this paragraph then outstanding would exceed the greater of (x) \$24,000,000 and (y) 2.2% of Total Assets, in each case determined at the such time of incurrence; *provided* that a certificate of the Borrower as to the satisfaction of the Consolidated Cash Interest Coverage Ratio condition described above delivered prior to, on or after the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy such Consolidated Cash Interest Coverage Ratio condition, shall be conclusive unless the Administrative Agent notifies the Borrower within five (5) Business Days of receipt of such certificate that it disagrees with such determination (including a description of the basis upon which it disagrees).

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Indebtedness of such Person; *provided* that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced or extended except by an amount equal to unpaid accrued interest and premium thereon plus other amounts owing or paid related to such Indebtedness, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, replacement or extension and by an amount equal to any

existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e), such modification, refinancing, refunding, renewal, replacement or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e) or (f), at the time thereof, no Event of Default shall have occurred and be continuing, (d) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is Junior Financing, to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, as reasonably determined by the Borrower, (e) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is secured by the Collateral and/or subject to intercreditor arrangements for the benefit of the Lenders, such modification, refinancing, refunding, renewal, replacement or extension is either (1) unsecured or (2) secured and, if secured, subject to intercreditor arrangements on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, as reasonably determined by the Borrower, and such modification, refinancing, refunding, renewal, replacement or extension is incurred by one or more Persons who is an obligor of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (f) any such modification, refinancing, renewal, replacement or extension has the same primary obligor and the same (or fewer) guarantors as the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended and (g) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is unsecured, such modification, refinancing, refunding, renewal, replacement or extension is either unsecured or subject to Liens only to the extent permitted by Section 7.01(bb) or (cc). Any reference to a Permitted Refinancing in this Agreement or any other Loan Document shall be interpreted to mean (a) a Permitted Refinancing of the subject Indebtedness and (b) any further refinancings constituting a Permitted Refinancing of the Indebtedness resulting from a prior Permitted Refinancing.

“Permitted Unsecured Refinancing Debt” has the meaning set forth in Section 2.15(h)(i).

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any material “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established or maintained by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

“Platform” has the meaning set forth in Section 6.01.

“Pledged Debt” has the meaning set forth in the Security Agreement.

“Pledged Equity” has the meaning set forth in the Security Agreement.

“Portillo Restaurant Group” means, collectively, Portillo’s Hot Dogs, Inc., Golden Dogs, Inc., Portillo’s Food Service, Inc. and C&O Chicago, L.L.C.

“Proceeding” has the meaning set forth in Section 10.05.

“Proceeds” has the meaning set forth in the Security Agreement.

“Pro Forma Basis” and **“Pro Forma Effect”** means, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.09.

“Pro Rata Share” means, with respect to each Lender, at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments and, if applicable and without duplication, Loans of such Lender under the applicable Facility or Facilities at such time and the denominator of which is the amount of the Aggregate Commitments under the applicable Facility or Facilities and, if applicable and without duplication, Loans under the applicable Facility or Facilities at such time.

“Projections” has the meaning set forth in Section 6.01(c).

“Public Company Costs” means costs relating to compliance with the provisions of the Securities Act and the Exchange Act, in each case as applicable to companies with equity or debt securities held by the public, the rules of national securities exchange companies with listed equity or debt securities, directors’ compensation, fees and expense reimbursement, costs relating to investor relations, shareholder meetings and reports to shareholders or debtholders, directors’ and officers’ insurance, listing fees and all executive, legal and professional fees related to the foregoing.

“Public Lender” has the meaning set forth in Section 6.01.

“Qualified ECP Guarantor” means in respect of any Swap Obligation, each Loan Party that, at the time the relevant guarantee (or grant of the relevant security interest, as applicable) becomes or would become effective with respect to such Swap Obligation, has total assets exceeding \$10,000,000 or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and which may cause another person to qualify as an “eligible contract participant” with respect to such Swap Obligation at such time by entering into a keepwell pursuant to section 1a(18)(A)(v)(II) of the Commodity Exchange Act (or any successor provision thereto).

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

“Qualified IPO” means the issuance by Borrower or any direct or indirect parent of Borrower of its common Equity Interests in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the U.S. Securities and Exchange Commission in accordance with the Securities Act (whether alone or in connection with a secondary public offering).

“Qualified Securitization Financing” means any Securitization Financing of a Securitization Subsidiary that meets the following conditions: (a) all sales and/or contributions of Securitization Assets and related assets to the Securitization Subsidiary are made at fair market value and (b) the financing terms, covenants, termination events and other provisions thereof, including any Standard Securitization Undertakings, shall be on market terms, as reasonably determined by the Borrower. The grant of a security interest in any Securitization Assets of the Borrower or any of the Restricted Subsidiaries (other than a Securitization Subsidiary) to secure Indebtedness under this Agreement prior to engaging in any Securitization Financing shall not be deemed a Qualified Securitization Financing.

“Qualifying Lender” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“Real Property” means, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned or leased by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Refinanced Debt” has the meaning set forth in Section 2.15(a).

“Refinanced Loans” has the meaning set forth in Section 2.15(h)(i).

“Refinancing” means the prepayment in full of all indebtedness under the Credit Agreement, dated as of December 16, 2010, among the Borrower, Barney’s Bar-B-Q, Inc., the several lenders from time to time party thereto and North Shore Community Bank & Trust, as administrative agent, as amended, restated, modified or supplemented from time to time, and the termination and release of all commitments, security interests and guaranties in connection therewith.

“Refinancing Amendment” has the meaning set forth in Section 2.15(f).

“Refinancing Commitments” has the meaning set forth in Section 2.15(a).

“Refinancing Equivalent Debt” has the meaning specified in Section 2.15(h)(i).

“Refinancing Facility Closing Date” has the meaning set forth in Section 2.15(d).

“Refinancing Lender” has the meaning set forth in Section 2.15(c).

“Refinancing Loan” has the meaning set forth in Section 2.15(b).

“Refinancing Loan Request” has the meaning set forth in Section 2.15(a).

“Register” has the meaning set forth in Section 10.07(d).

“Registered Equivalent Notes” means, with respect to any notes originally issued in an offering pursuant to Rule 144A under the Securities Act or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“Rejection Notice” has the meaning specified in Section 2.05(b)(vii).

“Related Indemnified Person” of an Agent, Lender, Arranger or Bookrunner means (1) any controlling Person or controlled Affiliate of such Person, (2) the respective directors, officers, or employees of such Person or any of its controlling Persons or controlled Affiliates and (3) the respective agents or representatives of such Person or any of its controlling Persons or controlled Affiliates, in the case of this clause (3), acting on behalf of or at the instructions of such Person, controlling person or such controlled Affiliate; *provided* that each reference to a controlled Affiliate, director, officer or employee in this definition pertains to a controlled Affiliate, director, officer or employee involved in the negotiation or syndication of this Agreement and the Facilities.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

“Release” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing or migrating in, into, onto or through the Environment.

“Replaced Loans” has the meaning specified in Section 10.01.

“Replacement Loans” has the meaning specified in Section 10.01.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the otherwise applicable notice period has been waived by regulation or otherwise by the PBGC.

“Required Class Lenders” means, as of any date of determination, with respect to one or more Facilities, Lenders having more than 50% of the sum of (a) the Total Outstandings under such Facility or Facilities and (b) the aggregate unused Commitments under such Facility or Facilities; *provided* that the unused Commitments of, and the portion of the Total Outstandings under such Facility or Facilities held, or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of the Required Class Lenders; *provided, further*, that, the Loans of any Affiliated Lender shall be excluded for purposes of making a determination of Required Class Lenders as set forth in Section 10.07(m).

“Required Lenders” means, as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Outstandings and (b) aggregate unused Commitments; *provided* that the unused Commitment of, and the portion of the Total Outstandings held, or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; *provided, further*, that, the Loans of any Affiliated Lender shall be excluded for purposes of making a determination of Required Lenders as set forth in Section 10.07(m).

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, chief operating officer, chief administrative officer, secretary or assistant secretary, treasurer or assistant treasurer or other similar officer or Person performing similar functions of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Cash” means cash and Cash Equivalents which are listed as “Restricted” on the consolidated balance sheet of the Borrower and its Restricted Subsidiaries.

“Restricted Investment” means an Investment other than a Permitted Investment.

“Restricted Payment” means (i) any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the Borrower’s or a Restricted Subsidiary’s stockholders, partners or members (or the equivalent Persons thereof) and (ii) any Restricted Investment.

“Restricted Subsidiary” means any Subsidiary of the Borrower other than an Unrestricted Subsidiary.

“Retained Percentage” means, with respect to any Excess Cash Flow Period, (a) 100% minus (b) the Applicable ECF Percentage with respect to such Excess Cash Flow Period.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“Sale Leaseback” means any transaction or series of related transactions pursuant to which the Borrower or any of the Restricted Subsidiaries (a) sells, transfers or otherwise Disposes of any property, real or personal, whether now owned or hereafter acquired, and (b) as part of such transaction, thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or otherwise Disposed.

“Sale Leaseback Properties” means any fee owned Real Property set forth on Schedule 1.01G.

“Sale Leaseback Transaction” has the meaning provided in Section 7.05(t).

“Same Day Funds” means immediately available funds.

“**Sanctions**” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“**OFAC**”) or the U.S. Department of State, or (b) the European Union or Her Majesty’s Treasury of the United Kingdom.

“**Sanctioned Country**” means, at any time, a country or territory which is the subject or target of any Sanctions.

“**Sanctioned Person**” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the European Union or Her Majesty’s Treasury of the United Kingdom and (b) any other Person organized in a Sanctioned Country or controlled (as determined by applicable law) by any Person that is a Sanctioned Person.

“**SEC**” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“**Second Lien Intercreditor Agreement**” means an intercreditor agreement substantially in the form of Exhibit I hereto, dated as of the Closing Date, among the Administrative Agent, the First Lien Administrative Agent, as “Senior Representative” (as defined therein) for the “First Lien Credit Agreement Secured Parties” (as defined therein) and each additional representative party thereto from time to time, as amended from time to time.

“**Secured Hedge Agreement**” means any Swap Contract permitted under Article VII that is entered into by and between the Borrower or any Subsidiary and any Hedge Bank. Notwithstanding the foregoing, any such Swap Contract shall not constitute a “Secured Hedge Agreement” if the obligations thereunder are First Lien Obligations.

“**Secured Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Secured Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“**Secured Parties**” means, collectively, the Administrative Agent, the Lenders, the Hedge Banks and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Securitization Assets**” means (a) the accounts receivable, royalty or other revenue streams and other rights to payment subject to a Qualified Securitization Financing and the proceeds thereof and (b) contract rights, lockbox accounts and records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in a securitization financing.

“**Securitization Fees**” means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with any Qualified Securitization Financing.

“Securitization Financing” means any transaction or series of transactions that may be entered into by the Borrower or any of its Subsidiaries pursuant to which the Borrower or any of its Subsidiaries may sell, convey or otherwise transfer to (a) a Securitization Subsidiary (in the case of a transfer by the Borrower or any of its Subsidiaries) or (b) any other Person (in the case of a transfer by a Securitization Subsidiary), or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries, and any assets related thereto, including all collateral securing such Securitization Assets, all contracts and all guarantees or other obligations in respect of such Securitization Assets, proceeds of such Securitization Assets and other assets that are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving Securitization Assets.

“Securitization Subsidiary” means a wholly owned Subsidiary of the Borrower (or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Borrower or any Subsidiary of the Borrower makes an Investment and to which the Borrower or any Subsidiary of the Borrower transfers Securitization Assets and related assets) that engages in no activities other than in connection with the financing of Securitization Assets of the Borrower or its Subsidiaries, all proceeds thereof and all rights (contingent and other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Borrower or such other Person (as provided below) as a Securitization Subsidiary and (a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings or Limited Originator Recourse), (ii) is recourse to or obligates Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, in any way other than pursuant to Standard Securitization Undertakings or Limited Originator Recourse or (iii) subjects any property or asset of Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings or Limited Originator Recourse, (b) with which none of Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, has any material contract, agreement, arrangement or understanding other than on terms which the Borrower reasonably believes to be no less favorable to Holdings, the Borrower or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower and (c) to which none of Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, has any obligation to maintain or preserve such entity’s financial condition or cause such entity to achieve certain levels of operating results. Any such designation by the Board of Directors of the Borrower or such other Person shall be evidenced to the Administrative Agent by delivery to the Administrative Agent of a certified copy of the resolution of the Board of Directors of the Borrower or such other Person giving effect to such designation and a certificate executed by a Responsible Officer certifying that such designation complied with the foregoing conditions.

“**Security Agreement**” means a Security Agreement substantially in the form of Exhibit E.

“**Security Agreement Supplement**” has the meaning specified in the Security Agreement.

“**Senior Representative**” means, with respect to any series of Permitted Pari Passu Secured Refinancing Debt, Permitted Junior Secured Refinancing Debt, Incremental Equivalent Debt or subordinated Permitted Unsecured Refinancing Debt, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“**Solicited Discount Proration**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Solicited Discounted Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Solicited Discounted Prepayment Notice**” means a written notice of the Borrower of Solicited Discounted Prepayment Offers made pursuant to Section 2.05(a)(v)(D) substantially in the form of Exhibit E-6.

“**Solicited Discounted Prepayment Offer**” means the irrevocable written offer by each Lender, substantially in the form of Exhibit E-7, submitted following the Administrative Agent’s receipt of a Solicited Discounted Prepayment Notice.

“**Solicited Discounted Prepayment Response Date**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Solvent**” and “**Solvency**” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the assets of such Person exceeds, on a consolidated basis, its debts and liabilities, subordinated, contingent or otherwise, (b) the present fair saleable value of the property of such Person is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) such Person is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and (d) such Person is not engaged in, and is not about to engage in, business for which it has unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

“**SPC**” has the meaning specified in Section 10.07(h).

“**Specified Discount**” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“**Specified Discount Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“**Specified Discount Prepayment Notice**” means a written notice of the Borrower Offer of Specified Discount Prepayment made pursuant to Section 2.05(a)(v)(B) substantially in the form of Exhibit E-8.

“**Specified Discount Prepayment Response**” means the irrevocable written response by each Lender, substantially in the form of Exhibit E-9, to a Specified Discount Prepayment Notice.

“**Specified Discount Prepayment Response Date**” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“**Specified Discount Proration**” has the meaning set forth in Section 2.05(a)(v)(B)(3).

“**Specified Junior Financing Obligations**” means any obligations in respect of any Junior Financing in respect of which any Loan Party is an obligor in a principal amount in excess of the Threshold Amount.

“**Specified Merger Agreement Representations**” means such of the representations and warranties made by or on behalf of the Borrower and its Subsidiaries in the Merger Agreement as are material to the interests of the Lenders, but only to the extent that Merger Sub (or its applicable Affiliate) has the right to terminate its obligation to consummate the Merger under the Merger Agreement (or the right not to consummate the Merger pursuant to the Merger Agreement) as a result of a breach of such representations and warranties.

“**Specified Representations**” means those representations and warranties made by the Borrower in Sections 5.01(a) (only with respect to organizational existence of the Loan Parties), 5.01(b)(ii), 5.02(a), 5.02(b)(i), 5.02(b)(iii), 5.04, 5.12, 5.16, 5.18(a)(ii) (only with respect to the use of proceeds of the Loans made on the Closing Date) and 5.19 (subject to the proviso at the end of Section 4.01(a)).

“**Specified Transaction**” means (t) the Transactions, (u) any Investment that results in a Person becoming a Restricted Subsidiary, (v) any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary, (w) a Sale Leaseback, (x) any Permitted Acquisition, (y) any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower and any Disposition of a business unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise or (z) any incurrence or repayment of Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit), Restricted Payment or Incremental Loan, in each case, that by the terms of this Agreement requires a financial ratio or test to be calculated on a “Pro Forma Basis” or after giving “Pro Forma Effect.”

“**Sponsor**” means Berkshire Partners LLC and any of its Affiliates and funds or partnerships managed or advised by it or any of its Affiliates but not including, however, any portfolio company of any of the foregoing.

“Sponsor Management Agreement” means one or more management, consulting, expense reimbursement or similar agreements among the Sponsor or other holders of Equity Interests and their Affiliates and Holdings, the Borrower (and/or any of its indirect parent companies) (including the Management Agreement, dated as of August 1, 2014, by and among PHD Group Holdings LLC, a Delaware limited liability company, Holdings, the Company and the Sponsor, as the same may be amended, amended and restated, modified, supplemented, replaced or otherwise modified from time to time in accordance with their terms, but only to the extent that such agreements and any such amendment, amendment and restatement, modification, supplement, replacement or other modification thereto does not, directly or indirectly, result in or increase the obligations of Holdings, the Borrower or any of its Restricted Subsidiaries to make any payments thereunder in excess of (x) with respect to any management, monitoring, oversight consulting or advisory fees, \$3,600,000 per fiscal year, (y) with respect to any transaction fees, 1.20% of the gross transaction value and (z) customary termination fees, indemnities and expenses of the Sponsor (plus, in each case, any unpaid and accrued fees, indemnities and expenses permitted pursuant to clauses (x), (y) and (z) plus interest thereon).

“Standard Securitization Undertakings” means representations, warranties, covenants and indemnities entered into by the Borrower or any Subsidiary of the Borrower that are customary in a Securitization Financing.

“Submitted Amount” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“Submitted Discount” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“Subordination Agreement” means a subordination agreement among the Administrative Agent and one or more Senior Representatives for the holders of Indebtedness subordinated to the Obligations, in form and substance reasonably acceptable to the Administrative Agent and the Borrower. Wherever in this Agreement a Senior Representative is required to become party to the Subordination Agreement, if the related Indebtedness is the initial Indebtedness incurred by the Borrower or any Restricted Subsidiary to be subordinated to the Obligations, then the Borrower, Holdings, the Subsidiary Guarantors, the Administrative Agent, the Senior Representative for such Indebtedness and, if the First Lien Administrative Agent elects to become a party thereto, the First Lien Administrative Agent shall execute and deliver the Subordination Agreement and the Administrative Agent, shall be authorized to execute and deliver the Subordination Agreement.

“Subsequent Transaction” has the meaning set forth in Section 1.09(e).

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (excluding, for the avoidance of doubt, any charitable organizations and any other Person that meets the requirements of Section 501(c)(3) of the Code) (i) of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned by such Person or (ii) the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, by such Person, to the extent such entity’s financial results are required to be included in such Person’s consolidated financial statements under GAAP. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantor**” means any Guarantor other than Holdings.

“**Successor Company**” has the meaning specified in Section 7.04(d).

“**Superholdco Preferred Stock**” means the \$100,000,000 in initial liquidation preference of preferred units issued by PHD Group Holdings, LLC, a Delaware limited liability company and a direct or indirect parent of Holdings.

“**Swap**” means any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“**Swap Contract**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

“**Swap Obligation**” means, with respect to any person, any obligation to pay or perform under any Swap.

“**Swap Termination Value**” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“**Syndication Agent**” means Jefferies Finance LLC, in its capacity as a syndication agent under this Agreement.

“**Tax Distribution**” has the meaning specified in Section 7.06(h)(iii).

“**Taxes**” means all present or future taxes, duties, levies, imposts, assessments or withholdings imposed by any Governmental Authority including interest, penalties and additions to tax.

“**Test Period**” means, for any date of determination under this Agreement, the four consecutive fiscal quarters of the Borrower most recently ended as of such date of determination.

“**Third Lien Intercreditor Agreement**” means an intercreditor agreement among the Administrative Agent and one or more Senior Representatives for the holders of Indebtedness secured on a junior basis to the Obligations under the Initial Loans, in form and substance reasonably acceptable to the Administrative Agent and the Borrower. Wherever in this Agreement a Senior Representative is required to become party to the Third Lien Intercreditor Agreement, if the related Indebtedness is the initial Indebtedness incurred by the Borrower or any Restricted Subsidiary to be secured by a Lien junior to the Liens securing the Obligations, then the Borrower, Holdings, the Subsidiary Guarantors, the Administrative Agent, the Senior Representative for such Indebtedness and, if the First Lien Administrative Agent elects to become a party thereto, the First Lien Administrative Agent, shall execute and deliver the Third Lien Intercreditor Agreement and the Administrative Agent shall be authorized to execute and deliver the Third Lien Intercreditor Agreement.

“**Threshold Amount**” means \$24,000,000.

“**Total Assets**” means the total assets of the Borrower and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP, as shown on the most recent balance sheet of the Borrower delivered pursuant to Section 6.01(a) or (b) (and, in the case of any determination relating to any incurrence of Indebtedness or any Investment or other acquisition, on a Pro Forma Basis including any property or assets being acquired in connection therewith) or for the period prior to the time any such statements are so delivered pursuant to Section 6.01(a) or (b), the Quality of Earnings Analysis dated June 25, 2014.

“**Total Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Total Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans.

“**Transaction Expenses**” means any fees or expenses incurred or paid by the Sponsor, any direct or indirect parent of the Borrower, the Borrower or any of its (or their) Subsidiaries in connection with the Transactions (including expenses in connection with close-out fees in connection with the termination of hedging transactions, if any, and payments to officers, employees and directors as change of control payments, severance payments, special or retention bonuses and charges for repurchase or rollover of, or modifications to, stock options and/or restricted stock), this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

“**Transactions**” means, collectively, (a) the Acquisition and other related transactions contemplated by the Merger Agreement, (b) the Equity Contribution, (c) the funding of the Initial Loans and the execution and delivery of the Loan Documents to be entered into on the Closing Date, (d) the funding of the First Lien Initial Term Loans and the First Lien Initial Revolving Borrowing on the Closing Date and the execution and delivery of First Lien Loan Documents to be entered into on the Closing Date, (e) the issuance of the Superholdco Preferred Stock, (f) the Refinancing and (g) the payment of Transaction Expenses.

“**Transferred Guarantor**” has the meaning specified in Section 11.09.

“**Treasury Services Agreement**” means any agreement between the Borrower or any Subsidiary and any Hedge Bank relating to treasury, depository, credit card, debit card and cash management services or automated clearinghouse transfer of funds or any similar services. Notwithstanding the foregoing, no such agreement shall be a “Treasury Services Agreement” if the obligations thereunder are First Lien Obligations.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

“**UBS**” means UBS AG, Stamford Branch, acting in its individual capacity, and its successors and assigns.

“**Unaudited Financial Statements**” has the meaning assigned to such term in the Merger Agreement (as in effect on the date hereof).

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“**United States**” and “**U.S.**” mean the United States of America.

“**United States Tax Compliance Certificate**” has the meaning set forth in Section 3.01(d)(ii)(C) and is in substantially the form of Exhibit H hereto.

“**Unrestricted Subsidiary**” means any Subsidiary of the Borrower designated by the Board of Directors of the Borrower as an Unrestricted Subsidiary pursuant to Section 6.14 subsequent to the Closing Date and each Securitization Subsidiary.

“**USA Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness; *provided* that the effects of any prepayments made on such Indebtedness shall be disregarded in making such calculation.

“**wholly owned**” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

Section 1.02 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (b) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.
- (c) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.
- (d) The term “including” (and its correlatives) means by way of example and not as a limitation.
- (e) The word “or” is not exclusive.
- (f) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.
- (g) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”
- (h) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.
- (i) For purposes of determining compliance with any Section of Article VII at any time, in the event that any Lien, Investment, Indebtedness (whether at the time of incurrence or upon application of all or a portion of the proceeds thereof), Disposition, Restricted Payment, Affiliate transaction, Contractual Obligation or prepayment of Indebtedness meets the criteria of one or more than one of the categories of transactions permitted pursuant to any clause of such Sections, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by the Borrower in its sole discretion at such time.

Section 1.03 Accounting Terms.

All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein.

Notwithstanding any changes in GAAP after the Closing Date, any lease of the Loan Parties and their Subsidiaries that would be characterized as an operating lease under GAAP in effect on the Closing Date (whether such lease is entered into before or after the Closing Date) shall not constitute Indebtedness, Attributable Indebtedness or a Capitalized Lease Obligation under this Agreement or any other Loan Document as a result of such changes in GAAP.

Section 1.04 Rounding.

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding up if there is no nearest number).

Section 1.05 References to Agreements, Laws, Etc.

Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by the Loan Documents; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day.

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.07 Timing of Payment of Performance.

When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

Section 1.08 Cumulative Credit Transactions.

If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount of the Cumulative Credit immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously.

Section 1.09 Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Total Net Leverage Ratio, the Secured Net Leverage Ratio, the Consolidated First Lien Net Leverage Ratio, the Consolidated Cash Interest Coverage Ratio and compliance with covenants determined by reference to Consolidated EBITDA or Total Assets, shall be calculated in the manner prescribed by this Section 1.09; *provided* that notwithstanding anything to the contrary in clauses (b), (c), (d) or (e) of this Section 1.09, (A) when calculating any such ratio or test for purposes of the definition of “Applicable ECF Percentage”, the events described in this Section 1.09 that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect and (B) when calculating any such ratio or test for purposes of the incurrence of any Indebtedness, cash and Cash Equivalents resulting from the incurrence of any such Indebtedness shall be excluded from the *pro forma* calculation of any applicable ratio or test. In addition, whenever a financial ratio or test is to be calculated on a *pro forma* basis, the reference to the “Test Period” for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower). For the avoidance of doubt, the provisions of the foregoing sentence shall not apply for purposes of calculating any financial ratio or test for purposes of the definition of “Applicable ECF Percentage” which shall be based on the financial statements delivered pursuant to Section 6.01(a) or (b), as applicable, for the relevant Test Period.

(b) For purposes of calculating any financial ratio or test or compliance with any covenant determined by reference to Consolidated EBITDA or Total Assets, Specified Transactions (with any incurrence or repayment of any Indebtedness in connection therewith to be subject to clause (d) of this Section 1.09) that have been made (i) during the applicable Test Period or (ii) if applicable as described in clause (a) above, subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA, Total Assets and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period (or, in the case of Total Assets, on the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.09, then such financial ratio or test (or Total Assets) shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.09.

(c) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Borrower and may include, for the avoidance of doubt, the amount of “run-rate” cost savings, operating expense reductions and synergies resulting from or relating to any Specified Transaction (including the Transactions) which is being given *pro forma* effect that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period and “run-rate” means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a public target’s Public Company Costs) net of the amount of actual benefits realized during such period from such actions, and any such adjustments shall be included in the initial *pro forma* calculations of any financial ratios or tests (and in respect of any subsequent *pro forma* calculations in which such Specified Transaction is given *pro forma* effect) and during any applicable subsequent Test Period in which the effects thereof are expected to be realized) relating to such Specified Transaction; *provided* that (A) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Borrower, (B) such actions are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than twenty four (24) months after the date of such Specified Transaction, and (C) no amounts shall be added pursuant to this clause (c) to the extent duplicative of any amounts that are otherwise added back in computing Consolidated EBITDA (or any other components thereof), whether through a *pro forma* adjustment or otherwise, with respect to such period.

(d) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility unless such Indebtedness has been permanently repaid and not replaced), (i) during the applicable Test Period or (ii) subject to paragraph (a), subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period (except in the case of the Consolidated Cash Interest Coverage Ratio (or similar ratio), in which case such incurrence, assumption, guarantee, redemption, repayment, retirement or extinguishment of Indebtedness will be given effect as if the same had occurred on the first day of the applicable Test Period).

(e) In connection with any action being taken solely in connection with a Limited Condition Transaction, for purposes of:

(i) determining compliance with any provision of this Agreement which requires the calculation of any financial ratio or test, including the Consolidated First Lien Net Leverage Ratio, Secured Net Leverage Ratio, Total Net Leverage Ratio and Consolidated Cash Interest Coverage Ratio (and, for the avoidance of doubt, any financial ratio set forth in Section 2.14(d)(iii)); or

(ii) testing availability under baskets set forth in this Agreement (including baskets measured as a percentage of Total Assets);

in each case, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "**LCT Election**"), the date of determination of whether any such action is permitted hereunder shall be deemed to be the date the definitive agreements for such Limited Condition Transaction are entered into (the "**LCT Test Date**"), and if, after giving Pro Forma Effect to the Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) as if they had occurred at the beginning of the most recent Test Period ending prior to the LCT Test Date, the Borrower would have been permitted to take such action on the relevant LCT Test Date in compliance with such ratio, test or basket, such ratio, test or basket shall be deemed to have been complied with. For the avoidance of doubt, if the Borrower has made an LCT Election and any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date are exceeded as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in Consolidated EBITDA or Total Assets of the Borrower or the Person subject to such Limited Condition Transaction, at or prior to the consummation of the relevant transaction or action, such baskets, tests or ratios will not be deemed to have been exceeded as a result of such fluctuations. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any calculation of any ratio, test or basket availability with respect to the incurrence of Indebtedness or Liens, the making of Restricted Payments, the making of any Permitted Investment, mergers, the conveyance, lease or other transfer of all or substantially all of the assets of the Borrower, the prepayment, redemption, purchase, defeasance or other satisfaction of Indebtedness, or the designation of an Unrestricted Subsidiary (a "**Subsequent Transaction**") following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement or irrevocable notice for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, for purposes of determining whether such Subsequent Transaction is permitted under this Agreement, any such ratio, test or basket shall be required to be satisfied on a Pro Forma Basis (i) assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated and (ii) assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have not been consummated.

(f) If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Consolidated Cash Interest Coverage Ratio is made had been the applicable rate for the entire period (taking into account any interest hedging arrangements applicable to such Indebtedness); *provided*, in the case of repayment of any Indebtedness, to the extent actual interest related thereto was included during all or any portion of the applicable Test Period, the actual interest may be used for the applicable portion of such Test Period. Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or Restricted Subsidiary may designate.

Section 1.10 Currency Generally.

For purposes of determining compliance with Sections 7.01, 7.03 and 7.06 and the definition of Permitted Investments with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred, made or acquired, was permitted hereunder).

For purposes of determining the Secured Net Leverage Ratio, the Consolidated First Lien Net Leverage Ratio, the Total Net Leverage Ratio or any other leverage-based ratio or test under this Agreement, the amount of Indebtedness shall reflect the currency translation effects, determined in accordance with GAAP, of Swap Contracts permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

ARTICLE II.
THE COMMITMENTS AND BORROWINGS

Section 2.01 The Loans.

(a) Subject to the terms and conditions set forth herein, each Lender severally agrees to make to the Borrower on the Closing Date loans denominated in Dollars in an aggregate amount not to exceed the amount of such Lender's Initial Commitment; and (b) subject to the terms and conditions set forth in any Incremental Amendment or Refinancing Amendment providing for, as applicable, the making, exchange, renewal, replacement or refinancing of Loans, each Lender party thereto severally agrees to, as applicable, make, exchange, renew, replace or refinance Loans on the date specified therein in an aggregate amount not to exceed the amount of such Lender's Commitment as set forth therein. Amounts borrowed, exchanged, renewed, replaced or refinanced under this Section 2.01 and repaid or prepaid may not be reborrowed. Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

Section 2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower's irrevocable notice, to the Administrative Agent (*provided* that the notices in respect of the initial Borrowings may be conditioned on the closing of the Merger), which may be given by telephone. Each such notice must be received by the Administrative Agent not later than (1) 1:00 p.m. (New York, New York time) three (3) Business Days prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans or any conversion of Base Rate Loans to Eurocurrency Rate Loans, and (2) 12:00 noon on the requested date of any Borrowing of Base Rate Loans; *provided* that the notice referred to in subclause (1) above may be delivered no later than one (1)

Business Day prior to the Closing Date in the case of initial Borrowings. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Except as provided in Section 2.14, each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a minimum principal amount of \$1,000,000, or a whole multiple of \$100,000 in excess thereof. Except as provided in Section 2.14, each Borrowing of or conversion to Base Rate Loans shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other or a continuation of Eurocurrency Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto and (vi) wire instructions of the account(s) to which funds are to be disbursed (it being understood, for the avoidance of doubt, that the amount to be disbursed to any particular account may be less than the minimum or multiple limitations set forth above so long as the aggregate amount to be disbursed to all such accounts pursuant to such Borrowing meets such minimums and multiples). If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation described in Section 2.02(a). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than the later of (i) in the case of Eurocurrency Rate Loans, 12:00 noon (New York, New York) on the Business Day specified in the applicable Committed Loan Notice and (ii) in the case of Base Rate Loans, one hour (or in the case of Borrowing of Base Rate Loans after the Closing Date where the Committed Loan Notice has been delivered on the date of the requested Borrowing, two hours) after written notice of such Borrowing is delivered by the Administrative Agent to such Lender; *provided, that*, on the Closing Date (or with respect to any Incremental Facilities, on the relevant Incremental Amendment Date), such funds may be made available at such earlier time as may be agreed among the relevant Lenders, the Borrower and the Administrative Agent for the purpose of consummating the Transactions (or, in the case of any Incremental Facilities, the relevant transactions). The Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account(s) of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided by the Borrower to (and reasonably acceptable to) the Administrative Agent.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. During the occurrence and continuation of an Event of Default, the Administrative Agent or the Required Lenders may require by notice to the Borrower that no Loans may be converted to or continued as Eurocurrency Rate Loans.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. The determination of the Eurocurrency Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Administrative Agent's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than fifteen (15) Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent; *provided* that after the establishment of any new Class of Loans pursuant to an Incremental Amendment, Refinancing Amendment or Extension Amendment, the number of Interest Periods otherwise permitted by this Section 2.02(e) shall increase by three (3) Interest Periods for each applicable Class so established.

(f) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(g) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share or other applicable share provided for under this Agreement available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (b) above, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the Overnight Rate plus any administrative, processing, or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the

Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(g) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.03 [Reserved].

Section 2.04 [Reserved].

Section 2.05 Prepayments.

(a) *Optional*. (i) The Borrower may, upon notice to the Administrative Agent by the Borrower, at any time or from time to time voluntarily prepay any Class or Classes of Loans in whole or in part without premium or penalty, except as set forth in Section 2.05(a)(vi); *provided* that (1) such notice must be received by the Administrative Agent not later than 11:30 a.m. (New York City time) (A) two (2) Business Days prior to any date of prepayment of Eurocurrency Rate Loans (unless otherwise agreed by the Administrative Agent) and (B) on the date of prepayment of Base Rate Loans; (2) any prepayment of Eurocurrency Rate Loans shall be in a minimum principal amount of \$1,000,000, or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding; and (3) any prepayment of Base Rate Loans shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be, as set forth in Section 2.05(c), accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05. In the case of each prepayment of the Loans pursuant to this Section 2.05(a), the Borrower may in its sole discretion select the Borrowing or Borrowings (and the order of maturity of principal payments) to be repaid, and such payment shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares or other applicable share provided for under this Agreement.

(ii) [Reserved].

(iii) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.05(a)(i) if such prepayment would have resulted from a refinancing of all or a portion of the applicable Facility, which refinancing shall not be consummated or shall otherwise be delayed.

(iv) [Reserved].

(v) Notwithstanding anything in any Loan Document to the contrary, so long as no Default or Event of Default has occurred and is continuing, any Company Party may prepay the outstanding Loans (which shall, for the avoidance of doubt, be automatically and permanently canceled immediately upon such prepayment) on the following basis:

(A) Any Company Party shall have the right to make a voluntary prepayment of Loans at a discount to par pursuant to a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of Discounted Prepayment Offers (any such prepayment, the “**Discounted Loan Prepayment**”), in each case made in accordance with this Section 2.05(a)(v).

(B) (1) Any Company Party may from time to time offer to make a Discounted Loan Prepayment by providing the Auction Agent with five (5) Business Days’ notice in the form of a Specified Discount Prepayment Notice; *provided* that (I) any such offer shall be made available, at the sole discretion of the Company Party, to (x) each Lender and/or (y) each Lender with respect to any Class of Loans on an individual Class basis, (II) any such offer shall specify the aggregate principal amount offered to be prepaid (the “**Specified Discount Prepayment Amount**”) with respect to each applicable Class, the Class or Classes of Loans subject to such offer and the specific percentage discount to par (the “**Specified Discount**”) of such Loans to be prepaid (it being understood that different Specified Discounts and/or Specified Discount Prepayment Amounts may be offered with respect to different Classes of Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(B)), (III) the Specified Discount Prepayment Amount shall be in an aggregate amount not less than \$10,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such offer shall remain outstanding through the Specified Discount Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Specified Discount Prepayment Notice and a form of the Specified Discount Prepayment Response to be completed and returned by each such Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., on the third Business Day after the date of delivery of such notice to such Lenders (which date may be extended for a period not exceeding three (3) Business Days upon notice by the Company Party to, and with the consent of, the Auction Agent) (the “**Specified Discount Prepayment Response Date**”).

(2) Each Lender receiving such offer shall notify the Auction Agent (or its delegate) by the Specified Discount Prepayment Response Date whether or not it agrees to accept a prepayment of any of its applicable then outstanding Loans at the Specified Discount and, if so (such accepting Lender, a “**Discount Prepayment Accepting Lender**”), the amount and the Classes of such Lender’s Loans to be prepaid at such

offered discount. Each acceptance of a Discounted Loan Prepayment by a Discount Prepayment Accepting Lender shall be irrevocable. Any Lender whose Specified Discount Prepayment Response is not received by the Auction Agent by the Specified Discount Prepayment Response Date shall be deemed to have declined to accept the applicable Borrower Offer of Specified Discount Prepayment.

(3) If there is at least one (1) Discount Prepayment Accepting Lender, the relevant Company Party will make a prepayment of outstanding Loans pursuant to this paragraph (B) to each Discount Prepayment Accepting Lender on the Discounted Prepayment Effective Date in accordance with the respective outstanding amount and Classes of Loans specified in such Lender's Specified Discount Prepayment Response given pursuant to subsection (2) above; *provided* that, if the aggregate principal amount of Loans accepted for prepayment by all Discount Prepayment Accepting Lenders exceeds the Specified Discount Prepayment Amount, such prepayment shall be made pro rata among the Discount Prepayment Accepting Lenders in accordance with the respective principal amounts accepted to be prepaid by each such Discount Prepayment Accepting Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its reasonable discretion) will calculate such proration (the "**Specified Discount Proration**"). The Auction Agent shall promptly, and in any case within three (3) Business Days following the Specified Discount Prepayment Response Date, notify (I) the relevant Company Party of the respective Lenders' responses to such offer, the Discounted Prepayment Effective Date and the aggregate principal amount of the Discounted Loan Prepayment and the Classes to be prepaid, (II) each Lender of the Discounted Prepayment Effective Date, and the aggregate principal amount and the Classes of Loans to be prepaid at the Specified Discount on such date and (III) each Discount Prepayment Accepting Lender of the Specified Discount Proration, if any, and confirmation of the principal amount, Class and Type of Loans of such Lender to be prepaid at the Specified Discount on such date. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the Company Party and such Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(C) (1) Any Company Party may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice in the form of a Discount Range Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Company Party, to (x) each Lender and/or (y) each Lender with respect to any Class of Loans on an individual Class basis, (II) any such notice shall specify the

maximum aggregate principal amount of the relevant Loans (the “**Discount Range Prepayment Amount**”), the Class or Classes of Loans subject to such offer and the maximum and minimum percentage discounts to par (the “**Discount Range**”) of the principal amount of such Loans with respect to each relevant Class of Loans willing to be prepaid by such Company Party (it being understood that different Discount Ranges and/or Discount Range Prepayment Amounts may be offered with respect to different Classes of Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(C)), (III) the Discount Range Prepayment Amount shall be in an aggregate amount not less than \$5,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such solicitation by a Company Party shall remain outstanding through the Discount Range Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Discount Range Prepayment Notice and a form of the Discount Range Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., on the third Business Day after the date of delivery of such notice to such Lenders (which date may be extended for a period not exceeding three (3) Business Days upon notice by the Company Party to, and with the consent of, the Auction Agent) (the “**Discount Range Prepayment Response Date**”). Each Lender’s Discount Range Prepayment Offer shall be irrevocable and shall specify a discount to par within the Discount Range (the “**Submitted Discount**”) at which such Lender is willing to allow prepayment of any or all of its then outstanding Loans of the applicable Class or Classes and the maximum aggregate principal amount and Classes of such Lender’s Loans (the “**Submitted Amount**”) such Lender is willing to have prepaid at the Submitted Discount. Any Lender whose Discount Range Prepayment Offer is not received by the Auction Agent by the Discount Range Prepayment Response Date shall be deemed to have declined to accept a Discounted Loan Prepayment of any of its Loans at any discount to their par value within the Discount Range.

(2) The Auction Agent shall review all Discount Range Prepayment Offers received on or before the applicable Discount Range Prepayment Response Date and shall determine (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the Applicable Discount and Loans to be prepaid at such Applicable Discount in accordance with this subsection (C). The relevant Company Party agrees to accept on the Discount Range Prepayment Response Date all Discount Range Prepayment Offers received by the Auction Agent within the Discount Range by the Discount Range Prepayment Response Date, in the order from the Submitted Discount that is the largest discount to par to the Submitted Discount that is the smallest discount to par, up to and including the Submitted Discount that is the smallest discount to par within the Discount Range (such Submitted Discount that is the smallest discount to par within the Discount Range being referred to as the “**Applicable Discount**”) which yields a Discounted Loan Prepayment in an aggregate principal amount equal to the lower of (I) the Discount

Range Prepayment Amount and (II) the sum of all Submitted Amounts. Each Lender that has submitted a Discount Range Prepayment Offer to accept prepayment at a discount to par that is larger than or equal to the Applicable Discount shall be deemed to have irrevocably consented to prepayment of Loans equal to its Submitted Amount (subject to any required proration pursuant to the following subsection (3)) at the Applicable Discount (each such Lender, a “**Participating Lender**”).

(3) If there is at least one (1) Participating Lender, the relevant Company Party will prepay the respective outstanding Loans of each Participating Lender on the Discounted Prepayment Effective Date in the aggregate principal amount and of the Classes specified in such Lender’s Discount Range Prepayment Offer at the Applicable Discount; *provided* that if the Submitted Amount by all Participating Lenders offered at a discount to par greater than the Applicable Discount exceeds the Discount Range Prepayment Amount, prepayment of the principal amount of the relevant Loans for those Participating Lenders whose Submitted Discount is a discount to par greater than or equal to the Applicable Discount (the “**Identified Participating Lenders**”) shall be made pro rata among the Identified Participating Lenders in accordance with the Submitted Amount of each such Identified Participating Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “**Discount Range Proration**”). The Auction Agent shall promptly, and in any case within five (5) Business Days following the Discount Range Prepayment Response Date, notify (I) the relevant Company Party of the respective Lenders’ responses to such solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount of the Discounted Loan Prepayment and the Classes to be prepaid, (II) each Lender of the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount and Classes of Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and Classes of such Lender to be prepaid at the Applicable Discount on such date, and (IV) if applicable, each Identified Participating Lender of the Discount Range Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the relevant Company Party and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(D) (1) Any Company Party may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice in the form of a Solicited Discounted Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Company Party, to (x) each Lender and/or (y) each Lender with respect to any Class of Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate amount of the Loans (the "**Solicited Discounted Prepayment Amount**") and the Class or Classes of Loans the applicable Company Party is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different Classes of Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(D)), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate amount not less than \$5,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such solicitation by a Company Party shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Solicited Discounted Prepayment Notice and a form of the Solicited Discounted Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., on the third Business Day after the date of delivery of such notice to such Lenders (which date may be extended for a period not exceeding three (3) Business Days upon notice by the Company Party to the Auction Agent) (the "**Solicited Discounted Prepayment Response Date**"). Each Lender's Solicited Discounted Prepayment Offer shall (x) be irrevocable, (y) remain outstanding until the Acceptance Date, and (z) specify both a discount to par (the "**Offered Discount**") at which such Lender is willing to allow prepayment of its then outstanding Loan and the maximum aggregate principal amount and Classes of such Loans (the "**Offered Amount**") such Lender is willing to have prepaid at the Offered Discount. Any Lender whose Solicited Discounted Prepayment Offer is not received by the Auction Agent by the Solicited Discounted Prepayment Response Date shall be deemed to have declined prepayment of any of its Loans at any discount.

(2) The Auction Agent shall promptly provide the relevant Company Party with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. Such Company Party shall review all such Solicited Discounted Prepayment Offers and select the smallest of the Offered Discounts specified by the relevant responding Lenders in the Solicited Discounted Prepayment Offers that is acceptable to the Company Party in its sole discretion (the "**Acceptable Discount**"), if any. If the Company Party elects, in its sole discretion, to accept any Offered Discount as the Acceptable Discount, then as soon as practicable after the determination of the Acceptable Discount, but in no event later than by the third Business Day after the date of receipt by such Company Party from the Auction Agent of a copy of all Solicited Discounted Prepayment Offers pursuant to the first sentence of this subsection (2) (the "**Acceptance Date**"), the Company Party shall submit an Acceptance and Prepayment Notice to the Auction Agent setting forth the Acceptable Discount. If the Auction Agent shall fail to receive an Acceptance and Prepayment Notice from the Company Party by the Acceptance Date, such Company Party shall be deemed to have rejected all Solicited Discounted Prepayment Offers.

(3) Based upon the Acceptable Discount and the Solicited Discounted Prepayment Offers received by Auction Agent by the Solicited Discounted Prepayment Response Date, within three (3) Business Days after receipt of an Acceptance and Prepayment Notice (the “**Discounted Prepayment Determination Date**”), the Auction Agent will determine (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate principal amount and the Classes of Loans (the “**Acceptable Prepayment Amount**”) to be prepaid by the relevant Company Party at the Acceptable Discount in accordance with this Section 2.05(a)(v)(D). If the Company Party elects to accept any Acceptable Discount, then the Company Party agrees to accept all Solicited Discounted Prepayment Offers received by Auction Agent by the Solicited Discounted Prepayment Response Date, in the order from largest Offered Discount to smallest Offered Discount, up to and including the Acceptable Discount. Each Lender that has submitted a Solicited Discounted Prepayment Offer with an Offered Discount that is greater than or equal to the Acceptable Discount shall be deemed to have irrevocably consented to prepayment of Loans equal to its Offered Amount (subject to any required pro-rata reduction pursuant to the following sentence) at the Acceptable Discount (each such Lender, a “**Qualifying Lender**”). The Company Party will prepay outstanding Loans pursuant to this subsection (D) to each Qualifying Lender in the aggregate principal amount and of the Classes specified in such Lender’s Solicited Discounted Prepayment Offer at the Acceptable Discount; *provided* that if the aggregate Offered Amount by all Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount exceeds the Solicited Discounted Prepayment Amount, prepayment of the principal amount of the Loans for those Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount (the “**Identified Qualifying Lenders**”) shall be made pro rata among the Identified Qualifying Lenders in accordance with the Offered Amount of each such Identified Qualifying Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “**Solicited Discount Proration**”). On or prior to the Discounted Prepayment Determination Date, the Auction Agent shall promptly notify (I) the relevant Company Party of the Discounted Prepayment Effective Date and Acceptable Prepayment Amount comprising the Discounted Loan Prepayment and the Classes to be prepaid, (II) each Lender of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Loans and the Classes to be prepaid at the Applicable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the Classes of such Lender to be prepaid at the

Acceptable Discount on such date, and (IV) if applicable, each Identified Qualifying Lender of the Solicited Discount Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to such Company Party and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to such Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(E) In connection with any Discounted Loan Prepayment, the Company Parties and the Lenders acknowledge and agree that the Auction Agent may require as a condition to any Discounted Loan Prepayment, the payment of customary and documented fees and out-of-pocket expenses from a Company Party in connection therewith.

(F) If any Loan is prepaid in accordance with paragraphs (B) through (D) above, a Company Party shall prepay such Loans on the Discounted Prepayment Effective Date without premium or penalty, except as set forth in Section 2.05(a)(vi). The relevant Company Party shall make such prepayment to the Administrative Agent, for the account of the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, at the Administrative Agent's Office in immediately available funds not later than 1:00 p.m. on the Discounted Prepayment Effective Date and all such prepayments shall be applied to the principal amount due at maturity of the relevant Class of Loans pursuant to Section 2.07. The Loans so prepaid shall be, as set forth in Section 2.05(c), accompanied by all accrued and unpaid interest on the par principal amount so prepaid up to, but not including, the Discounted Prepayment Effective Date. Each prepayment of the outstanding Loans pursuant to this Section 2.05(a)(v) shall be paid to the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, and shall be applied to the relevant Loans of such Lenders in accordance with their respective Pro Rata Share or other applicable share hereunder. The aggregate principal amount of the Classes and installments of the relevant Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the Classes of Loans prepaid on the Discounted Prepayment Effective Date in any Discounted Loan Prepayment. In connection with each prepayment pursuant to this Section 2.05(a)(v), the relevant Company Party shall waive any right to bring any action against the Administrative Agent, in its capacity as such, in connection with any such Discounted Loan Prepayment. In connection with each prepayment pursuant to this Section 2.05(a)(v), the relevant Company Party shall (a) make a representation to the Lenders and the Administrative Agent that it does not possess material non-public information with respect to Holdings and its Subsidiaries or the securities of any of them that has not been disclosed to the Lenders generally (other than Lenders who elect not to receive such information) or shall make a statement that such representation cannot be made and (b) waive any right to bring any action against the Administrative Agent, in its capacity as such, in connection with any such Discounted Loan Prepayment.

(G) To the extent not expressly provided for herein, each Discounted Loan Prepayment shall be consummated pursuant to procedures consistent with the provisions in this Section 2.05(a)(v), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by the applicable Company Party.

(H) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.05(a)(v), each notice or other communication required to be delivered or otherwise provided to the Auction Agent (or its delegate) shall be deemed to have been given upon the Auction Agent's (or its delegate's) actual receipt during normal business hours of such notice or communication; *provided that* any notice or communication actually received outside of normal business hours shall be deemed to have been given as of the opening of business on the next Business Day.

(I) Each of the Company Parties and the Lenders acknowledge and agree that the Auction Agent may perform any and all of its duties under this Section 2.05(a)(v) by itself or through any Affiliate of the Auction Agent and expressly consents to any such delegation of duties by the Auction Agent to such Affiliate and the performance of such delegated duties by such Affiliate. The exculpatory provisions pursuant to this Agreement shall apply to each Affiliate of the Auction Agent and its respective activities in connection with any Discounted Loan Prepayment provided for in this Section 2.05(a)(v) as well as activities of the Auction Agent.

(J) Each Company Party shall have the right, by written notice to the Auction Agent, to revoke or modify its offer to make a Discounted Loan Prepayment and rescind the applicable Specified Discount Prepayment Notice, Discount Range Prepayment Notice or Solicited Discounted Prepayment Notice therefor at its discretion at any time on or prior to the applicable Specified Discount Prepayment Response Date (and if such offer is revoked pursuant to the preceding clauses, any failure by such Company Party to make any prepayment to a Lender, as applicable, pursuant to this Section 2.05(a)(v) shall not constitute a Default or Event of Default under Section 8.01 or otherwise).

(vi) If any Initial Loans are voluntarily prepaid pursuant to Section 2.05(a)(i) or mandatorily prepaid pursuant to Section 2.05(b)(iii) or (iv), such prepayments shall be made at (x) 102% of the aggregate principal amount of Initial Loans prepaid if such prepayment occurs prior to the first anniversary of the Closing Date and (y) 101% of the aggregate principal amount of Initial Loans prepaid if such prepayment occurs on or after the first anniversary of the Closing Date but prior to the second anniversary of the Closing Date. If, prior to the second anniversary of the Closing Date, any Lender that is a Non-Consenting Lender is replaced pursuant to Section 3.07 in connection with any amendment, amendment and restatement or other modification of this Agreement, the primary purpose of which is to reduce the All-In Yield applicable to the Loans (other than any amendment, amendment and restatement or other modification effecting a reduction of the All-In Yield applicable to the Loans in connection with any Qualified

IPO, Permitted Acquisition or transaction that would result in a Change of Control), such Lender (and not any Person who replaces such Lender pursuant to Section 3.07) shall receive its portion (as determined immediately prior to it being so replaced) of the prepayment premium or fee described in the preceding sentence as if the Loans held by such Lender were voluntarily prepaid. Any amounts due to any Lender pursuant to this clause (vi) shall be due and payable on the date of such voluntary prepayment or effectiveness of such amendment for which such Lender was a Non-Consenting Lender, as applicable.

(b) *Mandatory.* (i) Subject to clause (ix) of this Section 2.05(b), within five (5) Business Days after financial statements have been delivered pursuant to Section 6.01(a) (commencing with the fiscal year ended December 31, 2015) and the related Compliance Certificate has been delivered pursuant to Section 6.02(a), the Borrower shall, subject to clause (b)(vii) of this Section 2.05, cause to be prepaid an aggregate principal amount of Loans in an amount equal to (A) the Applicable ECF Percentage of Excess Cash Flow, if any, for the Excess Cash Flow Period then ended minus (B) the sum of (1) all voluntary prepayments of (x) First Lien Term Loans, First Lien Incremental Equivalent Debt and First Lien Refinancing Equivalent Debt secured on a *pari passu* or senior basis with the Initial Loans, (y) Initial Loans and (z) Loans, Incremental Equivalent Debt and Refinancing Equivalent Debt, in each case in this clause (z), required to be secured by the Collateral on a *pari passu* basis with the Initial Loans, during such Excess Cash Flow Period or after the end of such Excess Cash Flow Period and prior to when such Excess Cash Flow prepayment is due (limited in the case of any voluntary prepayments made pursuant to Section 2.05(a)(v) and Section 2.05(a)(v) of the First Lien Credit Agreement to the discounted amount actually paid in respect of the principal amount of such Loans and First Lien Term Loans (as opposed to the face amount so prepaid)) and (2) all voluntary prepayments of First Lien Revolving Credit Loans or First Lien Incremental Revolving Loans during such Excess Cash Flow Period or after the end of such Excess Cash Flow Period and prior to when such Excess Cash Flow prepayment is due, to the extent the First Lien Revolving Credit Commitments or First Lien Incremental Revolving Commitments, as applicable, are permanently reduced by the amount of such payments and in the case of each of the immediately preceding clauses (1) and (2) to the extent such prepayments are funded with Internally Generated Cash.

(ii) Subject to clause (ix) of this Section 2.05(b), if (1) the Borrower or any Restricted Subsidiary of the Borrower Disposes of any property or assets (other than any Disposition of any property or assets permitted by Section 7.05(a), (b), (c), (d), (e), (g), (h), (i), (k), (l), (m), (n), (o), (p), (q), (s) or (t); *provided*, that, in the case of Section 7.05(t), immediately after giving effect to such Sale Leaseback and the application of the proceeds (if any) therefrom, (A) no Event of Default shall have occurred and be continuing and (B) the Total Net Leverage Ratio on a Pro Forma Basis is not greater than 6.50:1.00) or (2) any Casualty Event occurs, which results in the realization or receipt by the Borrower or Restricted Subsidiary of Net Proceeds, the Borrower shall cause to be prepaid on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or any Restricted Subsidiary of such Net Proceeds, subject to clause (b)(vii) of this Section 2.05, an aggregate principal amount of Loans in an amount equal to 100% of all such Net Proceeds received; *provided* that if at the time that any such prepayment would be required, the Borrower (or any Restricted Subsidiary)

is required to offer to repurchase Permitted Pari Passu Secured Refinancing Debt (or any Permitted Refinancing thereof that is secured on a pari passu basis with the Obligations under Initial Loans and other Loans required to be secured on a *pari passu* basis with the Initial Loans) pursuant to the terms of the documentation governing such Indebtedness with the net proceeds of such Disposition or Casualty Event (such Permitted Pari Passu Secured Refinancing Debt (or Permitted Refinancing thereof) required to be offered to be so repurchased, “**Other Applicable Indebtedness**”), then the Borrower may apply such Net Proceeds on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Loans and Other Applicable Indebtedness at such time; *provided* that the portion of such net proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such net proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such net proceeds shall be allocated to the Loans in accordance with the terms hereof) to the prepayment of the Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Loans that would have otherwise been required pursuant to this Section 2.05(b)(i) shall be reduced accordingly; *provided, further*, that to the extent the holders of Other Applicable Indebtedness decline to have such indebtedness repurchased or prepaid, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Loans in accordance with the terms hereof.

(iii) Subject to clause (ix) of this Section 2.05(b), if the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness after the Closing Date not permitted to be incurred or issued pursuant to Section 7.03, the Borrower shall cause to be prepaid an aggregate principal amount of Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds.

(iv) If the Borrower incurs or issues any Refinancing Loans (or Refinancing Equivalent Debt) resulting in Net Proceeds (as opposed to such Refinancing Loans or Refinancing Equivalent Debt arising out of an exchange of existing Loans for such Refinancing Loans or Refinancing Equivalent Debt), the Borrower shall cause to be prepaid an aggregate principal amount of Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower of such Net Proceeds.

(v) [Reserved].

(vi) Each prepayment of Loans pursuant to Section 2.05(b) (A) shall be applied either (x) ratably to each Class of Loans then outstanding or (y) as requested by the Borrower in the notice delivered pursuant to clause (vii) below, to any Class or Classes of Loans with a Maturity Date preceding the Maturity Date of the remaining Classes of Loans then outstanding, (B) [reserved] and (C) shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Share (or other applicable share provided by this Agreement) of each such Class of Loans, subject to clause (vii) of this Section 2.05(b). Notwithstanding clause (A) above, (1) in the case of prepayments pursuant to Section 2.05(b)(iv), such prepayment shall be applied in accordance with this

clause (vi) solely to those applicable Classes of Loans selected by the Borrower and specified in the applicable Refinancing Amendment or notice (i.e., the applicable Refinanced Debt or Refinanced Loans) and (2) any Incremental Amendment, Refinancing Amendment or Extension Amendment may provide (including on an optional basis as elected by the Borrower) for a less than ratable application of prepayments to any Class of Loans established thereunder.

(vii) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Loans required to be made by the Borrower pursuant to clauses (i) through (iv) of this Section 2.05(b) at least two (2) Business Days prior to the date of such prepayment (unless otherwise agreed by the Administrative Agent). Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower's prepayment notice and of such Appropriate Lender's Pro Rata Share of the prepayment. Each Lender may reject all or a portion of its Pro Rata Share of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of Loans required to be made pursuant to clauses (i), (ii) and (iii) of this Section 2.05(b) by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 5:00 p.m. one (1) Business Day after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Loans to be rejected by such Lender. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Loans. Any Declined Proceeds shall be offered to the Lenders not so declining such prepayment on a pro rata basis in accordance with the amounts of the Loans of such Lender (with such non-declining Lenders having the right to decline any prepayment with Declined Proceeds at the time and in the manner specified by the Administrative Agent). To the extent such non-declining Lenders elect to decline their Pro Rata Share of such Declined Proceeds, any Declined Proceeds remaining thereafter shall be retained by the Borrower (such remaining Declined Proceeds, the "**Borrower Retained Prepayment Amounts**").

(viii) Notwithstanding any other provisions of this Section 2.05, (i) to the extent that any of or all the Net Proceeds of any Disposition by a Foreign Subsidiary ("**Foreign Disposition**"), the Net Proceeds of any Casualty Event from a Foreign Subsidiary (a "**Foreign Casualty Event**") or Excess Cash Flow attributable to Foreign Subsidiaries are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Loans at the times provided in this Section 2.05(b) but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to use commercially reasonable efforts to cause the applicable Foreign Subsidiary to promptly take all actions reasonably required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Proceeds or Excess

Cash Flow is permitted under the applicable local law, such repatriation will be promptly effected and an amount equal to such repatriated Net Proceeds or Excess Cash Flow will be promptly (and in any event not later than five (5) Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Loans pursuant to this Section 2.05(b) to the extent provided herein and (ii) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Foreign Disposition or any Foreign Casualty Event or Excess Cash Flow attributable to Foreign Subsidiaries would have material adverse tax consequences (as determined in good faith by the Borrower) with respect to such Net Proceeds or Excess Cash Flow, such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Loans at the times provided in this Section 2.05(b) but may be retained by the applicable Foreign Subsidiary.

(ix) Notwithstanding anything in this Section 2.05 to the contrary, the Borrower shall not be required to make any mandatory prepayment pursuant to this Section 2.05(b) (other than pursuant to Section 2.05 (b)(iv)) (i) if such prepayment is prohibited by the Second Lien Intercreditor Agreement or (ii) prior to the First Lien Termination Date, except to the extent of, and not to exceed, the amount of Net Proceeds or Excess Cash Flow, as the case may be, consisting of amounts declined by (A) the First Lien Lenders pursuant to Section 2.05(b)(vii) of the First Lien Credit Agreement, (B) the holders of any First Lien Incremental Equivalent Debt or First Lien Refinancing Equivalent Debt, in each case, constituting First Lien Obligations, or pursuant to equivalent provisions of the credit documentation governing such First Lien Incremental Equivalent Debt or First Lien Refinancing Equivalent Debt or (C) the holders of any Permitted Refinancing of Indebtedness described under the foregoing clause (A) or (B), in each case, constituting First Lien Obligations pursuant to equivalent provisions of the credit documentation governing such Permitted Refinancing, which shall in each case be required to be applied as a mandatory prepayment hereunder (to the extent otherwise required herein) in an amount equal to the amounts so declined.

(c) *Interest Funding Losses, Etc.* (i) Except to the extent otherwise agreed by each Lender so being prepaid, all prepayments of Loans shall be accompanied by all accrued and unpaid interest thereon through but not including the date of such prepayment (which, in the case of prepayments pursuant to Section 2.05(a)(v)(F) shall be the accrued and unpaid interest on the principal amount so prepaid up to, but not including, the applicable Discounted Prepayment Effective Date), together with, in the case of any such prepayment of a Eurocurrency Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurocurrency Rate Loan pursuant to Section 3.05.

(ii) So long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurocurrency Rate Loans is required to be made under this Section 2.05 (but excluding prepayments required under Section 2.05(b)(iv)), prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 2.05 in respect of any such Eurocurrency Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in its sole discretion, deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into a Cash Collateral Account

until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the relevant provisions of this Section 2.05. Such deposit shall be deemed to be a prepayment of such Loans by the Borrower for all purposes under this Agreement.

Section 2.06 Termination of Commitments.

The Initial Commitment of each Lender shall be automatically and permanently reduced to \$0 upon the funding of Initial Loans to be made by it on the Closing Date. The Commitment of each Lender under an Incremental Facility, Refinancing Facility or Extension Series shall be automatically and permanently reduced to \$0 upon the funding of Loans to be made by it on the date set forth in the corresponding Incremental Amendment, Refinancing Amendment or Extension Amendment.

Section 2.07 Repayment of Loans.

The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the Maturity Date for any Class of Loans the aggregate principal amount of all Loans of such Class outstanding on such date.

Section 2.08 Interest.

(a) Subject to the provisions of Section 2.08(b), (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) During the continuance of a Default under Section 8.01(a), the Borrower shall pay interest on past due amounts owing by it hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; *provided* that no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on such amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.09 Fees.

(a) *Other Fees*. The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing (including without limitation pursuant to the Fee Letter) in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

(b) *Closing Fees*. The Borrower agrees to pay on the Closing Date to each Lender party to this Agreement on the Closing Date, as fee compensation for the funding of such Lender's Initial Loan, a closing fee (the "**Closing Fee**") in an amount equal to 0.50% of the stated principal amount of such Lender's Initial Loan made on the Closing Date. Such Closing Fee will be in all respects fully earned, due and payable on the Closing Date and non-refundable and non-creditable thereafter and such Closing Fee shall be netted against Loans made by such Lender on the Closing Date.

Section 2.10 Computation of Interest and Fees.

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurocurrency Rate or the prime rate) shall be made on the basis of a year of three hundred and sixty-five (365) days, or three hundred and sixty-six (366) days, as applicable, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a three hundred and sixty (360) day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one (1) day. In computing interest on any Loan, the day such Loan is made or converted to a Loan of a different Type shall be included and the date such Loan is repaid or converted to a Loan of a different type, as the case may be, shall be excluded. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11 Evidence of Indebtedness.

(a) The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) Entries made in good faith by the Administrative Agent in the Register pursuant to Section 2.11(a), and by each Lender in its account or accounts pursuant to Section 2.11(a), shall be *prima facie* evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.12 Payments Generally.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share provided for under this Agreement) of such payment in like funds as received by wire transfer to such Lender's applicable Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be; *provided* that, if such extension would cause payment of interest on or principal of Eurocurrency Rate Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(c) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(i) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the Overnight Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at a rate per annum equal to the Overnight Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(c) shall be conclusive, absent manifest error.

(d) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Borrowing set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan or to fund any such participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may (to the fullest extent permitted by mandatory provisions of applicable Law), but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all Loans outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

Section 2.13 Sharing of Payments.

If, other than as expressly provided elsewhere herein or required by court order, any Lender shall obtain payment in respect of any principal or interest on account of the Loans made by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them as shall be necessary to cause such purchasing Lender to share the excess payment in respect of any principal or interest on such Loans or such participations, as the case may be, pro rata with each of them; provided that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. For the avoidance of doubt, the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time (including the application of funds arising from the existence of a Defaulting Lender) or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased. For purposes of subclause (v)(a) of the definition of Indemnified Taxes, a Lender that acquires a participation pursuant to this Section 2.13 shall be treated as having acquired such participation on the earlier date(s) on which such Lender acquired the applicable interest(s) in the Commitment(s) and/or Loan(s) to which such participation relates.

Section 2.14 Incremental Loans.

(a) *Incremental Commitments*. The Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent (an “**Incremental Loan Request**”), request one or more new commitments which may be of the same Class as any outstanding Loans (a “**Loan Increase**”) or a new Class of term loans (collectively with any Loan Increase, the “**Incremental Commitments**”), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders.

(b) *Incremental Loans*. On the applicable date (each, an “**Incremental Facility Closing Date**”) specified in any Incremental Amendment (including through any Loan Increase), subject to the satisfaction of the terms and conditions in this Section 2.14, (i) each Incremental Lender of such Class shall make a Loan to the Borrower (an “**Incremental Loan**”) in an amount equal to its Incremental Commitment of such Class and (ii) each Incremental Lender of such Class shall become a Lender hereunder with respect to the Incremental Commitment of such Class and the Incremental Loans of such Class made pursuant thereto.

(c) *Incremental Loan Request*. Each Incremental Loan Request from the Borrower pursuant to this Section 2.14 shall set forth the requested amount and proposed terms of the relevant Incremental Loans. Incremental Loans may be made by any existing Lender (but no existing Lender will have an obligation to make any Incremental Commitment, nor will the Borrower have any obligation to approach any existing Lender to provide any Incremental Commitment) or by any Additional Lender (each such existing Lender or Additional Lender providing such Commitment or Loan, an “**Incremental Lender**” and, collectively, the “**Incremental Lenders**”); *provided* that (i) the Administrative Agent shall have consented (not to be unreasonably withheld or delayed) to such Additional Lender’s making such Incremental Loans to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Loans to such Lender or Additional Lender and (ii) any Affiliated Lender providing an Incremental Commitment shall be subject to the same restrictions set forth in Section 10.07(k) as they would otherwise be subject to with respect to any purchase by or assignment to such Affiliated Lender of Loans.

(d) *Effectiveness of Incremental Amendment*. The effectiveness of any Incremental Amendment, and the Incremental Commitments thereunder, shall be subject to the satisfaction on the applicable date (which shall be no earlier than the date of such Incremental Amendment) specified therein (the “**Incremental Amendment Date**”) of each of the following conditions, together with any other conditions set forth in the Incremental Amendment:

(i) after giving effect to such Incremental Commitments, the conditions of Section 4.02 shall be satisfied (it being understood that all references to “the date of such Borrowing” or similar language in such Section 4.02 shall be deemed to refer to the Incremental Amendment Date); *provided, that* such Incremental Amendment may include a waiver by the Incremental Lenders party thereto of the condition set forth in Section 4.02(iii) and, in connection with any Incremental Commitment, the primary purpose of which is to finance a Permitted Acquisition, a waiver in full or in part of the conditions set forth in clauses (i) and (ii) (other than with respect to any Event of Default under Section 8.01(a) or (f)) of Section 4.02;

(ii) each Incremental Commitment shall be in an aggregate principal amount that is not less than \$10,000,000 and shall be in an increment of \$1,000,000 (*provided* that such amount may be less than \$10,000,000 if such amount represents all remaining availability under the limit set forth in Section 2.14(d)(iii));

(iii) (A) after giving Pro Forma Effect to both (x) the making of Incremental Loans (assuming a borrowing of the maximum amount of Loans available thereunder) under such Incremental Amendment and (y) any Specified Transactions consummated in connection therewith, (1) if such Incremental Loans are secured, the Secured Net Leverage Ratio does not exceed 6.25:1.00 or (2) if such Incremental Loans are unsecured, the Total Net Leverage Ratio does not exceed 6.25:1.00 or (B) together with the Incremental Loans made under such Incremental Amendment, the aggregate principal amount of Incremental Loans made under this clause (B) (*plus* the First Lien Incremental Usage Amount and Incremental Equivalent Debt incurred in reliance on clause (i)(B) of Section 2.14(h)) does not exceed (i) \$85,000,000 plus (ii) the principal amount of any voluntary prepayments of Loans (to the extent not made with the proceeds of Indebtedness (other than the incurrence of First Lien Revolving Credit Loans or extensions of credit under any other revolving credit or similar facility) plus (iii) in the case of any Incremental Commitment that effectively extends the Maturity Date or any other maturity date with respect to any Class of Loans or Commitments hereunder, an amount equal to the portion of the relevant Class of Loans or Commitments that will be replaced by such Incremental Commitments *provided, that*, it is understood that Incremental Loans may be incurred under either clause (A) or clause (B) as selected by the Borrower in its sole discretion, including by designating any portion of Incremental Commitments in excess of an amount permitted to be incurred under clause (A) at the time of such incurrence as incurred under clause (B)); and

(iv) to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (A) customary legal opinions, board resolutions and officers' certificates consistent with those delivered on the Closing Date (conformed as appropriate) other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent and (B) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Incremental Lenders are provided with the benefit of the applicable Loan Documents.

(e) *Required Terms.* The terms, provisions and documentation of the Incremental Loans of any Class shall be as agreed between the Borrower and the applicable Incremental Lenders providing such Incremental Commitments, and except as otherwise set forth herein, to the extent not identical to any Class of Loans, each existing on the Incremental Facility Closing Date, shall be consistent with clauses (i) through (iii) below, as applicable, and otherwise reasonably satisfactory to the Administrative Agent; *provided* that in the case of a Loan Increase, the terms, provisions and documentation of such Loan Increase shall be identical (other than with respect to upfront fees, OID or similar fees) to the applicable Class of Loans being increased, in each case, as existing on the Incremental Facility Closing Date. In any event:

(i) the Incremental Loans:

(A) (I) shall rank *pari passu* or junior in right of payment with the Obligations under Loans that are senior in right of payment and (II) shall be secured by the Collateral and shall rank *pari passu* or junior in right of security with the Obligations under Initial Loans and other Loans required to be secured on a *pari passu* basis with the Initial Loans (and, if applicable, subject to a Subordination Agreement (if subject to payment subordination) and/or a Third Lien Intercreditor Agreement (if subject to lien subordination) (or, alternatively, terms in the Incremental Amendment substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent) or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent) or unsecured,

(B) as of the Incremental Amendment Date, shall not have a final scheduled maturity date earlier than the Maturity Date of the Initial Loans or any Extended Term Loans as to which the Initial Loans were the Existing Term Loan Tranche,

(C) as of the Incremental Amendment Date, shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Initial Loans,

(D) shall have an Applicable Rate, and subject to clauses (e)(i)(B) and (e)(i)(C) above, amortization determined by the Borrower and the applicable Incremental Lenders; *provided* the Applicable Rate and amortization for a Loan Increase shall be the Applicable Rate and amortization for the Class being increased,

(E) shall have fees determined by the Borrower and the applicable Incremental Loan arranger(s), and

(F) may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis (except for prepayments pursuant to Section 2.05(b)(iv) and Section 2.05(b)(vi)(A)(y) or any voluntary prepayments of any Class of Loans with an earlier Maturity Date than any other Classes of Loans)) in any voluntary or mandatory prepayments of Loans hereunder;

(ii) [Reserved]; and

(iii) the All-In Yield applicable to the Incremental Loans of each Class shall be determined by the Borrower and the applicable Incremental Lenders and shall be set forth in each applicable Incremental Amendment; *provided, however*, that with respect to any Loans made under Incremental Commitments (to the extent *pari passu* in right of payment and security with the Initial Loans), the All-In Yield applicable to such Incremental Loans shall not be greater than the applicable All-In Yield payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to Initial Loans plus 50 basis points per annum unless the interest rate (together with, as provided in the proviso below, the Eurocurrency Rate or Base Rate floor) with respect to the Initial Loans is increased so as to cause the then applicable All-In Yield under this Agreement on the Initial Loans to equal the All-In Yield then applicable to the Incremental Loans minus 50 basis points; *provided, further*, that any increase in All-In Yield to any Initial Loan due to the application or imposition of a Eurocurrency Rate or Base Rate floor on any Incremental Loan shall be effected solely through an increase in (or implementation of, as applicable) any Eurocurrency or Base Rate floor applicable to such Initial Loan.

(f) *Incremental Amendment*. Commitments in respect of Incremental Loans shall become additional Commitments pursuant to an amendment (an “**Incremental Amendment**”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Incremental Lender providing such Commitments and the Administrative Agent. The Incremental Amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.14, including amendments as deemed necessary by the Administrative Agent in its reasonable judgment to effect any lien or payment subordination and associated rights of the applicable Lenders to the extent any Incremental Loans are to rank junior in right of security or payment or to address technical issues relating to funding and payments. The Borrower will use the proceeds of the Incremental Loans for any purpose not prohibited by this Agreement.

(g) [Reserved].

(h) *Incremental Equivalent Debt*. The Borrower may, upon notice to the Administrative Agent, at any time or from time to time after the Closing Date, issue, incur or otherwise obtain Indebtedness of the Borrower (and any Permitted Refinancing thereof) in respect of one or more series of senior or subordinated notes or loans (which may be unsecured or secured on a junior lien basis or, in the case of notes only, a *pari passu* basis with the Initial Loans and other Loans required to be secured on a *pari passu* basis with the Initial Loans), in each case issued in a public offering, Rule 144A or other private placement or bridge in lieu of the foregoing, or senior or subordinated mezzanine Indebtedness (which may be in the form of loans or notes and limited to being unsecured or secured solely on a junior lien basis), in each case, that are issued or made in lieu of Incremental Commitments (the “**Incremental Equivalent Debt**”); *provided* that (i) (A) after giving Pro Forma Effect to both (x) the issuance or incurrence of such Incremental Equivalent Debt (assuming a borrowing of the maximum credit thereunder) and (y) any Specified Transactions consummated in connection therewith, (1) if such Incremental Equivalent Debt is secured, the Secured Net Leverage Ratio does not exceed 6.25:1.00 and (2) if such Incremental Equivalent Debt is unsecured, the Total Net Leverage Ratio does not exceed 6.25:1.00 or (B) together with such Incremental Equivalent Debt, the aggregate principal amount of Incremental Equivalent Debt incurred or issued under this clause (B) and Incremental Loans made under Section 2.14(d)(iii)(B) (plus the First Lien Incremental

Usage Amount) does not exceed \$85,000,000 plus the principal amount of any voluntary prepayments of Loans (to the extent not made with the proceeds of Indebtedness (other than the incurrence of First Lien Revolving Credit Loans or extensions of credit under any other revolving credit or similar facility)) plus in the case of any Incremental Equivalent Debt that effectively extends the Maturity Date or any other maturity date with respect to any Class of Loans or Commitments hereunder, an amount equal to the portion of the relevant Class of Loans or Commitments that will be replaced by such Incremental Commitments (ii) such Incremental Equivalent Debt shall not be subject to any Guarantee by any Person other than a Loan Party, (iii) if such Incremental Equivalent Debt is secured, the obligations in respect thereof shall not be secured by any Lien on any asset of Holdings, the Borrower or any Restricted Subsidiary other than any asset constituting Collateral, (iv) no Default or Event of Default shall have occurred and be continuing or would exist immediately after giving effect to such incurrence, (v) if such Incremental Equivalent Debt is secured, the security agreements and other collateral documents relating to such Incremental Equivalent Debt shall be substantially similar to the Collateral Documents (with such differences as are reasonably satisfactory to the Administrative Agent), (vi) if such Incremental Equivalent Debt is (a) secured on a *pari passu* basis with the Obligations under Initial Loans and other Loans required to be secured on a *pari passu* basis with the Initial Loans then such Incremental Equivalent Debt shall be subject to the Second Lien Intercreditor Agreement, if applicable, or a Junior Lien Intercreditor Agreement, (b) secured on a junior basis with the Obligations under Initial Loans and other Loans required to be secured on a *pari passu* basis with the Initial Loans then such Incremental Equivalent Debt shall be subject to a Third Lien Intercreditor Agreement or other lien subordination and intercreditor arrangement satisfactory to the Borrower and Administrative Agent or (c) unsecured and subordinated to the Obligations, then such Incremental Equivalent Debt shall be subject to a Subordination Agreement (or, alternatively, terms in the definitive documentation for such Incremental Equivalent Debt substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent), (vii) such Incremental Equivalent Debt shall have a final maturity date which is no earlier than the then Maturity Date and a Weighted Average Life to Maturity which is equal to or greater than the Weighted Average Life to Maturity of the Initial Loans, (viii) such Incremental Equivalent Debt shall not be subject to any mandatory redemption or prepayment provisions or rights (except to the extent any such mandatory redemption or prepayment is required to be applied pro rata to the Loans required to be secured on a first lien basis and except with respect to customary "AHYDO catch-up payments", offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) and (ix) except as otherwise set forth in this clause (h), such Incremental Equivalent Debt shall have terms and conditions (other than with respect to pricing, fees, rate floors and optional prepayment or redemption terms) substantially similar to, or (taken as a whole) no more favorable (as reasonably determined by the Borrower) to the lenders or holders providing such Incremental Equivalent Debt, than those applicable to the Initial Loans (except for covenants or other provisions (a) conformed (or added) in the Loan Documents, for the benefit of the Lenders holding Initial Loans, pursuant to an amendment thereto subject solely to the reasonable satisfaction of the Administrative Agent or (b) applicable only to periods after the Latest Maturity Date at the time of the issuance or incurrence of such Incremental Equivalent Debt) or such terms and conditions shall be current market terms for such type of Incremental Equivalent Debt (as reasonably determined in good faith by the Borrower). It is understood that Incremental Equivalent Debt may be incurred under either clause (i)(A) or clause (i)(B) of the immediately preceding sentence as selected by the Borrower in its sole discretion, including by designating any portion of Incremental Equivalent Debt in excess of an amount permitted to be incurred under such clause (i)(A) at the time of such incurrence as incurred under such clause (i)(B).

(i) This Section 2.14 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.15 Refinancing Amendments.

(a) *Refinancing Commitments*. The Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent (a "**Refinancing Loan Request**"), request a new Class of term loans (any such new Class, "**Refinancing Commitments**"), in each case, established in exchange for, or to extend, renew, replace, repurchase, retire or refinance, in whole or in part, existing Loans or Commitments (with respect to a particular Refinancing Commitment or Refinancing Loan, such existing Loans or Commitments, "**Refinanced Debt**"), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders.

(b) *Refinancing Loans*. On any Refinancing Facility Closing Date on which any Refinancing Commitments of any Class are effected, subject to the satisfaction of the terms and conditions in this Section 2.15, (i) each Refinancing Lender of such Class shall make a Loan to the Borrower (a "**Refinancing Loan**") in an amount equal to its Refinancing Commitment of such Class and (ii) each Refinancing Lender of such Class shall become a Lender hereunder with respect to the Refinancing Commitment of such Class and the Refinancing Loans of such Class made pursuant thereto.

(c) *Refinancing Loan Request*. Each Refinancing Loan Request from the Borrower pursuant to this Section 2.15 shall set forth the requested amount and proposed terms of the relevant Refinancing Loans. Refinancing Loans may be made, by any existing Lender (but no existing Lender will have an obligation to make any Refinancing Commitment, nor will the Borrower have any obligation to approach any existing Lender to provide any Refinancing Commitment) or by any Additional Lender (each such existing Lender or Additional Lender providing such Commitment or Loan, a "**Refinancing Lender**," and, collectively, "**Refinancing Lenders**"); *provided* that (i) the Administrative Agent, shall have consented (not to be unreasonably withheld or delayed) to such Additional Lender's making such Refinancing Loans to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Loans to such Lender or Additional Lender and (ii) with respect to Refinancing Commitments, any Affiliated Lender providing a Refinancing Commitment shall be subject to the same restrictions set forth in Section 10.07(k) as they would otherwise be subject to with respect to any purchase by or assignment to such Affiliated Lender of Loans.

(d) *Effectiveness of Refinancing Amendment*. The effectiveness of any Refinancing Amendment, and the Refinancing Commitments thereunder, shall be subject to the satisfaction on the date thereof (a "**Refinancing Facility Closing Date**") of each of the following conditions, together with any other conditions set forth in the Refinancing Amendment:

(i) after giving effect to such Refinancing Commitments, the conditions of Sections 4.02(i) and (ii) shall be satisfied (it being understood that all references to “the date of such Borrowing” or similar language in such Section 4.02 shall be deemed to refer to the effective date of such Refinancing Amendment);

(ii) each Refinancing Commitment shall be in an aggregate principal amount that is not less than \$10,000,000 and shall be in an increment of \$1,000,000 (*provided* that such amount may be less than \$10,000,000 and not in an increment of \$1,000,000 if such amount is equal to the entire outstanding principal amount of Refinanced Debt); and

(iii) to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) customary legal opinions, board resolutions and officers’ certificates consistent with those delivered on the Closing Date (conformed as appropriate) other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel’s form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Refinancing Lenders are provided with the benefit of the applicable Loan Documents.

(e) *Required Terms.* The terms, provisions and documentation of the Refinancing Loans of any Class shall be as agreed between the Borrower and the applicable Refinancing Lenders providing such Refinancing Commitments, and except as otherwise set forth herein, to the extent not identical to any Class of Loans each existing on the Refinancing Facility Closing Date, shall be consistent with clauses (i) and (ii) below, as applicable, and otherwise reasonably satisfactory to the Administrative Agent. In any event:

(i) the Refinancing Loans:

(A) as of the Refinancing Facility Closing Date, shall not have a final scheduled maturity date earlier than the Maturity Date of the Refinanced Debt,

(B) as of the Refinancing Facility Closing Date, shall not have a Weighted Average Life to Maturity shorter than the remaining Weighted Average Life to Maturity of the Refinanced Debt,

(C) shall have an Applicable Rate and Eurocurrency Rate or Base Rate floor (if any), and subject to clauses (e)(i)(A) and (e)(i)(B) above, amortization determined by the Borrower and the applicable Refinancing Lenders,

(D) shall have fees determined by the Borrower and the applicable Refinancing Loan arranger(s),

(E) may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis (except for prepayments pursuant to Section 2.05(b)(iv) and Section 2.05(b)(vi)(A)(y) or any voluntary prepayments of any Class of Loans with an earlier Maturity Date than any other Classes of Loans)) in any voluntary or mandatory prepayments of Loans hereunder, or if junior in right of security, shall be on a junior basis with respect thereto,

(F) shall not have a greater principal amount than the principal amount of the Refinanced Debt plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees, expenses, OID and upfront fees associated with the refinancing, and

(G) (I) shall rank *pari passu* or junior in right of payment with the Obligations under Loans that are senior in right of payment and (II) shall be secured by the Collateral and shall rank *pari passu* or junior in right of security with the Obligations under the Initial Loans and other Loans that are required to be secured on a *pari passu* basis with the Initial Loans (and, if applicable, subject to a Subordination Agreement and/or a Third Lien Intercreditor Agreement (or, alternatively, terms in the Refinancing Amendment substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent) or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent); and

(ii) [Reserved].

(f) *Refinancing Amendment*. Commitments in respect of Refinancing Loans shall become additional Commitments pursuant to an amendment (a "**Refinancing Amendment**") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Refinancing Lender providing such Commitments, and the Administrative Agent. The Refinancing Amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15, including amendments as deemed necessary by the Administrative Agent in its reasonable judgment to effect any lien or payment subordination and associated rights of the applicable Lenders to the extent any Refinancing Loans are to rank junior in right of security or payment or to address technical issues relating to funding and payments. The Borrower will use the proceeds of the Refinancing Loans to extend, renew, replace, repurchase, retire or refinance, substantially concurrently, the applicable Refinanced Debt.

(g) [Reserved.]

(h) *Refinancing Equivalent Debt*.

(i) In lieu of incurring any Refinancing Loans, the Borrower may, upon notice to the Administrative Agent, at any time or from time to time after the Closing Date issue, incur or otherwise obtain (A) secured Indebtedness (including any Registered Equivalent Notes) in the form of one or more series of senior secured notes secured on a *pari passu* basis with the Initial Loans (such notes, "**Permitted Pari Passu Secured Refinancing Debt**"), (B) secured Indebtedness (including any Registered Equivalent Notes) in the form of one or more series of junior lien secured notes or junior lien secured term loans (such notes or term loans, "**Permitted Junior Secured Refinancing Debt**")

and (C) unsecured or subordinated Indebtedness (including any Registered Equivalent Notes) in the form of one or more series of unsecured or subordinated notes or term loans (such notes or term loans, “**Permitted Unsecured Refinancing Debt**” and together with Permitted Pari Passu Secured Refinancing Debt and Permitted Junior Secured Refinancing Debt, and, in each case, any Permitted Refinancing thereof, “**Refinancing Equivalent Debt**”), in each case, in exchange for, or to extend, renew, replace, repurchase, retire or refinance, in whole or in part, any existing Class of Loans (such Loans, “**Refinanced Loans**”).

(ii) Any Refinancing Equivalent Debt:

(A) (1) shall not have a Maturity Date prior to the date that is on or after the Maturity Date of the Refinanced Loans, (2) if in the form of term loans, shall not have a Weighted Average Life to Maturity shorter than the remaining Weighted Average Life to Maturity of the Refinanced Loans, (3) if in the form of notes, shall not have scheduled amortization or payments of principal and not be subject to mandatory redemption, repurchase, prepayment or sinking fund obligations (other than customary “AHYDO catch-up payments”, offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default), in each case prior to the Maturity Date of the Refinanced Loans, (4) shall not be guaranteed by Persons other than Guarantors, (5) if in the form of subordinated Permitted Unsecured Refinancing Debt, shall be subject to a Subordination Agreement to which a Senior Representative acting on behalf of the holders of such Permitted Unsecured Refinancing Debt shall have become a party or otherwise subject (or, alternatively, terms in the definitive documentation for such Refinancing Equivalent Debt substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent); *provided* that if such Permitted Unsecured Refinancing Debt is the initial subordinated Permitted Unsecured Refinancing Debt incurred by the Borrower, then Holdings, the Borrower, the Subsidiary Guarantors, the Administrative Agent and the Senior Representative for such Permitted Unsecured Refinancing Debt shall have executed and delivered a Subordination Agreement, (6) shall not have a greater principal amount than the principal amount of the Refinanced Loans plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees, expenses, OID and upfront fees associated with the refinancing and (7) except as otherwise set forth in this clause (h)(ii), shall have terms and conditions (other than with respect to pricing, fees, rate floors and optional prepayment or redemption terms) substantially similar to, or (taken as a whole) no more favorable (as reasonably determined by the Borrower) to the lenders or holders providing such Refinancing Equivalent Debt, than those applicable to the Refinanced Loans (except for covenants or other provisions (a) conformed (or added) in the Loan Documents, for the benefit of the Lenders holding Initial Loans, pursuant to an amendment thereto subject solely to the reasonable satisfaction of the Administrative Agent or (b) applicable only to periods after the Latest Maturity Date at the time of the issuance or incurrence of such Refinancing Equivalent Debt) or such terms and conditions shall be current market terms for such type of Refinancing Equivalent Debt (as reasonably determined in good faith by the Borrower),

(B) (1) if either Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt, shall be subject to security agreements relating to such Refinancing Equivalent Debt that are substantially the same as or more favorable to the Loan Parties than the Collateral Documents (with such differences as are reasonably satisfactory to the Administrative Agent), (2) if Permitted Pari Passu Secured Refinancing Debt, (x) shall be secured by the Collateral on a *pari passu* basis with the Obligations under Initial Loans and other Loans required to be secured on a *pari passu* basis with the Initial Loans and shall not be secured by any property or assets of Holdings, the Borrower or any Restricted Subsidiary other than the Collateral, and (y) shall be subject to the Second Lien Intercreditor Agreement, if applicable, or a Junior Lien Intercreditor Agreement to which a Senior Representative acting on behalf of the holders of such Permitted Pari Passu Secured Refinancing Debt shall have become a party or otherwise subject and (3) if Permitted Junior Secured Refinancing Debt, (x) shall be secured by the Collateral on a junior priority basis to the Liens securing the Initial Loans and other Loans required to be secured on a *pari passu* basis with the Initial Loans and shall not be secured by any property or assets of Holdings, the Borrower or any Restricted Subsidiary other than the Collateral, and (y) shall be subject to a Third Lien Intercreditor Agreement to which a Senior Representative acting on behalf of the holders of such Permitted Junior Secured Refinancing Debt shall have become a party or otherwise subject or other lien subordination or intercreditor arrangement satisfactory to the Borrower and the Administrative Agent, and

(C) shall be incurred solely to repay, repurchase, retire or refinance substantially concurrently the Refinanced Loans.

(iii) This Section 2.15 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.16 Extension of Loans.

(a) *Extension of Loans.* The Borrower may at any time and from time to time request that all or a portion of the Loans of a given Class (an “**Existing Tranche**”) be amended to extend the scheduled Maturity Date(s) with respect to the Loans of such Existing Tranche (any such Loans which have been so amended, “**Extended Loans**”) and to provide for other terms consistent with this Section 2.16. In order to establish any Extended Loans, the Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Loan Tranche) (each, an “**Extension Request**”) setting forth the proposed terms of the Extended Loans to be established, which shall (x) be identical as offered to each Lender under such Existing Tranche (including as to the proposed interest rates and fees payable, but excluding any arrangement, structuring or other similar fees payable in connection therewith that are not generally shared with all relevant Lenders) and offered pro rata to each Lender under such Existing Tranche and (y) be identical to the Loans under the Existing

Tranche from which such Extended Loans are intended to be amended, except that: (i) all or any of the scheduled amortization payments of principal of the Extended Loans may be delayed to later dates than the scheduled amortization payments of principal of the Loans of such Existing Tranche, to the extent provided in the applicable Extension Amendment; *provided, however*, that at no time shall there be Classes of Extended Loans and Refinancing Loans hereunder which have more than five (5) different Maturity Dates; (ii) the All-In Yield with respect to the Extended Loans (whether in the form of interest rate margin, upfront fees, original issue discount or otherwise) may be different than the All-In Yield for the Loans of such Existing Tranche, in each case, to the extent provided in the applicable Extension Amendment; (iii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Loans); and (iv) Extended Loans may have call protection as may be agreed by the Borrower and the Lenders thereof; *provided*, that no Extended Loans may be optionally prepaid prior to the Maturity Date of the Initial Loans, unless such optional prepayment is accompanied by a pro rata optional prepayment of the Initial Loans; *provided, however*, that (A) no Event of Default shall have occurred and be continuing at the time an Extension Request is delivered to Lenders, (B) in no event shall the Maturity Date of any Extended Loans of a given Extension Series at the time of establishment thereof be earlier than the Maturity Date of the Existing Tranche, (C) the Weighted Average Life to Maturity of any Extended Loans of a given Loan Extension Series at the time of establishment thereof shall be no shorter than the remaining Weighted Average Life to Maturity of the Existing Tranche, (D) all documentation in respect of such Extension Amendment shall be consistent with the foregoing and (E) any Extended Loans may participate on a pro rata basis or less than or greater than a pro rata basis in any voluntary repayments or prepayments of principal of Loans hereunder and on a pro rata basis or less than a pro rata basis (but not greater than a pro rata basis except in the case of a prepayment under Section 2.05(b)(iv) and Section 2.05(b)(vi)(A)(y)), in any mandatory repayments or prepayments of Loans hereunder, in each case as specified in the respective Extension Request. Any Extended Loans amended pursuant to any Extension Request shall be designated a series (each, an “**Extension Series**”) of Extended Loans for all purposes of this Agreement; *provided* that any Extended Loans amended from an Existing Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Extension Series with respect to such Existing Tranche (in which case scheduled amortization with respect thereto shall be proportionately increased). Each request for an Extension Series of Extended Loans proposed to be incurred under this Section 2.16 shall be in an aggregate principal amount that is not less than \$10,000,000 (it being understood that the actual principal amount thereof provided by the applicable Lenders may be lower than such minimum amount) and the Borrower may impose an Extension Minimum Condition with respect to any Extension Request, which may be waived by the Borrower in its sole discretion.

(b) [Reserved].

(c) *Extension Request.* The Borrower shall provide the applicable Extension Request at least five (5) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to the date on which Lenders under the Existing Tranche are requested to respond, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.16. No Lender shall have any obligation to agree to have any of its Loans of any Existing

Tranche amended into Extended Loans pursuant to any Extension Request. Any Lender holding a Loan under an Existing Tranche (each, an “**Extending Lender**”) wishing to have all or a portion of its Loans under the Existing Tranche subject to such Extension Request amended into Extended Loans shall notify the Administrative Agent (each, an “**Extension Election**”) on or prior to the date specified in such Extension Request of the amount of its Loans under the Existing Tranche which it has elected to request be amended into Extended Loans (subject to any minimum denomination requirements imposed by the Administrative Agent). In the event that the aggregate principal amount of Loans under the Existing Tranche in respect of which applicable Lenders shall have accepted the relevant Extension Request exceeds the amount of Extended Loans requested to be extended pursuant to the Extension Request, Loans subject to Extension Elections shall be amended to Extended Loans on a pro rata basis (subject to rounding by the Administrative Agent, which shall be conclusive) based on the aggregate principal amount of Loans included in each such Extension Election.

(d) *Extension Amendment.* Extended Loans shall be established pursuant to an amendment (each, a “**Extension Amendment**”) to this Agreement among the Borrower, the Administrative Agent and each Extending Lender providing an Extended Loan thereunder, which shall be consistent with the provisions set forth in Section 2.16(a) above (but which shall not require the consent of any other Lender). The effectiveness of any Extension Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in Section 4.02 and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) legal opinions, board resolutions and officers’ certificates consistent with those delivered on the Closing Date (conformed as appropriate) other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel’s form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that the Extended Loans are provided with the benefit of the applicable Loan Documents. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment. Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Extended Loans incurred pursuant thereto, (ii) modify the scheduled repayments set forth in Section 2.07 with respect to any Existing Tranche subject to an Extension Election to reflect a reduction in the principal amount of the Loans required to be paid thereunder in an amount equal to the aggregate principal amount of the Extended Loans amended pursuant to the applicable Extension (with such amount to be applied to reduce scheduled repayment of such Loans on the Maturity Date as required pursuant to Section 2.07), (iii) modify the prepayments set forth in Section 2.05 to reflect the existence of the Extended Loans and the application of prepayments with respect thereto, (iv) address technical issues relating to funding and payments and (v) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.16, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment.

(e) No conversion of Loans pursuant to any Extension in accordance with this Section 2.16 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

Section 2.17 Defaulting Lenders.

(a) *Adjustments*. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower may request (so long as no Default or Event of Default has occurred and is continuing), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders, as a result of any judgment of a court of competent jurisdiction obtained by any Lender, against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.17(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(b) *Defaulting Lender Cure*. If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

ARTICLE III.
TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

Section 3.01 Taxes.

(a) Except as provided in this Section 3.01, any and all payments made by or on account of the Borrower or Guarantor under any Loan Document shall be made free and clear of and without deduction for any Taxes, except as required by any Law. If the Borrower, any Guarantor or other applicable withholding agent shall be required by any Laws to deduct any Taxes from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (i) if the Tax in question is an Indemnified Tax or Other Tax, the sum payable by the Borrower or any Guarantor shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.01), each Lender (or, in the case of a payment made to an Agent for its own account, such Agent) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions, (iii) the applicable withholding agent shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), if the Borrower or any Guarantor is the applicable withholding agent, it shall furnish to such Agent or Lender (as the case may be) the original or a copy of a receipt evidencing payment thereof or other evidence acceptable to such Agent or Lender.

(b) In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary Taxes and any other excise, property, intangible or mortgage recording Taxes, imposed by any Governmental Authority, which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document excluding, in each case, any such Tax imposed as a result of a Lender's Assignment and Assumption, grant of a participation, transfer or assignment to or designation of a new applicable Lending Office or other office for receiving payments under any Loan Document (collectively, "**Assignment Taxes**"), except for Assignment Taxes resulting from assignment or participation that is requested or required in writing by the Borrower (all such non-excluded Taxes described in this Section 3.01(b) being hereinafter referred to as "**Other Taxes**").

(c) Borrower and each Guarantor agrees to indemnify each Agent and each Lender for (i) the full amount of Indemnified Taxes and Other Taxes payable by such Agent or such Lender (including Indemnified Taxes and Other Taxes imposed on or attributable to amounts payable under this Section 3.01) and (ii) any expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the Governmental Authority. A certificate as to the amount of such payment or liability prepared in good faith and delivered by such Agent or Lender (or by an Agent on behalf of such Lender), accompanied by a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts shall be conclusive absent manifest error.

(d) Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Law or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, any applicable withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation obsolete or inaccurate in any material respect, deliver promptly and on or before the date such documentation expires, becomes obsolete or inaccurate to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding Tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the applicable withholding agent shall withhold amounts required to be withheld by applicable Law from such payments at the applicable statutory rate. Notwithstanding any other provision of this clause (d), a Lender shall not be required to deliver any form pursuant to this clause (d) that such Lender is not legally eligible to deliver. Without limiting the foregoing:

(i) Each Lender that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed original copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding.

(ii) Each Lender that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(A) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party,

(B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Sections 871(h) or 881(c) of the Code, (A) a certificate substantially in the form of Exhibit H hereto (any such certificate a “**United States Tax Compliance Certificate**”) and (B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms),

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a Participant holding a participation granted by a participating Lender), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, W-8BEN-E United States Tax Compliance Certificate, Form W-9, Form W-8IMY or any other required information from each beneficial owner, as applicable (*provided* that, if the Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such partner(s)), or

(E) two properly completed and duly signed original copies of any other form prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, U.S. federal withholding tax on any payments to such Lender under the Loan Documents.

(iii) Each Agent that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent two properly completed and duly signed original copies of Internal Revenue Service Form W-9 with respect to fees received for its own account, certifying that such Agent is exempt from U.S. federal backup withholding. Each Agent that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent two properly completed and duly signed original copies of (A) Internal Revenue Service Form W-8ECI with respect to fees received for its own account and (B) Internal Revenue Service Form W-8IMY (together with all required accompanying documentation) with respect to payments received by it on behalf of the Lenders. Notwithstanding anything to the contrary in this Section 3.01(d)(iii), no Agent shall be required to deliver any documentation that such Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

(e) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Laws and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Laws and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has or has not complied with such Lender’s obligations under FATCA and, if necessary, to determine the amount to deduct and withhold from such payment. For purposes of this clause (e), the term “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(f) Any Lender or Agent claiming any additional amounts payable pursuant to this Section 3.01 shall use its reasonable efforts to mitigate or reduce the additional amounts payable, which reasonable efforts may include a change in the jurisdiction of its Lending Office (or any other measures reasonably requested by the Borrower) if such a change or other measures would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, result in any unreimbursed cost or expense or be otherwise disadvantageous to such Lender.

(g) If any Lender or Agent determines, in its sole discretion, that it has received a refund in respect of any Indemnified Taxes or Other Taxes as to which indemnification or additional amounts have been paid to it by a Loan Party pursuant to this Section 3.01, it shall promptly remit such refund to such Loan Party (but only to the extent of indemnification or additional amounts paid by the Loan Party under this Section 3.01(g) with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) of the Lender or Agent, as the case may be, and without interest (other than any interest paid by the relevant taxing authority with respect to such refund net of any Taxes payable by any Agent or Lender on such interest); *provided* that the Loan Parties, upon the request of the Lender or Agent, as the case may be, agree promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant taxing authority) to such party in the event such party is required to repay such refund to the relevant taxing authority. This Section 3.01(g) shall not be construed to require any Agent or any Lender to make available its tax returns (or any other information relating to Taxes that it deems confidential) to the Borrower or any other Person.

Section 3.02 Illegality.

If any Lender reasonably determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans, or to determine or charge interest rates based upon the Eurocurrency Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Loans to Eurocurrency Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all applicable Eurocurrency Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to

maintain such Eurocurrency Rate Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment and conversion.

Section 3.03 Inability to Determine Rates.

If the Required Lenders reasonably determine that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that (a) deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount, currency and Interest Period of such Eurocurrency Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan or in connection with an existing or proposed Base Rate Loan, or (c) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Section 3.04 Increased Cost and Reduced Return; Capital Adequacy; Eurocurrency Rate Loan Reserves.

(a) If any Lender reasonably determines that as a result of a Change in Law, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining Eurocurrency Rate Loans or (as the case may be) issuing or participating in Letters of Credit, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (including any Taxes (other than (i) Indemnified Taxes or Other Taxes or (ii) Taxes excluded from the definition of Indemnified Taxes (other than Taxes excluded solely under clause (ii) thereof)), including by imposing, modifying or holding applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other

liabilities or capital attributable thereto, and excluding for purposes of this Section 3.04(a) any such increased costs or reduction in amount resulting from reserve requirements contemplated by Section 3.04(b) or the definition of Eurocurrency Rate), then from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by it, or participations in or issuance of Letters of Credit by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity and such Lender's desired return on capital), then from time to time upon demand of such Lender (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender, as the case may be, within fifteen (15) days after demand by such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, additional interest on the unpaid principal amount of each applicable Eurocurrency Rate Loan of the Borrower equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financing regulatory authority imposed in respect of the maintenance of the Commitments or the funding of any Eurocurrency Rate Loans of the Borrower, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrower shall have received at least fifteen (15) days' prior notice (with a copy to the Administrative Agent) of such additional interest or cost from such Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such notice.

Section 3.05 Funding Losses.

Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense actually incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Eurocurrency Rate Loan of the Borrower on a day other than the last day of the Interest Period for such Loan; or

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurocurrency Rate Loan of the Borrower on the date or in the amount notified by the Borrower; including any loss or expense (excluding loss of anticipated profits or margin) arising from the liquidation or reemployment of funds obtained by it to maintain such Eurocurrency Rate Loan or from fees payable to terminate the deposits from which such funds were obtained.

Section 3.06 Matters Applicable to All Requests for Compensation.

(a) If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect; *provided* nothing in this Section 3.06(a) shall affect or postpone any Obligations of the Borrower or the rights of the Lenders under this Article III.

(b) If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue Eurocurrency Rate Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into Eurocurrency Rate Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(d) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of Section 3.01, 3.02, 3.03 or 3.04 shall not constitute a waiver of such Lender's right to demand such compensation, *provided* that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of Section 3.01, 3.02, 3.03 or 3.04 for any increased costs incurred or reductions suffered more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event giving rise to such claim and of such Lender's intention to claim compensation therefor (except that, if the circumstance giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

(d) If the obligation of any Lender to make or continue any Eurocurrency Rate Loan or to convert Base Rate Loans into Eurocurrency Rate Loans shall be suspended pursuant to Section 3.06(b) hereof, such Lender's applicable Eurocurrency Rate Loans shall be automatically converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for such Eurocurrency Rate Loans (or, in the case of any immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurocurrency Rate Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's applicable Eurocurrency Rate Loans shall be applied instead to its Base Rate Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurocurrency Rate Loans shall be made or continued instead as Base Rate Loans (if possible), and all Base Rate Loans of such Lender that would otherwise be converted into Eurocurrency Rate Loans shall remain as Base Rate Loans.

(e) If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of any of such Lender's Eurocurrency Rate Loans pursuant to this Section 3.06 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurocurrency Rate Loans made by other Lenders under the applicable Facility are outstanding, if applicable, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurocurrency Rate Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurocurrency Rate Loans under such Facility and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments for the applicable Facility.

(f) Any Agent or Lender claiming compensation under this Article III shall deliver a certificate to the Borrower setting forth in reasonable detail the additional amount or amounts to be paid to it hereunder, which shall be conclusive on the absence of manifest error. In determining such amounts, such Agent or Lender may use any reasonable averaging and attribution methods. Any Agent or Lender claiming compensation under Section 3.04 shall do so only to the extent such Agent or Lender requires similarly situated borrowers under comparable credit facilities to pay such amounts.

Section 3.07 Replacement of Lenders under Certain Circumstances.

If (i) any Lender ceases to make Eurocurrency Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, (iii) any Lender is a Non-Consenting Lender, (iv) any Lender becomes a Defaulting Lender, or (v) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and

delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement (or, with respect to clause (iii) above, all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver and amendment) and the related Loan Documents to one or more Eligible Assignees (provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person) that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided* that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.07(b)(ii)(B);

(b) such Lender shall have received payment of an amount equal to the applicable outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower;

(c) such Lender being replaced pursuant to this Section 3.07 shall (1) execute and deliver an Assignment and Assumption with respect to all, or a portion as applicable, of such Lender's Commitment and outstanding Loans, and (2) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); *provided* that the failure of any such Lender to execute an Assignment and Assumption or deliver such Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment may be recorded in the Register and the Notes shall be deemed to be canceled upon such failure;

(d) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender;

(e) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(f) such assignment shall not conflict with applicable Laws; and

(g) the Lender that acts as the Administrative Agent cannot be replaced in its capacity as Administrative Agent other than in accordance with Section 9.06,

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each affected Lender or all the Lenders with respect to a certain Class or Classes of the Loans and/or Commitments and (iii) the Required Lenders (or, in the case of a consent, waiver or amendment involving all affected Lenders of a certain Class, the Required Class Lenders) have agreed (but solely to the extent required by Section 10.01) to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "**Non-Consenting Lender.**"

In connection with any such replacement, (i) if the Lender to be replaced is a Non-Consenting Lender, the Borrower shall pay to each Non-Consenting Lender, concurrently with the effectiveness of the respective assignment, the fee set forth in Section 2.05(a)(vi) to the extent applicable and (ii) if any such Non-Consenting Lender or Defaulting Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Assumption reflecting such replacement within five (5) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Assumption Agreement to such Non-Consenting Lender or Defaulting Lender, then such Non-Consenting Lender or Defaulting Lender shall be deemed to have executed and delivered such Assignment and Assumption without any action on the part of the Non-Consenting Lender or Defaulting Lender.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 3.08 Survival.

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, resignation of the Administrative Agent and any assignment of rights by, or replacement of, any Lender.

ARTICLE IV.
CONDITIONS PRECEDENT TO BORROWINGS

Section 4.01 Conditions to Borrowing on the Closing Date.

The obligation of each Lender to make a Borrowing hereunder on the Closing Date is subject to satisfaction of the following conditions precedent, except as otherwise agreed between the Borrower and the Administrative Agent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or pdf copies or other facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party:

(i) a Committed Loan Notice in accordance with the requirements hereof;

(ii) executed counterparts of this Agreement;

(iii) a Note executed by the Borrower in favor of each Lender that has requested a Note at least two (2) Business Days in advance of the Closing Date;

(iv) the Security Agreement, Perfection Certificate, Intellectual Property Security Agreement and each other Collateral Document required to be executed on the Closing Date, duly executed by each Loan Party thereto, together with:

(A) to the extent not delivered to the First Lien Collateral Agent as bailee for the Collateral Agent pursuant to the Second Lien Intercreditor Agreement, certificates, if any, representing the Pledged Equity referred to therein accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank; and

(B) evidence that all other actions, recordings and filings required by the Collateral Documents (other than the filing or recording of any Mortgages) that the Administrative Agent may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been taken, completed or otherwise provided for;

(v) such certificates of good standing (to the extent such concept exists) from the applicable secretary of state of the state of organization of each Loan Party, certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Closing Date;

(vi) an opinion from Weil, Gotshal & Manges LLP, counsel to the Loan Parties, in customary form;

(vii) a solvency certificate from the chief financial officer, chief accounting officer or other officer with duties of the Borrower (after giving effect to the Transactions) substantially in the form attached hereto as Exhibit D-2;

(viii) evidence that the Administrative Agent has been named as loss payee and/or additional insured, as applicable, under each insurance policy with respect to all insurance as to which the Administrative Agent shall have reasonably requested to be so named; and

(ix) a copy of the Second Lien Intercreditor Agreement, duly executed and delivered by each party thereto;

provided, however, that, each of the requirements set forth in clauses (iv) and (ix) above, including the delivery of documents and instruments necessary to satisfy the Collateral and Guarantee Requirement (except for the execution and delivery of the Security Agreement and to the extent that a Lien on the Collateral may be perfected (x) by the filing of a financing statement under the Uniform Commercial Code or (y) by the delivery of stock certificates of the Borrower and the Subsidiary Guarantors with respect to which a Lien may be perfected upon closing by the delivery of a stock certificate), shall not constitute conditions precedent to any Borrowing on the Closing Date after the Borrower's use of commercially reasonable efforts to satisfy such requirement on or prior to the Closing Date without undue burden or expense (1) if the Borrower agrees to deliver, or cause to be delivered, such evidence of insurance, documents and instruments, or take or cause to be taken such other actions as may be required to confirm such

insurance or perfect such security interests within ninety (90) days after the Closing Date (subject to extensions approved by the Administrative Agent in its reasonable discretion) or (2) other than with respect to the Borrower and Holdings, if the delivery of such documents and instruments cannot be provided as a condition precedent solely because the Board of Directors of the applicable entities (each such entity, a “**Deferred Loan Party**”) have not authorized such documents or instruments (such documents and instruments, the “**Duly Authorized Documents**”) and the elections of new directors or managers, as the case may be, of the applicable Deferred Loan Party’s Board of Directors, to authorize such documents or instruments has not taken place.

(b) Payment of all fees and expenses due to the Administrative Agent and the Arrangers, to the extent invoiced at least three (3) Business Days prior to the Closing Date (except as otherwise reasonably agreed by the Borrower), required to be paid on the Closing Date.

(c) Prior to or substantially concurrently with the initial Borrowing on the Closing Date, (i) the Equity Contribution shall have been consummated; (ii) the initial borrowings under the First Lien Credit Agreement shall have been consummated; (iii) the Merger shall have been consummated in accordance with the terms of the Merger Agreement, and the Merger Agreement shall not have been amended or waived, and no consents shall have been given with respect thereto, in any material respect by the Borrower or any of its Subsidiaries in a manner materially adverse to the Lenders or the Arrangers (in each case in their capacity as such) without the consent of the Arrangers (such consent not to be unreasonably withheld, conditioned or delayed); *provided that* (a) any amendment, waiver or consent that results in a change in the amount of consideration required to consummate the Merger shall be deemed not to be materially adverse to the Lenders or the Arrangers so long as (i) any reduction shall be applied as follows: (1) 70% to reduce the commitments in respect of Initial Loans and the First Lien Initial Term Loans on a pro rata basis and (2) 30% to reduce the Equity Contribution, and (ii) any increase is funded by amounts permitted to be drawn under the First Lien Revolving Credit Commitments or the Equity Contribution (as the Equity Contribution may be increased), (b) the granting of any consent under the Merger Agreement that is not materially adverse to the interests of the Lenders or the Arrangers shall not otherwise constitute an amendment or waiver and (c) any change to the definition of “Material Adverse Change” in the Merger Agreement shall be deemed materially adverse to the Lenders and the Arrangers; and (iv) the Refinancing shall have been consummated.

(d) There shall not have occurred a Material Adverse Change (as defined in, and interpreted pursuant to, the Merger Agreement) since the date of the Merger Agreement.

(e) The Specified Representations shall be true and correct in all material respects and a Responsible Officer of the Borrower shall have certified as to the same.

(f) The Arrangers shall have received the Audited Financial Statements.

(g) The Administrative Agent shall have received, at least two (2) days prior to the Closing Date, all documentation and other information about the Borrower and the Guarantors required under applicable “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act, that has been requested by the Administrative Agent in writing at least ten (10) days prior to the Closing Date.

(h) The Specified Merger Agreement Representations shall be true and correct in all material respects, but only to the extent the failure of the Specified Merger Agreement Representations to be true and correct in all material respects gives the Merger Sub (or its applicable Affiliate) the right to terminate its obligation to consummate (or gives the Merger Sub (or its applicable Affiliate) the right not to consummate) the Acquisition under the Merger Agreement.

Without limiting the generality of the provisions of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.02 Conditions to All Borrowings After the Closing Date.

The obligation of each Lender to honor any Committed Loan Notice (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) after the Closing Date is subject to the following conditions precedent:

(i) The representations and warranties of each Loan Party set forth in Article V and in each other Loan Document shall be true and correct in all material respects on and as of the date of such Borrowings with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(ii) No Default shall exist or would result from such proposed Borrowing or from the application of the proceeds therefrom.

(iii) The Administrative Agent and shall have received a Committed Loan Notice in accordance with the requirements hereof.

Each Committed Loan Notice (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by the Borrower after the Closing Date shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(i) and (ii) have been satisfied on and as of the date of the applicable Borrowing.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES

The Borrower and each of the Subsidiary Guarantors party hereto represent and warrant to the Agents and the Lenders at the time of each Borrowing (to the extent required to be true and correct for such Borrowing pursuant to Article IV) that:

Section 5.01 Existence, Qualification and Power; Compliance with Laws.

Each Loan Party and each Restricted Subsidiary that is a Material Subsidiary (a) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concept exists in such jurisdiction), (b) has all requisite power and authority to (i) own or lease its assets and carry on its business as currently conducted and (ii) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and in good standing (to the extent such concept exists in such jurisdiction) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all applicable Laws, orders, writs and injunctions and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case referred to in clause (a) (other than with respect to Holdings and the Borrower), (b)(i) (other than with respect to Holdings and the Borrower), (c), (d) or (e), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.02 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transactions, (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01), or require any payment to be made under (x) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject or (iii) violate any Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) (A) referred to in clauses (ii) and (iii), to the extent that such violation, conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect and (B) solely for purposes of Section 4.01, (x) clause (iii) shall be limited to any violation of applicable Law that would result in a Company Material Adverse Effect and (y) clause (i) shall be limited to a contravention arising out of the execution, delivery and performance of the Loan Documents.

Section 5.03 Governmental Authorization; Other Consents.

No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement) and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect.

Section 5.04 Binding Effect.

This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is a party thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by (i) Debtor Relief Laws and by general principles of equity principles of good faith and fair dealing, and (ii) the need for filings and registrations necessary to create or perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties and (iii) the effect of foreign Laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

Section 5.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements fairly present in all material respects the financial condition of the Portillo Restaurant Group as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(b) The Unaudited Financial Statements fairly present in all material respects the financial condition of the Persons referred to therein as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except (i) as otherwise expressly noted therein and (ii) to normal year-end audit adjustments, the absence of footnotes and other presentation items.

(c) The forecasts of consolidated balance sheets, income statements and cash flow statements of the Borrower and its Subsidiaries for each of the fiscal years ending July 31, 2015 through July 31, 2021, copies of which have been furnished to the Administrative Agent prior to the Closing Date, and all Projections delivered pursuant to Section 6.01 have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made, it being understood that projections as to future events are not to be viewed as facts and actual results may vary materially from such forecasts.

(d) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

Section 5.06 Litigation.

Except as set forth in Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Restricted Subsidiaries or against any of their properties or revenues (other than actions, suits, proceedings and claims in connection with the Transactions) that either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.07 Ownership of Property; Liens.

The Borrower and each of its Restricted Subsidiaries has good record title to, or valid leasehold interests in, or easements or other limited property interests in, all Real Property necessary in the ordinary conduct of its business, free and clear of all Liens except as set forth in Schedule 5.07 and except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted by Section 7.01 and except where the failure to have such title or other interest could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.08 Environmental Matters.

Except as specifically disclosed in Schedule 5.08 or except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) each Loan Party and its respective properties and operations are in compliance with all Environmental Laws, which includes obtaining and maintaining all applicable Environmental Permits required under such Environmental Laws to carry on the business of the Loan Parties;

(b) the Loan Parties have not received any written notice that alleges any of them is in violation of or potentially liable under any Environmental Laws and none of the Loan Parties nor any of the Real Property is the subject of any claims, investigations, liens, demands, or judicial, administrative or arbitral proceedings pending or, to the knowledge of the Borrower, threatened in writing, under any Environmental Law the effect of which would be to impose liability on any Loan Party under such Environmental Law or to revoke or modify any Environmental Permit held by any of the Loan Parties; and

(c) there has been no Release of Hazardous Materials on, at, under or from any Real Property or facilities owned, operated or leased by any of the Loan Parties, or, to the knowledge of the Borrower, Real Property formerly owned, operated or leased by any Loan Party that, in any case, could reasonably be expected to require the Borrower to perform any investigation, remedial activity or corrective action or cleanup under Environmental Laws or could otherwise reasonably be expected to result in the Borrower incurring liability under Environmental Laws.

Section 5.09 Taxes.

Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Borrower and its Restricted Subsidiaries have timely filed all tax returns required to be filed by them, and have paid all Taxes levied or imposed upon them or their properties, income, profits or assets, that are due and payable (including in their capacity as a withholding agent), except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax deficiency or assessment known to any Loan Parties against the Loan Parties that, if made would, individually or in the aggregate, have a Material Adverse Effect.

Section 5.10 ERISA Compliance.

(a) Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other applicable Federal or state Laws.

(b) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); and (iii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan, except, with respect to each of the foregoing clauses of this Section 5.10(b), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.11 Subsidiaries; Equity Interests.

As of the Closing Date (after giving effect to the Transactions), no Loan Party has any Material Subsidiaries other than those specifically disclosed in Schedule 5.11, and all of the outstanding Equity Interests owned by the Loan Parties (or a Subsidiary of any Loan Party) in such Material Subsidiaries have been validly issued and are fully paid and all Equity Interests owned by a Loan Party (or a Subsidiary of any Loan Party) in such Material Subsidiaries are owned free and clear of all Liens except (i) those created under the Collateral Documents and (ii) any Lien that is permitted under Section 7.01. As of the Closing Date, Schedules 1(a) and 5(a) to the Perfection Certificate (a) set forth the name and jurisdiction of each Domestic Subsidiary that is a Loan Party, (b) set forth the ownership interest of the Borrower and any other Subsidiary thereof in each Subsidiary, including the percentage of such ownership and (c) identifies each Subsidiary that is a Subsidiary the Equity Interests of which are required to be pledged on the Closing Date pursuant to the Collateral and Guarantee Requirement.

Section 5.12 Margin Regulations; Investment Company Act.

(a) The Borrower is not engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation U of the Board of Governors of the United States Federal Reserve System.

(b) Neither the Borrower nor any of its Restricted Subsidiaries is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

Section 5.13 Disclosure.

No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, *pro forma* financial information and information of a general economic or industry nature) to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not materially misleading. With respect to projected financial information and *pro forma* financial information, the Borrower represents that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

Section 5.14 Labor Matters.

Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against the Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened and (b) hours worked by and payments made to employees of the Borrower or any of its Restricted Subsidiaries have been in compliance with the Fair Labor Standards Act or any other applicable Laws dealing with such matters.

Section 5.15 Intellectual Property; Licenses, Etc.

The Borrower and its Restricted Subsidiaries own, license or possess the right to use all of the trademarks, service marks, trade names, domain names, copyrights, patents, patent rights, licenses, technology, software, know-how database rights, design rights and other intellectual property rights (collectively, “**IP Rights**”) that are reasonably necessary for the operation of their respective businesses as currently conducted, and such IP Rights do not conflict with the rights of any Person, except to the extent the absence of such IP Rights and such conflicts, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower and its Restricted Subsidiaries as currently conducted does not infringe upon any rights held by any Person except for such infringements, individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the IP Rights is pending or, to the knowledge of the Borrower, threatened in writing against any Loan Party or any of the Restricted Subsidiaries, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.16 Solvency.

On the Closing Date, after giving effect to the Transactions, the Borrower and its Restricted Subsidiaries, on a consolidated basis, are Solvent.

Section 5.17 Subordination of Junior Financing.

The Obligations under any Facility are “Senior Debt,” “Senior Indebtedness,” “Guarantor Senior Debt” or “Senior Secured Financing” (or any comparable term) under, and as defined in, any Junior Financing Documentation in respect of any Junior Financing that is subordinated in right of payment to the Obligations under such Facility.

Section 5.18 USA Patriot Act, Anti-Corruption Laws and Sanctions.

(a) To the extent applicable, each of Holdings and its Subsidiaries is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the USA Patriot Act.

(b) (i) No part of the proceeds of the Loans (or any Letters of Credit) will be used directly or, to the knowledge of Holdings and its Subsidiaries, indirectly, (A) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (the “**FCPA**”) or (B) except as would not reasonably be expected to have a Material Adverse Effect, in violation of any other Anti-Corruption Laws and (ii) Holdings, its Subsidiaries and, to the knowledge of Holdings or such Subsidiary, their respective directors, officers and employees, are currently in compliance with (A) the FCPA in all material respects and (B) except as would not reasonably be expected to have a Material Adverse Effect, any other Anti-Corruption Laws.

(c) (i) None of Holdings or its Subsidiaries will directly or, to the knowledge of Holdings or such Subsidiary, indirectly, use the proceeds of the Loans in violation of applicable Sanctions or otherwise knowingly make available such proceeds to any Person for the purpose of financing the activities of any Sanctioned Person, except to the extent licensed, exempted or otherwise approved by a competent governmental body responsible for enforcing such Sanctions, (ii) none of Holdings, any Subsidiary or to the knowledge of Holdings or such Subsidiary, their respective directors, officers or employees or, to the knowledge of the Borrower, any controlled Affiliate of Holdings, the Borrower or its Subsidiaries that will act in any capacity in connection with or benefit from any Facility, is a Sanctioned Person and (iii) none of Holdings, its Subsidiaries or, to the knowledge of Holdings or such Subsidiary, their respective directors, officers and employees, are in violation of applicable Sanctions in any material respect.

Section 5.19 Security Documents.

Except as otherwise contemplated hereby or under any other Loan Documents, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents (including the delivery to the Administrative Agent (or the First Lien Administrative Agent as bailee for the Administrative Agent pursuant to the Second Lien Intercreditor Agreement) of any Pledged Debt and any Pledged Equity required to be delivered pursuant to the applicable Collateral Documents), are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties, except as otherwise provided hereunder, including subject to Liens permitted by Section 7.01, a legal, valid, enforceable and perfected second priority Lien on all right, title and interest of the respective Loan Parties in the Collateral described therein.

Notwithstanding anything herein (including this Section 5.19) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty as to (A) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (C) on the Closing Date and until required pursuant to Section 6.11 or 4.01(a)(iv), the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Closing Date pursuant to Section 4.01(a)(iv).

ARTICLE VI.
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements as to which arrangements reasonably satisfactory to the applicable Hedge Bank have been made) hereunder which is accrued and payable shall remain unpaid or unsatisfied, then from and after the Closing Date, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.15) cause each of its Restricted Subsidiaries to:

Section 6.01 Financial Statements.

Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) commencing with the fiscal year ending December 31, 2014, within one hundred fifty (150) days after the end of each of the fiscal years of the Borrower ending December 31, 2014 and December 31, 2015, and one hundred twenty (120) days after the end of each fiscal year of the Borrower thereafter, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of comprehensive income, shareholders' equity and cash flows for such fiscal year, setting forth in each case commencing with the fiscal year ending December 31, 2015, in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an accounting firm, which accounting firm shall,

commencing with the fiscal year ending December 31, 2015, be an independent registered public accounting firm of nationally recognized standing, which report and opinion (i) shall be prepared in accordance with generally accepted auditing standards and (ii) shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit (except as may be required as a result of (x) a prospective or actual event of default with respect to the Financial Covenant (as defined under the First Lien Credit Agreement), or (y) the impending maturity of any Facility, any Incremental Equivalent Debt, any Refinancing Equivalent Debt, the First Lien Term Loans, any First Lien Incremental Equivalent Debt or any First Lien Refinancing Equivalent Debt);

(b) commencing with the fiscal quarter ending September 30, 2014, within seventy-five (75) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter and the related (i) consolidated statements of comprehensive income for such fiscal quarter and for the portion of the fiscal year then ended and (ii) consolidated statements of cash flows for the portion of the fiscal year then ended, setting forth in each case commencing with the fiscal quarter ending September 30, 2015 in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) no later than one hundred fifty (150) days after the end of the fiscal year ending December 31, 2015 and within one-hundred twenty (120) days after the end of each subsequent fiscal year, a reasonably detailed consolidated budget for the then-current fiscal year on a quarterly basis (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal year and the related consolidated statements of projected cash flow and projected income for such fiscal year and a summary of the material underlying assumptions applicable thereto) (collectively, the “**Projections**”), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such Projections, it being understood that actual results may vary from such Projections and that such variations may be material; and

(d) simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 6.01(a) and 6.01(b) above, the related unaudited consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from such consolidated financial statements.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 6.01 may be satisfied with respect to financial information of the Borrower and the Restricted Subsidiaries by furnishing (A) the applicable financial statements of Holdings (or any direct or indirect parent of Holdings) or (B) the Borrower’s or Holdings’ (or any direct or indirect parent thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that, with respect to clauses (A) and (B), (i) to the extent such information relates to Holdings (or a parent

thereof), such information is accompanied by unaudited consolidating information that explains in reasonable detail the differences between the information relating to Holdings (or such direct or indirect parent thereof), on the one hand, and the information relating to the Borrower and its consolidated Restricted Subsidiaries on a standalone basis, on the other hand and (ii) to the extent such information is in lieu of information required to be provided under Section 6.01(a), such materials are, to the extent applicable, accompanied by a report and opinion of any accounting firm, which accounting firm shall, commencing with the fiscal year ending December 31, 2015, be an independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit (except as may be required as a result of (x) a prospective Event of Default or actual event of default with respect to the Financial Covenant under the First Lien Credit Agreement or (y) the impending maturity of any Facility, any Incremental Equivalent Debt, any Refinancing Equivalent Debt, the First Lien Term Loans, any First Lien Incremental Equivalent Debt or any First Lien Refinancing Equivalent Debt).

Any financial statement required to be delivered pursuant to Section 6.01(a) or (b) shall not be required to include acquisition accounting adjustments relating to the Transactions or any Permitted Acquisition to the extent it is not practicable to include any such adjustments in such financial statement.

Documents required to be delivered pursuant to Section 6.01 and Section 6.02(b) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower (or any direct or indirect parent of the Borrower) posts such documents, or provides a link thereto on the website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower’s behalf on IntraLinks or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that (i) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents (which may be electronic copies delivered via electronic mail) to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(a) to the Administrative Agent (which may be electronic copies delivered via electronic mail). Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “**Borrower Materials**”) by posting the Borrower Materials on IntraLinks, DebtDomain, SyndTrak or another similar electronic system (the “**Platform**”) and (b) certain of the Lenders (each, a “**Public Lender**”) may have personnel who do not wish to receive material non-public information with respect to the Borrower or its

Subsidiaries, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (*provided, however*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.08); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Administrative Agent and the Arranger shall treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark the Borrower Materials "PUBLIC."

Section 6.02 Certificates; Other Information.

Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) no later than five (5) days after the delivery of the financial statements referred to in Section 6.01(a) and (b) a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower;

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(c) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), (i) in the case of annual Compliance Certificates only, a report setting forth the information required by those sections of the Perfection Certificate describing the legal name and the jurisdiction of formation of each Loan Party and the location of the chief executive office of each Loan Party or confirming that there has been no change in such information since the Closing Date or, if later, the date of the last such report and (ii) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such Compliance Certificate (to the extent that there have been any changes in the identity or status as a Restricted Subsidiary or Unrestricted Subsidiary of any such Subsidiaries since the later of the Closing Date or the most recent list provided); and

(d) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Loan Parties or any of their respective Restricted Subsidiaries, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request.

Section 6.03 Notices.

Promptly after a Responsible Officer of the Borrower has obtained actual knowledge thereof, notify the Administrative Agent:

(a) of the occurrence of any Default;

(b) of the occurrence of an ERISA Event which could reasonably be expected to result in a Material Adverse Effect; and

(c) of the filing or commencement of, or any written threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority against the Borrower or any of its Restricted Subsidiaries, that could in each case reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to Section 6.03(a), (b) or (c) (as applicable) and (y) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04 Payment of Taxes.

Pay, discharge or otherwise satisfy, as the same shall become due and payable in the normal conduct of its business, all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (a) any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP or (b) the failure to pay or discharge the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization, and

(b) take all reasonable action to maintain all rights, privileges (including its good standing where applicable in the relevant jurisdiction), permits, licenses and franchises material to the ordinary conduct of its business, except, in the case of clause (a) (other than with respect to the Borrower) or (b), to the extent (i) that failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (ii) pursuant to any merger, consolidation, liquidation, dissolution or Disposition permitted by Article VII.

Section 6.06 Maintenance of Properties.

Except if the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and fire, casualty or condemnation excepted.

Section 6.07 Maintenance of Insurance.

Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons. Each such policy of insurance shall as appropriate (i) name the Administrative Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interest may appear or (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement that names the Administrative Agent, on behalf of the Secured Parties, as loss payee thereunder. If the improvements on any Mortgaged Property are at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then, to the extent required by applicable Flood Insurance Laws, the Borrower shall, or shall cause each Loan Party to, (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount reasonably satisfactory to the Administrative Agent and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent.

Section 6.08 Compliance with Laws.

Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.09 Books and Records.

Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP and which reflect all material financial transactions and matters involving the assets and business of the Borrower or a Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

Section 6.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* that only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year and only one (1) such time shall be at the Borrower's expense; *provided, further*, that during the continuance of an Event of Default, the Administrative Agent (or any of its respective representatives or independent contractors), on behalf of the Lenders, may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 6.10, none of the Borrower or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (c) is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 6.11 Additional Collateral; Additional Guarantors.

At the Borrower's expense, subject to the limitations and exceptions of this Agreement, including, without limitation, the provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(a) Upon the formation or acquisition of any new direct or indirect wholly owned Material Domestic Subsidiary (in each case, other than an Excluded Subsidiary) by any Loan Party or the designation in accordance with Section 6.14 of any existing direct or indirect wholly owned Material Domestic Subsidiary as a Restricted Subsidiary (in each case, other than an Excluded Subsidiary) or any Subsidiary becoming a wholly owned Material Domestic Subsidiary (in each case, other than an Excluded Subsidiary):

(i) within sixty (60) days after such formation, acquisition or designation or such a Subsidiary so becoming a Material Domestic Subsidiary, or such longer period as the Administrative Agent may agree in its discretion:

(A) cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Administrative Agent, other than with respect to any Excluded Assets, joinders to this Agreement as Guarantors, Security Agreement Supplements, Intellectual Property Security Agreements, a counterpart of the Intercompany Note, joinders to the Intercreditor Agreements then in effect and other security agreements and documents as reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent (consistent with the Security Agreement, Intellectual Property Security Agreements and other security agreements in effect on the Closing Date), in each case granting Liens required by the Collateral and Guarantee Requirement;

(B) cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement (and the parent of each such Material Domestic Subsidiary that is a Guarantor) to deliver to the Administrative Agent (or the First Lien Administrative Agent as bailee for the Administrative Agent pursuant to the Second Lien Intercreditor Agreement) any and all certificates representing Equity Interests (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement or the Security Agreement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(C) take and cause such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement and the parent of such Material Domestic Subsidiary to take whatever action (including the recording of Mortgages, the filing of UCC financing statements and delivery of stock and membership interest certificates to the extent certificated) as may be required pursuant to the terms of the Collateral Documents or as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and perfected second priority Liens (subject to Liens permitted by Section 7.01) to the extent required by the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement;

(ii) if reasonably requested by the Administrative Agent, within sixty (60) days after such request (or such longer period as the Administrative Agent may agree in its discretion), deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties to the Administrative Agent as to such matters set forth in this Section 6.11(a) as the Administrative Agent may reasonably request;

(iii) as promptly as practicable after the request therefor by the Administrative Agent, deliver to the Administrative Agent with respect to each Material Real Property, any existing title reports, abstracts or environmental assessment reports, to the extent available and in the possession or control of the Borrower; *provided, however*, that there shall be no obligation to deliver to the Administrative Agent any existing environmental assessment report whose disclosure to the Administrative Agent would require the consent of a Person other than the Borrower or one of its Subsidiaries, where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained; and

(iv) if reasonably requested by the Administrative Agent, within sixty (60) days after such request (or such longer period as the Administrative Agent may agree in its discretion), deliver to the Administrative Agent any other items necessary from time to time to satisfy the Collateral and Guarantee Requirement with respect to perfection and existence of security interests with respect to property of any Guarantor acquired after the Closing Date and subject to the Collateral and Guarantee Requirement, but not specifically covered by the preceding clauses (i), (ii) or (iii) or clause (b) below.

(b) Not later than one hundred twenty (120) days after the acquisition by any Loan Party of Material Real Property as determined by the Borrower (acting reasonably and in good faith) (or such longer period as the Administrative Agent may agree in its discretion) that is required to be provided as Collateral pursuant to the Collateral and Guarantee Requirement, which property would not be automatically subject to another Lien pursuant to pre-existing Collateral Documents, cause such property to be subject to a Lien and Mortgage in favor of the Administrative Agent for the benefit of the Secured Parties and take, or cause the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect or record such Lien, in each case to the extent required by, and subject to the limitations and exceptions of this Agreement, including, without limitation, the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement.

Section 6.12 Compliance with Environmental Laws.

Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and, in each case to the extent the Loan Parties are required by applicable Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with applicable Environmental Laws.

Section 6.13 Further Assurances.

Promptly upon reasonable request by the Administrative Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents, to the extent required pursuant to the Collateral and Guarantee Requirement. If the Administrative Agent reasonably determines that it is required by applicable Law to have appraisals prepared in respect of the Real Property of any Loan Party subject to a mortgage constituting Collateral, the Borrower shall provide to the Administrative Agent appraisals that satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of FIRREA.

Section 6.14 Designation of Subsidiaries.

The Borrower may at any time after the Closing Date designate any Restricted Subsidiary of the Borrower as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that (i) immediately before and after such designation, no Default shall have occurred and be continuing, (ii) in the case of the designation of an Unrestricted Subsidiary as a Restricted Subsidiary, immediately after giving effect to such designation, the Borrower could incur \$1.00 of Permitted Ratio Debt, or the Consolidated Cash Interest Coverage Ratio would be no less than the Consolidated Cash Interest Coverage Ratio immediately prior to giving effect thereto, (iii) no Subsidiary may be designated as an Unrestricted Subsidiary if, after such designation, it would be a "Restricted Subsidiary" for the purpose of any Junior Financing, any Incremental Equivalent Debt, any Permitted Ratio Debt or any Permitted Refinancing thereof and (iv) no Restricted Subsidiary may be designated an Unrestricted Subsidiary if it was previously designated an Unrestricted Subsidiary. The designation of any Subsidiary as an Unrestricted Subsidiary after the Closing Date shall constitute an Investment by the Borrower therein at the date of designation as set forth in the definition of Investment. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the Borrower in Unrestricted Subsidiaries pursuant to the definition of Investment.

Section 6.15 Maintenance of Ratings.

Use commercially reasonable efforts to maintain (i) a public corporate credit rating (but not any specific rating) from S&P and a public corporate family rating (but not any specific rating) from Moody's, in each case in respect of the Borrower, and (ii) a public rating (but not any specific rating) in respect of the Initial Loans from each of S&P and Moody's.

Section 6.16 Use of Proceeds.

Use the proceeds of any Borrowing on the Closing Date, whether directly or indirectly, in a manner consistent with the uses set forth in the preliminary statements to this Agreement, and after the Closing Date, use the proceeds of any Borrowing for any purpose not otherwise prohibited under this Agreement, including for general corporate purposes, working capital needs, the repayment of Indebtedness, the making of Restricted Payments and the making of Investments.

Section 6.17 Annual Lender Calls.

Participate in a conference call with the Administrative Agent and the Lenders to discuss the financial condition and results of operations of the Borrower and its Subsidiaries for the most recently-ended period for which financial statements have been delivered pursuant to Section 6.01(a), which call shall occur within a reasonable period of time after the delivery of such audited financial statements and after the Lenders have first been provided reasonable notice of such call; provided, however, if the Borrower is holding a conference call to discuss the financial condition and results of operations of the Borrower and its Subsidiaries for the most recently-ended period for which audited financial statements have been delivered which is either open to the public or has been requested by the First Lien Administrative Agent pursuant to Section 6.17 of the First Lien Credit Agreement, the Borrower will not be required to hold a second, separate call for the Lenders as long as Lenders are provided access to such conference call.

Section 6.18 Post-Closing Actions.

Complete each of the actions described on Schedule 6.18 as soon as commercially reasonable and by no later than the date set forth in Schedule 6.18 with respect to such action or such later date as the Administrative Agent may reasonably agree.

ARTICLE VII.
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements as to which arrangements reasonably satisfactory to the applicable Hedge Bank have been made) hereunder which is accrued and payable shall remain unpaid or unsatisfied, then from and after the Closing Date, the Borrower (and, with respect to Section 7.14 only, Holdings) shall not and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

Section 7.01 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) (i) Liens created pursuant to any Loan Document and (ii) subject to the Second Lien Intercreditor Agreement and the limitations in Section 7.03(q), Liens on the Collateral created pursuant to any First Lien Loan Document;

(b) Liens existing on the Closing Date and listed in Schedule 7.01(b) and any modifications, replacements, renewals, refinancings or extensions thereof; *provided* that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 7.03, and (B) proceeds and products thereof, and (ii) the replacement, renewal, extension or refinancing of the obligations secured or benefited by such Liens, to the extent constituting Indebtedness, is permitted by Section 7.03;

(c) Liens for taxes, assessments or governmental charges (i) that are not overdue for a period of more than thirty (30) days or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or the equivalent accounting principles in the relevant local jurisdiction or (ii) that are not required to be paid pursuant to Section 6.04.

(d) statutory or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, so long as, in each case, such Liens secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Liens or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or the equivalent accounting principles in the relevant local jurisdiction;

(e) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, health, disability or employee benefits, unemployment insurance and other social security laws or similar legislation or regulation or other insurance-related obligations (including, but not limited to, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Holdings, the Borrower or any of its Restricted Subsidiaries;

(f) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business or consistent with past practice or industry practice;

(g) easements, rights-of-way, covenants, conditions, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and minor title defects affecting Real Property that do not in the aggregate materially interfere with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries, taken as a whole, or the use of the property for its intended purpose, and any other exceptions to title on the final Mortgage Policies issued to the Administrative Agent in connection with the Mortgaged Properties;

(h) Liens securing judgments or orders for the payment of money not constituting an Event of Default under Section 8.01(h);

(i) leases, licenses, cross-licenses, subleases or sublicenses granted to others in the ordinary course of business which (i) do not interfere in any material respect with the business of the Borrower and its Restricted Subsidiaries, taken as a whole, (ii) do not secure any Indebtedness or (iii) are permitted by Section 7.05;

(j) Liens in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(k) Liens (i) of a collection bank arising under Section 4-208 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking or other financial institution arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry or arising pursuant to such banking institution's general terms and conditions;

(l) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 7.06 to be applied against the purchase price for such Investment or other acquisition, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or other acquisition or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(m) Liens (i) in favor of the Borrower or a Restricted Subsidiary on assets of a Non-Loan Party or (ii) in favor of the Borrower or any Subsidiary Guarantor on assets of a Restricted Subsidiary;

(n) any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases, subleases, licenses, cross-licenses or sublicenses entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(o) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(p) Liens deemed to exist in connection with Investments in repurchase agreements under Section 7.06 or the definition of "Permitted Investments";

(q) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts maintained in the ordinary course of business and not for speculative purposes;

(r) Liens that are contractual rights of set-off or rights of pledge (i) relating to the establishment of depository relations with banks or other deposit-taking financial institutions and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any of its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(s) Liens solely on any cash earnest money deposits made by the Borrower or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(t) ground leases in respect of Real Property on which facilities owned or leased by the Borrower or any of its Restricted Subsidiaries are located;

(u) Liens to secure Indebtedness permitted under Section 7.03(e); *provided* that (i) such Liens are created within two hundred seventy (270) days of the acquisition, construction, repair, lease or improvement of the property subject to such Liens, (ii) such Liens do not at any time encumber property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits and (iii) with respect to Capitalized Leases, such Liens do not at any time extend to or cover any assets (except for replacements, additions and accessions to such assets) other than the assets subject to such Capitalized Leases and the proceeds and products thereof and customary security deposits; *provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(v) Liens on property of any Non-Loan Party, which Liens secure Indebtedness of any Non-Loan Party permitted under Section 7.03 or other obligations of any Non-Loan Party not constituting Indebtedness;

(w) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (other than by designation as a Restricted Subsidiary pursuant to Section 6.14), in each case after the Closing Date; *provided* that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition) and (iii) the Indebtedness secured thereby is permitted under Section 7.03(g), (m), (s) or (x);

(x) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Real Property that does not materially interfere with the ordinary conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(y) Liens arising from precautionary Uniform Commercial Code financing statement or similar filings;

(z) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(aa) the modification, replacement, renewal or extension of any Lien permitted by clauses (b), (u), (w) and (cc) of this Section 7.01; *provided* that (i) the Lien does not extend to any additional property, other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien and (B) proceeds and products thereof, and (ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by Section 7.03 (to the extent constituting Indebtedness);

(bb) Liens with respect to property or assets of the Borrower or any of its Restricted Subsidiaries securing obligations in an aggregate principal amount outstanding at any time not to exceed the greater of \$30,000,000 and 2.65% of Total Assets, in each case determined as of the date of incurrence;

(cc) Liens securing obligations in respect of Indebtedness; *provided*, that (1) after giving Pro Forma Effect to the incurrence of such Indebtedness (and any Specified Transactions consummated in connection therewith), (x) if such Liens are not expressly junior in right of security with the First Lien Obligations that are secured on a first lien basis, the Borrower's Consolidated First Lien Net Leverage Ratio shall be no greater than 5.00:1.00 or (y) if such Liens rank junior in right of security with the First Lien Obligations that are secured on a first lien basis, the Borrower's Secured Net Leverage Ratio shall be no greater than 6.25:1.00;

(dd) Liens on the Collateral securing obligations in respect of: (i) Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt and any Permitted Refinancing of any of the foregoing; *provided* that (x) any such Liens securing any Permitted Refinancing in respect of Permitted Pari Passu Secured Refinancing Debt are subject to the Second Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement and (y) any such Liens securing any Permitted Refinancing in respect of Permitted Junior Secured Refinancing Debt are subject to the Third Lien Intercreditor Agreement or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent and (ii) First Lien Incremental Equivalent Debt and First Lien Refinancing Equivalent Debt; *provided* such Liens are subject to the Second Lien Intercreditor Agreement or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent;

(ee) Liens on specific items of inventory or other goods and the proceeds thereof of any Person securing such Person's obligations in respect of letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods in the ordinary course of business;

(ff) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(gg) Liens securing obligations in respect of Indebtedness permitted under Section 7.03(w);

(hh) Liens on the Securitization Assets arising in connection with a Qualified Securitization Financing; and

(ii) Liens in respect of Sale Leasebacks (including any Sale Leaseback Transaction), in each case on the assets or property sold and leased back in such Sale Leaseback.

The expansion of Liens by virtue of accrual of interest, the accretion of accreted value, the payment of interest or dividends in the form of additional Indebtedness, amortization of original issue discount and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 7.01.

Section 7.02 [Reserved].

Section 7.03 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) (i) Indebtedness outstanding on the Closing Date and listed in Schedule 7.03(b) and any Permitted Refinancing thereof and (ii) intercompany Indebtedness among the Borrower and any Restricted Subsidiary outstanding on the Closing Date and any Permitted Refinancing thereof; *provided* that all such Indebtedness of any Loan Party owed to any Non-Loan Party shall be unsecured and subordinated to the Obligations pursuant to an Intercompany Note;

(c) Guarantees by the Borrower and any Restricted Subsidiary in respect of Indebtedness of the Borrower or any Restricted Subsidiary of the Borrower otherwise permitted hereunder; *provided* that (A) no Guarantee by any Restricted Subsidiary of any Indebtedness constituting a Specified Junior Financing Obligation, Incremental Equivalent Debt, Refinancing Equivalent Debt, First Lien Term Loans, First Lien Incremental Equivalent Debt or First Lien Refinancing Equivalent Debt shall be permitted unless such guaranteeing party shall have also provided a Guarantee of the Obligations on the terms set forth herein and (B) if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(d) Indebtedness of the Borrower or any Restricted Subsidiary owing to any Loan Party or any other Restricted Subsidiary (or issued or transferred to any direct or indirect parent of a Loan Party which is substantially contemporaneously transferred to a Loan Party or any Restricted Subsidiary of a Loan Party) to the extent constituting a Restricted Investment permitted by Section 7.06 or a Permitted Investment; *provided* that all such Indebtedness of any Loan Party owed to any Non-Loan Party shall be unsecured and subordinated to the Obligations pursuant to the Intercompany Note;

(e) (i) Attributable Indebtedness and other Indebtedness (including Capitalized Leases) financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred by the Borrower or any Restricted Subsidiary prior to or within

two hundred seventy (270) days after the acquisition, construction, repair, replacement, lease or improvement of the applicable asset and any Permitted Refinancing thereof in an aggregate amount not to exceed the greater of \$24,000,000 and 2.4% of Total Assets, in each case determined at the time of incurrence at any time outstanding and (ii) Attributable Indebtedness arising out of Sale Leaseback and any Permitted Refinancing of such Attributable Indebtedness;

(f) Indebtedness in respect of Swap Contracts designed to hedge against Holdings', the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes and Guarantees thereof;

(g) Indebtedness of the Borrower or any Restricted Subsidiary (i) assumed (including Acquired Indebtedness) in connection with any Permitted Acquisition or (ii) incurred to finance a Permitted Acquisition and, in the case of clauses (i) and (ii), any Permitted Refinancing of any such Indebtedness; *provided* that after giving Pro Forma Effect to such Permitted Acquisition and the assumption or incurrence of such Indebtedness incurred or assumed pursuant to this clause (g), either:

- (A) the Consolidated Cash Interest Coverage Ratio is at least 1.75:1.00, or
- (B) the Consolidated Cash Interest Coverage Ratio is equal to or greater than immediately prior to such Permitted Acquisition, or
- (C) the Total Net Leverage Ratio is no greater than 6.50:1.00, or
- (D) the Total Net Leverage Ratio is equal to or less than immediately prior to such Permitted Acquisition;

provided that (1) any such Indebtedness incurred (but not assumed) does not mature or have scheduled amortization or payments of principal (other than customary "AHYDO catch-up payments", customary offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) prior to the Maturity Date of the Initial Loans at the time such Indebtedness is incurred and (2) any such Indebtedness incurred by a Non-Loan Party does not exceed in the aggregate at any time outstanding the greater of \$24,000,000 and 2.4% of Total Assets, in each case determined at the time of incurrence;

(h) Indebtedness representing deferred compensation to employees of the Borrower (and any direct or indirect parent thereof) or any of its Restricted Subsidiaries incurred in the ordinary course of business;

(i) Indebtedness to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests or other equity-based awards of the Borrower or any direct or indirect parent of the Borrower permitted by Section 7.06;

(j) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition, in each case, constituting indemnification obligations or obligations in respect of purchase price (including earnouts) or other similar adjustments;

(k) Indebtedness consisting of obligations of the Borrower or any of its Restricted Subsidiaries under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions, and Permitted Acquisitions or any other Investment expressly permitted under this Agreement;

(l) Cash Management Obligations and other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements in the ordinary course of business and any Guarantees thereof;

(m) Indebtedness which, when aggregated with the principal amount of all other Indebtedness incurred pursuant to this clause (m) and then outstanding, does not exceed the greater of \$54,000,000 and 5.40% of Total Assets (in each case determined at the time of incurrence or assumption, it being understood that any Indebtedness incurred pursuant to this Section 7.03(m) shall cease to be deemed incurred or outstanding for purposes of this Section 7.03(m) but shall be deemed incurred for the purposes of this covenant from and after the first date on which the Borrower or such Restricted Subsidiary could have incurred such Indebtedness under Section 7.03(s) without reliance on this Section 7.03(m));

(n) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, incurred in the ordinary course of business;

(o) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(p) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(q) (x) Indebtedness incurred under the First Lien Credit Agreement, First Lien Incremental Equivalent Debt and First Lien Refinancing Equivalent Debt, in an aggregate principal amount not exceeding an amount at any time outstanding equal to (1) \$438,000,000 *plus* (2) the First Lien Incremental Usage Amount at such time and (y) Indebtedness incurred under the First Lien Credit Agreement or First Lien Incremental Equivalent Debt to the extent (1) if such Indebtedness is secured by the Collateral on a senior basis to the Obligations (and, for

purposes of calculating the Consolidated First Lien Net Leverage Ratio, treating such Indebtedness as secured by the Collateral on a first-lien basis whether or not so secured), the Consolidated First Lien Net Leverage Ratio on a Pro Forma Basis after giving effect to such incurrence and the use of proceeds thereof does not exceed 5.25:1.00 (2) if such Indebtedness is secured by the Collateral on a *pari passu* or junior basis to the Obligations under the Initial Loans, the Secured Net Leverage Ratio on a Pro Forma Basis after giving effect to such incurrence and the use of proceeds thereof does not exceed 6.50:1.00 and (3) if such Indebtedness is unsecured, the Total Net Leverage Ratio on a Pro Forma Basis after giving effect to such incurrence and the use of proceeds thereof does not exceed 6.50:1.00 and (z) Permitted Refinancings or First Lien Refinancing Equivalent Debt in respect of Indebtedness incurred pursuant to clause (x) or (y) hereof;

(r) Indebtedness supported by a letter of credit under the First Lien Credit Agreement, in a principal amount not to exceed the face amount of such letter of credit;

(s) Permitted Ratio Debt and any Permitted Refinancing thereof;

(t) Refinancing Equivalent Debt;

(u) Indebtedness of a Non-Loan Party which, when aggregated with the principal amount of all other Indebtedness incurred pursuant to this clause (u) and then outstanding, does not exceed the greater of \$18,000,000 and 1.5% of Total Assets (in each case determined at the date of incurrence or issuance, it being understood that any Indebtedness incurred pursuant to this Section 7.03(u) shall cease to be deemed incurred or outstanding for purposes of this Section 7.03(u) but shall be deemed incurred or issued for the purposes of this covenant from and after the first date on which the Borrower or such Restricted Subsidiary could have incurred such Indebtedness under Section 7.03(s) without reliance on this Section 7.03(u));

(v) Indebtedness incurred by a Securitization Subsidiary in a Qualified Securitization Financing that is not recourse (except for Standard Securitization Undertakings and Limited Originator Recourse) to the Borrower or any of the Restricted Subsidiaries;

(w) Incremental Equivalent Debt;

(x) Indebtedness of the Borrower or any Restricted Subsidiary (and any Permitted Refinancing thereof) in an aggregate principal amount not to exceed the amount of the net cash proceeds received by the Borrower since the Closing Date from the issuance or sale of Equity Interests of the Borrower or cash contributed to the capital of the Borrower (in each case, other than proceeds of Disqualified Equity Interests, sales of Equity Interests to the Borrower or any of its Subsidiaries or proceeds which have been designated as a Cure Amount under and as defined in the First Lien Credit Agreement) as determined in accordance with clauses (b) and (c) of the definition of "Cumulative Credit" to the extent such net cash proceeds have not been applied pursuant to such clauses to make Restricted Payments pursuant to Section 7.06 or to prepay, redeem, purchase, defease or satisfy Indebtedness pursuant to Section 7.13, so long as (i) such Indebtedness is incurred within one (1) year following the receipt by the Borrower of such net cash proceeds and (ii) such Indebtedness is designated as "Contribution Indebtedness" on the date incurred;

(y) unsecured Indebtedness in respect of obligations of the Borrower or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; *provided* that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money; and

(z) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (y) above.

For purposes of determining compliance with Section 7.03, in the event that an item of Indebtedness (or any portion thereof) at any time, whether at the time of incurrence or upon the application of all or a portion of the proceeds thereof or subsequently, meets the criteria of more than one of the categories of permitted Indebtedness described in Section 7.03(a) through (z) above, the Borrower, in its sole discretion, will classify and may subsequently reclassify such item of Indebtedness (or any portion thereof) in any one or more of the types of Indebtedness described in Section 7.03(a) through (z) and will only be required to include the amount and type of such Indebtedness in such of the above clauses as determined by the Borrower at such time. The Borrower will be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in Section 7.03(a) through (z). Notwithstanding the foregoing, Indebtedness incurred (a) under the Loan Documents, any Incremental Commitments, any Incremental Loans, any Refinancing Commitments and any Refinancing Loans shall only be classified as incurred under Section 7.03(a), (b) as Refinancing Equivalent Debt shall only be classified as incurred under Section 7.03(t), (c) as Incremental Equivalent Debt shall only be classified as incurred under Section 7.03(w) and (d) under the First Lien Credit Agreement or as First Lien Incremental Equivalent Debt or First Lien Refinancing Equivalent Debt shall only be classified as incurred under Section 7.03(q).

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and expenses (including OID) incurred in connection with such refinancing.

The accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.03. The principal amount of any non-interest bearing Indebtedness or

other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP. Notwithstanding the foregoing, no Non-Loan Party shall guarantee Indebtedness for borrowed money of any Loan Party.

Section 7.04 Fundamental Changes.

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (other than as part of the Transactions), except that:

(a) any Restricted Subsidiary may merge, amalgamate or consolidate with (i) the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that the Borrower shall be the continuing or surviving Person or (ii) one or more other Restricted Subsidiaries; *provided* that when any Person that is a Loan Party (other than the Borrower) is merging with a Restricted Subsidiary, a Loan Party shall be the continuing or surviving Person unless the resulting Investment made in connection with a Loan Party merging with a Non-Loan Party shall otherwise be a Restricted Investment permitted by Section 7.06 or a Permitted Investment;

(b) (i) any Subsidiary that is a Non-Loan Party may merge, amalgamate or consolidate with or into any other Subsidiary that is a Non-Loan Party, (ii) any Subsidiary (other than the Borrower) may liquidate or dissolve and (iii) the Borrower or any Subsidiary may change its legal form if, with respect to clauses (ii) and (iii), the Borrower determines in good faith that such action is in the best interest of the Borrower and its Subsidiaries and if not materially disadvantageous to the Lenders (it being understood that in the case of any change in legal form, the Borrower will remain the Borrower and a Subsidiary that is a Guarantor will remain a Guarantor unless such Guarantor is otherwise permitted to cease being a Guarantor hereunder);

(c) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then (i) the transferee must be a Loan Party or (ii) to the extent constituting an Investment, such Investment must be a Restricted Investment permitted by Section 7.06 or a Permitted Investment;

(d) so long as no Default has occurred and is continuing or would result therefrom, the Borrower may merge or consolidate with any other Person; *provided* that (i) the Borrower shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the “**Successor Company**”),

(A) the Successor Company shall be an entity organized or existing under the Laws of the United States, any state thereof, or the District of Columbia, (B) the Successor Company shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have confirmed that its Guarantee shall apply to the Successor

Company's obligations under the Loan Documents, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement and other applicable Collateral Documents confirmed that its obligations thereunder shall apply to the Successor Company's obligations under the Loan Documents, (E) if requested by the Administrative Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, shall have by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Administrative Agent) confirmed that its obligations thereunder shall apply to the Successor Company's obligations under the Loan Documents, and (F) the Borrower shall have delivered to the Administrative Agent an officer's certificate and an opinion of counsel, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement; *provided, further*, that if the foregoing are satisfied, the Successor Company will succeed to, and be substituted for, the Borrower under this Agreement;

(e) so long as no Event of Default has occurred and is continuing or would result therefrom (in the case of a merger, amalgamation or consolidation involving a Loan Party), any Restricted Subsidiary may merge, amalgamate or consolidate with any other Person in order to effect an Investment permitted pursuant to Section 7.06 or a Permitted Investment; *provided* that the continuing or surviving Person shall be a Restricted Subsidiary of the Borrower, which together with each of its Restricted Subsidiaries, shall have complied with the requirements of Section 6.11 to the extent required pursuant to the Collateral and Guarantee Requirement;

(f) the Borrower and the Restricted Subsidiaries may consummate the Merger, related transactions contemplated by the Merger Agreement (and documents related thereto) and the Transactions; and

(g) so long as no Event of Default has occurred and is continuing or would result therefrom, a merger, consolidation, amalgamation, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 7.05.

Section 7.05 Dispositions.

Make any Disposition (other than as part of or in connection with the Transactions), except:

(a) (w) Dispositions of obsolete, worn out, used or surplus property, whether now owned or hereafter acquired, in the ordinary course of business,
(x) Dispositions of property no longer used or useful in the conduct of the business of the Borrower or any of its Restricted Subsidiaries and
(y) Dispositions to landlords of improvements made to leased real property pursuant to customary terms of leases entered into in the ordinary course of business;

(b) Dispositions of inventory, goods held for sale in the ordinary course of business and immaterial assets in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(d) Dispositions of property to the Borrower or any Restricted Subsidiary; *provided* that if the transferor of such property is a Loan Party (i) the transferee thereof must be a Loan Party or (ii) if such transaction constitutes an Investment, such Investment must be a Restricted Investment permitted by Section 7.06 or a Permitted Investment;

(e) Dispositions that are permitted by Section 7.04 (other than Section 7.04(g)) or otherwise constitute a Restricted Payment (including a Restricted Investment) permitted by Section 7.06 and Liens permitted by Section 7.01 (other than Section 7.01(l)(ii));

(f) Dispositions of non-core assets acquired in connection with Permitted Acquisitions taking place following the Closing Date;

(g) Dispositions of Cash Equivalents;

(h) (i) leases, subleases, licenses, cross-licenses or sublicenses, in each case in the ordinary course of business and which do not materially interfere with the business of the Borrower or any of its Restricted Subsidiaries and (ii) Dispositions of intellectual property that are not material to the business of the Borrower or any of its Restricted Subsidiaries;

(i) transfers of property subject to Casualty Events;

(j) Dispositions of property; *provided* that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Default has occurred and is continuing), no Event of Default shall have occurred and be continuing or would result from such Disposition and (ii) with respect to any Disposition pursuant to this clause (j) for a purchase price in excess of \$12,000,000 the Borrower or any of its Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 7.01, Liens permitted by Section 7.01(a), clauses (ii) and (iii) of Section 7.01(k), Section 7.01(m), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(v), Section 7.01(w), Section 7.01(aa), Section 7.01(bb) (solely to the extent the Obligations under the Initial Loans shall be secured on a *pari passu* or senior basis with such Liens), Section 7.01(cc), Section 7.01(dd) and Section 7.01(gg)); *provided, however*, that for the purposes of this clause (j)(ii), the following shall be deemed to be cash: (A) any liabilities (as shown on the Borrower's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that (i) are assumed by the transferee with respect to the applicable Disposition or (ii) are otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Borrower or its Restricted Subsidiaries) and, in each case, for which the Borrower and all of its Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities, notes or other obligations or assets received by the Borrower or the applicable Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within one hundred eighty (180) days following the closing of the applicable Disposition, and (C) aggregate non-cash consideration received by the Borrower or the applicable Restricted Subsidiary having an aggregate fair market value (determined as of the closing of the applicable Disposition for which such non-cash consideration is received) not to exceed the greater of \$24,000,000 and 2.20% of Total Assets as determined at the time of such Dispositions (net of any non-cash consideration converted into cash and Cash Equivalents);

(k) to the extent allowable under Section 1031 of the Code (or comparable or successor provision), any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Borrower or any of the Restricted Subsidiaries that is not in contravention of Section 7.07;

(l) Dispositions or discounts without recourse of accounts receivable in connection with the compromise or collection thereof in the ordinary course of business;

(m) Dispositions by any Loan Party to any wholly-owned Restricted Subsidiary of the type described in clauses (d), (h) and (i) of the definition of "Excluded Subsidiary" to the extent consisting of contributions or other Dispositions of Equity Interests in other Restricted Subsidiaries of the type described in clauses (d), (h) and (i) of the definition of "Excluded Subsidiary" to such wholly-owned Restricted Subsidiary;

(n) any swap of assets in exchange for services or other assets in the ordinary course of business of comparable or greater value or usefulness to the business of the Borrower and its Subsidiaries as a whole, as determined in good faith by the management of the Borrower;

(o) any sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(p) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(q) the unwinding of any Swap Contract;

(r) the lapse or abandonment in the ordinary course of business of any registrations or applications for registration of any immaterial IP Rights;

(s) any Disposition of Securitization Assets to a Securitization Subsidiary;

(t) any Disposition of the Sale Leaseback Properties in connection with a Sale Leaseback (each, a "**Sale Leaseback Transaction**"); and

(u) Dispositions in the aggregate pursuant to this clause (u) not to exceed the greater of \$12,000,000 and 1.0% of Total Assets as determined at the time of such Disposition;

provided that any Disposition of any property pursuant to this Section 7.05 (except pursuant to Sections 7.05(a), (d), (e), (h), (i), (l), (m), (p), (q) and (r) and except for Dispositions from a Loan Party to any other Loan Party) shall be for no less than the fair market value of such property at the time of such Disposition. To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than Holdings, the Borrower or a Restricted Subsidiary, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and the Administrative Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

Section 7.06 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower, and other Restricted Subsidiaries of the Borrower (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) the Borrower and each Restricted Subsidiary may declare and make dividend payments or other Restricted Payments payable solely in the Equity Interests (other than Disqualified Equity Interests not otherwise permitted by Section 7.03) of such Person;

(c) Restricted Payments made (i) to consummate the Transactions, (ii) in respect of working capital adjustments or purchase price adjustments pursuant to the Merger Agreement, (iii) in order to satisfy indemnity and other similar obligations under the Merger Agreement and (iv) to holders of Equity Interests of Borrower (immediately prior to giving effect to the Transactions) in connection with, or as a result of, their exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, in each case, with respect to the Transactions;

(d) to the extent constituting Restricted Payments, the Borrower (or any direct or indirect parent thereof) and its Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Section 7.04 or 7.08 (other than Section 7.08(f) or 7.08(l));

(e) repurchases of Equity Interests in the Borrower or any Restricted Subsidiary of the Borrower deemed to occur upon exercise of stock options or warrants or the settlement or vesting of other equity-based awards if such Equity Interests represent a portion of the exercise price of, or tax withholdings with respect to, such options, warrants or other equity-based awards;

(f) the Borrower and each Restricted Subsidiary may (i) pay (or make Restricted Payments to allow Holdings or any other direct or indirect parent thereof to pay) for the repurchase, retirement or other acquisition or retirement for value of Equity Interests or settlement of equity-based awards of such Restricted Subsidiary (or of the Borrower or any other such direct or indirect parent thereof) held by any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) or any of its Subsidiaries or (ii) make Restricted Payments in the form of distributions to allow Holdings or any direct or indirect parent of Holdings to pay principal or interest on promissory notes that were issued to any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or

distributes of any of the foregoing) of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) in lieu of cash payments for the repurchase, retirement or other acquisition or retirement for value of such Equity Interests or equity-based awards held by such Persons, in each case, upon the death, disability, retirement or termination of employment or services, as applicable, of any such Person or pursuant to any employee, manager or director equity plan, employee, manager or director stock option plan or any other employee, manager or director benefit plan or any agreement (including any stock subscription agreement, shareholder agreement or stockholders' agreement) with any employee, director, officer or consultant of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) or any of its Restricted Subsidiaries; *provided* that the aggregate amount of Restricted Payments made pursuant to this clause (f) together with the aggregate amount of loans and advances to Holdings or any parent thereof made pursuant to clause (25) of the definition of "Permitted Investments" in lieu of Restricted Payments permitted by this clause (f) shall not exceed \$12,000,000 in any calendar year (which shall increase to \$18,000,000 subsequent to the consummation of a Qualified IPO) (with 100% of the unused amounts in any calendar year being carried over to succeeding calendar years); *provided further* that such amount in any calendar year may further be increased by an amount not to exceed:

(A) amounts used to increase the Cumulative Credit pursuant to clauses (b) and (c) of the definition of "Cumulative Credit";

(B) the Net Proceeds of key man life insurance policies received by the Borrower or its Restricted Subsidiaries less the amount of Restricted Payments previously made with the cash proceeds of such key man life insurance policies;

and *provided further* that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from members of management of the Borrower, any of the Borrower's direct or indirect parent companies or any of the Borrower's Restricted Subsidiaries in connection with a repurchase of Equity Interests of any of the Borrower's direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of this Agreement;

(g) the Borrower and its Restricted Subsidiaries may make Restricted Payments in an aggregate amount not to exceed (x) the greater of \$24,000,000 and 2.2% of Total Assets as determined at the time of such Restricted Payment (less the amount of any prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings in reliance on the dollar amount set forth in Section 7.13(a)(iv)), *plus* (y) the Cumulative Credit at such time (*provided*, that with respect to any Restricted Payment (other than a Restricted Investment) made out of amounts under clause (a)(ii) of the definition of "Cumulative Credit" pursuant to this clause (y), no Event of Default has occurred and is continuing or would result therefrom and the Borrower, immediately after giving effect to such Restricted Payment on a Pro Forma Basis, could incur \$1.00 of additional Permitted Ratio Debt);

(h) the Borrower may make Restricted Payments to any direct or indirect parent of the Borrower:

(i) to pay its operating costs and expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries, Transaction Expenses and any reasonable and indemnification claims made by directors or officers of such parent attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries;

(ii) the proceeds of which shall be used to pay (or make Restricted Payments to allow any direct or indirect parent thereof to pay) franchise and similar taxes and other fees and expenses required to maintain its (or any of its direct or indirect parents') corporate existence;

(iii) for any taxable period for which the Borrower is a disregarded entity or a partnership for U.S. federal income tax purposes or for which the Borrower and/or any of its Subsidiaries is a member of a consolidated, combined or similar income tax group of which a direct or indirect parent of the Borrower is the common parent, in an amount equal to the product of (x) taxable income of the Borrower and, to the extent applicable, its Subsidiaries and (y) the highest combined marginal income tax rate applicable to an individual or corporate resident in New York City that holds equity in the Borrower ("**Tax Distribution**");

(iv) to finance any Permitted Investments and other Investments that would be permitted to be made pursuant to this Section 7.06 and Section 7.08 if made by the Borrower or any of its Restricted Subsidiaries; *provided* that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or the Restricted Subsidiaries or (2) the merger (to the extent permitted in Section 7.04) of the Person formed or acquired into the Borrower or its Restricted Subsidiaries in order to consummate such Permitted Acquisition or Investment, in each case, in accordance with the requirements of Section 6.11;

(v) the proceeds of which (A) shall be used to pay salary, commissions, bonus and other benefits payable to and indemnities provided on behalf of officers, employees, directors and members of management of Holdings or any direct or indirect parent company of Holdings and any payroll social security or similar taxes thereof to the extent such salaries, commissions, bonuses and other benefits are attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries or (B) shall be used to make payments permitted under Sections 7.08 (e), (i), (k) and (p) (but only to the extent such payments have not been and are not expected to be made by the Borrower or a Restricted Subsidiary); and

(vi) the proceeds of which shall be used by Holdings to pay (or to make Restricted Payments to allow any direct or indirect parent thereof to pay) (A) fees and expenses (other than to Affiliates) related to any unsuccessful equity or debt offering by

Holdings (or any direct or indirect parent thereof) that is directly attributable to the operations of the Borrower and its Restricted Subsidiaries and (B) expenses and indemnities of the trustee with respect to any debt offering by Holdings (or any direct or indirect parent thereof);

(i) payments made or expected to be made by Holdings, the Borrower or any of the Restricted Subsidiaries in respect of withholding or other payroll and other similar Taxes payable by or with respect to any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) and any repurchases of Equity Interests in consideration of such payments including deemed repurchases in connection with the exercise of stock options or the vesting or settlement of other equity-based awards;

(j) after a Qualified IPO, (i) any Restricted Payment by the Borrower or any other direct or indirect parent of the Borrower to pay listing fees and other costs and expenses attributable to being a publicly traded company which are reasonable and customary and (ii) additional Restricted Payments in an aggregate amount per annum not to exceed an amount equal to 6% of the net proceeds received by (or contributed to) the Borrower and its Restricted Subsidiaries from such Qualified IPO;

(k) Holdings, the Borrower or any of the Restricted Subsidiaries may pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted Acquisition; and

(l) Restricted Payments in an aggregate amount not to exceed the net cash proceeds received by the Borrower or any Restricted Subsidiary from a Person other than Holdings or a Subsidiary thereof from the sale of the Sale Leaseback Properties pursuant to a Sale Leaseback Transaction; *provided*, that immediately after giving effect to any such Restricted Payment (A) no Event of Default has occurred and is continuing and (B) the Total Net Leverage Ratio on a Pro Forma Basis is not greater than 6.50:1.00; and

(m) additional Restricted Payments (the proceeds of which may be utilized by Holdings to make additional Restricted Payments) so long as immediately after giving effect to such Restricted Payment, the Total Net Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 5.00 to 1.00, and satisfaction of such test shall be evidenced by a certificate from a Responsible Officer of the Borrower demonstrating such satisfaction calculated in reasonable detail.

Section 7.07 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date or any business or any other activities reasonably related, complementary, synergistic or ancillary thereto (including related, complementary, synergistic or ancillary technologies) or reasonable extensions thereof.

Section 7.08 Transactions with Affiliates.

Enter into any transaction of any kind with any Affiliate of the Borrower involving aggregate payments or consideration in excess of \$1,800,000 for any individual transaction or series of related transactions, whether or not in the ordinary course of business, other than

- (a) transactions among Holdings, the Borrower and its Restricted Subsidiaries,
- (b) on terms substantially as favorable to the Borrower or such Restricted Subsidiary as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate,
- (c) the Transactions and the payment of fees and expenses (including Transaction Expenses) as part of or in connection with the Transactions,
- (d) the issuance of Equity Interests or equity-based awards to any officer, director, employee or consultant of the Borrower or any of its Restricted Subsidiaries or any direct or indirect parent of Holdings in connection with the Transactions,
- (e) the payment of management, monitoring, consulting, advisory and other fees (including transaction and termination fees), indemnities and expenses pursuant to the Sponsor Management Agreement (plus any unpaid management, consulting, monitoring, advisory and other fees, indemnities and expenses accrued in any prior year),
- (f) Restricted Payments permitted under Section 7.06 and Permitted Investments other than Permitted Investments under clauses (3), (10), (11) and (13) of the definition thereof,
- (g) transactions by the Borrower and its Restricted Subsidiaries permitted under an express provision (including any exceptions thereto) of this Article VII,
- (h) employment, consulting, severance and other service or benefit related arrangements between the Borrower and its Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option and other equity award plans and employee benefit plans and arrangements in the ordinary course of business,
- (i) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, officers, employees and consultants of Holdings, the Borrower and its Restricted Subsidiaries (or any direct or indirect parent of the Borrower) in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries,
- (j) transactions pursuant to agreements, instruments or arrangements in existence on the Closing Date and set forth in Schedule 7.08 or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect,

(k) payments by the Borrower and any of its Restricted Subsidiaries to one or more direct or indirect holders of Equity Interests in Holdings (including any Sponsor) made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions or divestitures), which payments are approved by the majority of the members of the Board of Directors or a majority of the disinterested members of the Board of Directors of the Borrower in good faith,

(l) payments by the Borrower or any of its Subsidiaries pursuant to any tax sharing agreements with any direct or indirect parent of the Borrower to the extent attributable to the ownership or operation of the Borrower and the Subsidiaries, but only to the extent permitted by Section 7.06(h)(iii),

(m) the issuance or transfer of Equity Interests (other than Disqualified Equity Interests) of Holdings to any Permitted Holder or to any former, current or future director, manager, officer, employee or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees or Affiliate of any of the foregoing) of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof,

(n) transactions with customers, clients, joint venture partners, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party,

(o) any payments required to be made pursuant to the Merger Agreement,

(p) the payment of reasonable out-of-pocket costs and expenses and indemnities to equity holders of any direct or indirect parent of Holdings pursuant to the stockholders' agreement entered into, and as in effect on, on the Closing Date,

(q) transactions in which the Borrower or any of the Restricted Subsidiaries, as the case may be, deliver to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (b) of this Section 7.08,

(r) payments to or from, and transactions with, joint ventures (to the extent any such joint venture is only an Affiliate as a result of Investments by Holdings and the Restricted Subsidiaries in such joint venture) to the extent otherwise constituting a Permitted Investment or Restricted Payment permitted under Section 7.06, and

(s) any Disposition of Securitization Assets or related assets, Investment permitted pursuant to clause (14) of the definition of "Permitted Investments" or Standard Securitization Undertakings and Limited Originator Recourse, in each case in connection with any Qualified Securitization Financing.

Section 7.09 Burdensome Agreements.

Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability of:

(a) any Non-Loan Party to make Restricted Payments to any Loan Party or

(b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Lenders with respect to the Facilities and the Obligations or under the Loan Documents; *provided* that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which

(i) (x) exist on the Closing Date and (to the extent not otherwise permitted by this Section 7.09) are listed in Schedule 7.09 and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such Contractual Obligation,

(ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary of the Borrower, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary of the Borrower,

(iii) are customary restrictions that arise in connection with (x) any Lien permitted by Sections 7.01(k), (l), (p), (q), (r)(i), (r)(ii), (s) and (ee) and relate to the property subject to such Lien or (y) arise in connection with any Disposition permitted by Section 7.04 or 7.05 and relate solely to the assets or Person subject to such Disposition,

(iv) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures constituting Permitted Investments or otherwise permitted under Section 7.06 and applicable solely to such joint venture,

(v) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 7.03 but solely to the extent any negative pledge relates to the property financed by such Indebtedness and the proceeds and products thereof,

(vi) are customary restrictions on leases, subleases, licenses, cross-licenses, sublicenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the property interest, rights or the assets subject thereto,

(vii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 7.03(e), (g), (n)(i) and (u) to the extent that such restrictions apply only to the property or assets securing such Indebtedness or, in the case of Section 7.03(g), to the Restricted Subsidiaries incurring or guaranteeing such Indebtedness,

(viii) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary,

(ix) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business,

(x) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business,

(xi) arise in connection with cash or other deposits permitted under Sections 7.01 or the definition of Permitted Investments, and limited to such cash or deposits, and

(xii) comprise restrictions imposed by any agreement governing Indebtedness entered into on or after the Closing Date and permitted under Section 7.03 that are, taken as a whole, in the good faith judgment of the Borrower, no more restrictive with respect to the Borrower or any Restricted Subsidiary than customary market terms for Indebtedness of such type (and, in any event, are no more restrictive than the restrictions contained in this Agreement or the First Lien Credit Agreement), so long as the Borrower shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required hereunder.

Section 7.10 [Reserved].

Section 7.11 [Reserved].

Section 7.12 Accounting Changes.

Make any change in its fiscal year; *provided, however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

Section 7.13 Prepayments, Etc. of Junior Financing.

(a) Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled principal, interest and mandatory prepayments shall be permitted) any Indebtedness for borrowed money of a Loan Party that is subordinated in right of payment or Collateral to the Obligations expressly by its terms (including any Incremental Equivalent Debt or Refinancing Equivalent Debt that is subordinated in right of Collateral to the Liens securing the Obligations under the Loans) and any Permitted Refinancing of any of the foregoing (collectively, "**Junior Financing**"), except

(i) the refinancing thereof with any Indebtedness (to the extent such Indebtedness constitutes a Permitted Refinancing and, if such Indebtedness was originally incurred under Section 7.03(g), is permitted pursuant to Section 7.03(g)), to the extent not required to prepay any Loans pursuant to Section 2.05(b),

(ii) the conversion or exchange of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of Holdings or any of its direct or indirect parents,

(iii) the prepayment of Indebtedness of the Borrower or any Restricted Subsidiary to the Borrower or any Restricted Subsidiary,

(iv) prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings prior to their scheduled maturity in an aggregate amount not to exceed (x) the greater of \$24,000,000 and 2.2% of Total Assets as determined at the time of such transaction (less the amount of any Restricted Payments made in reliance on the dollar amount set forth in Section 7.06(g)(x)) plus (y) the Cumulative Credit at such time (provided, that with respect to any prepayment, redemption, purchase, defeasance or other payment in respect of Junior Financings made out of amounts under clause (a)(ii) of the definition of "Cumulative Credit" pursuant to this clause (y), no Event of Default has occurred and is continuing or would result therefrom and the Borrower, immediately after giving effect to such prepayment, redemption, purchase, defeasance or other payment on a Pro Forma Basis, could incur \$1.00 of additional Permitted Ratio Debt), and

(v) additional prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings, so long as immediately after giving effect to such prepayment, redemption, purchase, defeasance or other payment, the Total Net Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 5.00 to 1.00, and satisfaction of such test shall be evidenced by a certificate from a Responsible Officer of the Borrower demonstrating such satisfaction calculated in reasonable detail.

(b) Amend, modify or change in any manner materially adverse to the interests of the Lenders, as determined in good faith by the Borrower, any term or condition of any Junior Financing Documentation in respect of any Junior Financing having an aggregate outstanding principal amount in excess of the Threshold Amount (other than as a result of any Permitted Refinancing in respect thereof) without the consent of the Administrative Agent (which consent shall not be unreasonably withheld, conditioned or delayed); *provided that*, in respect of any Junior Financing, the following shall not, in and of themselves, be deemed materially adverse to the interests of the Lenders: (1) any term or condition of any Junior Financing Documentation in respect of any Permitted Refinancing thereof, (2) any modification to the All-In Yield or changes to, or additions of, premiums or penalties; (3) any increase in the aggregate principal amount to the extent otherwise permitted by this Agreement; (4) any extension of maturity date or increase to Weighted Average Life to Maturity; (5) any amendment, modification or change to any terms applicable only to periods after the Latest Maturity Date at the time of such amendment, modification or change, (6) amendments, modifications or changes to maintain consistency with, as applicable, those being made substantially concurrently to the Loan Documents (including, for the avoidance of doubt, the addition of any covenant or other provision added or extended (including the addition of a financial covenant or the extension of an existing financial covenant for the benefit of Lenders) under this Agreement or any Incremental Equivalent Debt or Refinancing Equivalent Debt which is secured by the Collateral on a pari passu or senior basis to the Junior Financing, *provided* such additional covenant (including any financial covenant) includes a cushion on any dollar baskets, thresholds or covenant levels consistent with the

existing cushion (if any) between applicable covenants in this Agreement and such Junior Financing) and (7) reductions to any cushion on levels, baskets or thresholds between covenants under this Agreement and substantially similar covenants under any Junior Financing to the extent such cushion is reduced by no more than 10% from the cushion in effect on the date such Junior Financing is incurred.

Section 7.14 Permitted Activities.

With respect to Holdings, engage in any material operating or business activities; *provided* that the following and any activities incidental thereto shall be permitted in any event: (i) its ownership of the Equity Interests of the Borrower and activities incidental thereto, including payment of dividends and other amounts in respect of its Equity Interests, (ii) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (iii) the performance of its obligations with respect to the Loan Documents, the First Lien Loan Documents, Permitted Holdings Debt and any other Indebtedness, (iv) any public offering of its common stock or any other issuance or sale of its Equity Interests, (v) financing activities, including the issuance of securities, incurrence of Indebtedness, payment of dividends, making contributions to the capital of the Borrower and guaranteeing the obligations of the Borrower; provided that any such Indebtedness shall (a) be unsecured, (b) not be guaranteed by the Borrower or any Restricted Subsidiary and (c) not have a maturity date prior to the Latest Maturity Date in effect for the Loans on the date of incurrence of such Indebtedness, (vi) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and the Borrower, (vii) holding any cash or property (but not operate any property), (viii) providing indemnification to officers and directors and (ix) any activities incidental to the foregoing. Holdings shall not own any Equity Interests other than those of the Borrower.

ARTICLE VIII.
EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Events of Default.

Any of the following from and after the Closing Date shall constitute an event of default (an “**Event of Default**”):

- (a) *Non-Payment*. Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable (or required to be paid) hereunder or with respect to any other Loan Document; or
- (b) *Specific Covenants*. The Borrower or, in the case of Section 7.14, Holdings, fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03(a) or 6.05(a) (solely with respect to the Borrower), Article VII or under the “Market Flex” section of the Fee Letter; or
- (c) *Other Defaults*. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(d) *Representations and Warranties.* Any representation, warranty, certification or statement of fact made or deemed made by any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect in any material respect when made or deemed made; or

(e) *Cross-Default.* Any Loan Party or any Restricted Subsidiary (A) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate outstanding principal amount of not less than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts and not as a result of any other default thereunder by any Loan Party), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; *provided* that (I) this clause (e)(B) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and (II) no such event under any Senior Facility (as defined in the Second Lien Intercreditor Agreement) (other than the failure to pay any outstanding principal amount when due at the final scheduled maturity of such Senior Facility) shall constitute an Event of Default under this clause (e) until the Indebtedness under such Senior Facility shall have been accelerated or commitments thereunder have been terminated as a result of such event; *provided, further*, that such failure is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to Section 8.02; or

(f) *Insolvency Proceedings, Etc.* Any Loan Party or any Restricted Subsidiary that is a Material Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) *Attachment.* Any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of the Borrower and the Restricted Subsidiaries, taken as a whole, and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) *Judgments*. There is entered against any Loan Party or any Restricted Subsidiary a final judgment and order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(i) *Invalidity of Loan Documents*. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05) or as a result of acts or omissions by the Administrative Agent or any Lender or the satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document or the validity or priority of a Lien as required by the Collateral Documents on a material portion of the Collateral; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations and termination of the Aggregate Commitments), or purports in writing to revoke or rescind any Loan Document; or

(j) *Change of Control*. There occurs any Change of Control; or

(k) *Collateral Documents*. (i) Any Collateral Document after delivery thereof pursuant to Section 4.01, 6.11 or 6.13 shall for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction not prohibited under this Agreement) cease to create a valid and perfected Lien, with the priority required by the Collateral Documents on and security interest in any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01, (x) except to the extent that any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or results from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file Uniform Commercial Code continuation statements and (y) except as to Collateral consisting of Real Property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage or (ii) any Lien created or purported to be created by the Collateral Documents shall cease to have the lien priority established or purported to be established by the applicable Intercreditor Agreement; or

(l) *Duly Authorized Documents*. Any Deferred Loan Party fails to deliver any Duly Authorized Documents by 5:00 p.m. on the Closing Date; or

(m) *ERISA*. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of a Loan Party or an ERISA Affiliate in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect.

Section 8.02 Remedies Upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Lenders, shall take any or all of the following actions:

- (i) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;
- (ii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and
- (iii) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code of the United States or any Debtor Relief Laws, the obligation of each Lender to make Loans shall automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

Section 8.03 Application of Funds.

Except as may be otherwise provided in any applicable Incremental Amendment with respect to Obligations under the applicable Incremental Loans or in any applicable Refinancing Amendment with respect to Obligations under the applicable Refinancing Loans (in each case, which shall not be more favorable to the holders of such Loans than the allocation described below), after the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), subject to the Second Lien Intercreditor Agreement, any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order (to the fullest extent permitted by mandatory provisions of applicable Law):

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs payable under Section 10.04 and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause *Second* payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, and any fees, premiums and scheduled periodic payments due under Treasury Services Agreements or Secured Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Third* payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, and any breakage, termination or other payments under Treasury Services Agreements or Secured Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Fourth* held by them;

Fifth, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Notwithstanding the foregoing, no amount received from any Guarantor shall be applied to any Excluded Swap Obligation of such Guarantor.

Section 8.04 [Reserved].

ARTICLE IX.
ADMINISTRATIVE AGENT AND OTHER AGENTS

Section 9.01 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints UBS to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX (other than Sections 9.06 (solely with respect to the removal and consent rights of the Borrower set forth therein) and Section 9.10 (solely with respect to the requirement for execution, filing and other actions with respect to the Collateral Documents and other collateral documentation set forth therein)) are solely for the benefit of the Administrative Agent and the Lenders, and no Loan Party shall have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising

any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article X (including the second paragraph of Section 10.05), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

Section 9.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 9.03 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 9.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.05 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Section 9.06 Resignation of Administrative Agent.

The Administrative Agent may resign as the Administrative Agent upon ten (10) days' notice to the Lenders and the Borrower; *provided* that if no successor agent is appointed in accordance with the terms set forth below within such ten (10)-day period, the Administrative Agent shall not be permitted to resign until the earlier to occur of (x) the date of the appointment of the successor agent or (y) the date that is thirty (30) days after the last day of such ten (10)-day period. If the Administrative Agent is subject to an Agent-Related Distress Event, the Borrower may remove the Administrative Agent upon ten (10) days' notice. Upon the resignation or removal of the Administrative Agent under this Agreement, the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which such appointment shall be subject to the consent of the Borrower (which consent of the Borrower shall not be unreasonably withheld or delayed if such successor is a commercial bank with a combined capital and surplus of at least \$5,000,000,000 that is a "U.S. person" and a "financial institution" within the meaning of Treasury Regulation Section 1.1441-1, and otherwise may be withheld at the Borrower's sole discretion) at all times other than during the existence of an Event of Default under Section 8.01(a) or (f); *provided*, that in no event shall a Disqualified Institution be a successor agent. If no successor agent is appointed by the Required Lenders prior to the effective date of the resignation or removal of the Administrative Agent, the retiring or removed Administrative Agent may appoint, after consulting with the Lenders and subject to the Borrower's consent right set forth above, a successor agent from among the Lenders; *provided* that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments and communications provided to be made to or through the Administrative Agent shall instead be made to each Lender directly and all determinations provided to be made by the Administrative Agent shall instead be made by the Required Lenders, in each case until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent. Upon resignation or removal, the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation or the removed Administrative Agent's removal hereunder and under the other Loan Documents, hereunder and under the other Loan Documents, the provisions of this Article and Sections 10.04 and 10.05 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

Section 9.07 Non-Reliance on Administrative Agent and Other Lenders.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 9.08 No Other Duties, Etc.

Anything herein to the contrary notwithstanding, none of the Administrative Agent, Bookrunners, Arrangers or Syndication Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender.

Section 9.09 Administrative Agent May File Proofs of Claim; Credit Bidding.

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.09, 10.04 and 10.05) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09, 10.04 and 10.05.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding.

Section 9.10 Collateral and Guaranty Matters.

Each of the Lenders (including in its capacities as a potential Hedge Bank) irrevocably authorize the Administrative Agent:

(a) to automatically release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations as to which no claim has been asserted and (B) obligations and liabilities under Treasury Services Agreements and Secured Hedge Agreements not due and payable), (ii) at the time the property subject to such Lien is Disposed or to be Disposed as part of or in connection with any Disposition permitted (other than a lease and other than to a Person that is a Loan Party) hereunder or under any other Loan Document, (iii) subject to Section 10.01, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to clause (c) below, (v) if such property becomes an Excluded Asset or (vi) to the extent such release is required pursuant to the terms of the Second Lien Intercreditor Agreement;

(b) to release or subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(u) to the extent required by the holder of, or pursuant to the terms of any agreement governing, the obligations secured by such Liens; and

(c) to release any Subsidiary Guarantor from its obligations under the Guaranty, if in the case of any such Subsidiary, such Person ceases to be a Material Domestic Subsidiary or becomes an Excluded Subsidiary as a result of a transaction or designation permitted hereunder; *provided* that no such release shall occur if such Guarantor continues to be a guarantor or obligor in respect of any Junior Financing, any Refinancing Equivalent Debt or any Incremental Equivalent Debt or any Permitted Refinancing in respect thereof or any First Lien Obligations.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will (and each Lender irrevocably authorizes the Administrative Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

Section 9.11 Secured Cash Management Agreements and Secured Hedge Agreements.

Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Treasury Services Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Hedge Bank.

The Lenders hereby authorize the Administrative Agent to enter into the Second Lien Intercreditor Agreement, any Third Lien Intercreditor Agreement, any Subordination Agreement or other intercreditor agreement or arrangement permitted under this Agreement and the Lenders acknowledge that any such intercreditor agreement is binding upon the Lenders.

Section 9.12 Withholding Tax Indemnity.

To the extent required by any applicable Laws (as determined in good faith by the Administrative Agent), the Administrative Agent may withhold from any payment to any Lender under any Loan Document an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 3.01, each Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within ten (10) days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.12. The agreements in this Section 9.12 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations.

ARTICLE X.
MISCELLANEOUS

Section 10.01 Amendments, Etc.

Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (other than with respect to any amendment or waiver contemplated in Sections 10.01(a) through (h) below, which shall only require the consent of the Lenders expressly set forth therein and not the Required Lenders) (or by the Administrative Agent with the consent of the Required Lenders) and the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that, no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.02 or of any Default, mandatory prepayment or mandatory reduction of any Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.07 or 2.08 (other than pursuant to Section 2.08(b)), without the written consent of each Lender directly and adversely affected thereby, it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest;

(c) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (iii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document (or extend the timing of payments of such fees or other amounts) without the written consent of each Lender directly and adversely affected thereby; *provided* that, for the avoidance of doubt, only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) change any provision of this Section 10.01 or the definition of "Required Lenders," "Required Class Lenders," or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents, without the written consent of each Lender directly affected thereby (it being understood that each Lender shall be directly and adversely affected by a change to the "Required Lenders" or "Pro Rata Share" definitions);

(e) other than in connection with a transaction permitted under Section 7.04 or Section 7.05, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender (except as otherwise required pursuant to the Second Lien Intercreditor Agreement);

(f) other than in connection with a transaction permitted under Section 7.04 or Section 7.05, release all or substantially all of the aggregate value of the Guarantees, without the written consent of each Lender (except as otherwise required pursuant to the Second Lien Intercreditor Agreement);

(g) [Reserved]; or

(h) amend, waive or otherwise modify any term or provision (including the availability and conditions to funding under Section 2.14 with respect to Incremental Loans and the rate of interest applicable thereto) which directly affects Lenders of one or more Incremental Loans (including Loans extended under such Commitments) and does not directly affect Lenders under any other Class, in each case, without the written consent of the Required Class Lenders under such applicable Incremental Loans (and in the case of multiple Classes which are affected, such Required Class Lenders shall consent together as one Class); *provided, however*, that the waivers described in this clause (h) shall not require the consent of any Lenders other than (x) the Required Class Lenders under such applicable Incremental Loans and (y) in the case of any waiver that otherwise would be subject to clause (a), (b), (c), (d) or (e) above, each Lender, each directly affected Lender or each directly and adversely affected Lender (as specified in clause (a), (b), (c), (d) or (e) above) under the applicable Class or Classes of Incremental Loans (including Loans extended under such Commitments);

and *provided, further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; and (ii) Section 10.07(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any such Defaulting Lender may not be increased or extended without the consent of such Lender, (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms materially and adversely affects any Defaulting Lender to a greater extent than other affected Lenders shall require the consent of such Defaulting Lender and (z) the consent of any Defaulting Lender shall be required in respect of any amendments referred to in Section 10.01(b).

Notwithstanding the foregoing, no Lender consent is required to effect any amendment or supplement to any Junior Lien Intercreditor Agreement, the Second Lien Intercreditor Agreement, any Third Lien Intercreditor Agreement, any Subordination Agreement or any other intercreditor agreement or arrangement permitted under this Agreement (i) that is for the purpose of adding the holders of Permitted Pari Passu Secured Refinancing Debt, Permitted Junior Secured Refinancing Debt, subordinated Permitted Unsecured Refinancing Debt, Incremental Equivalent Debt (or, in each case, a Senior Representative with respect thereto), First Lien Incremental Equivalent Debt or First Lien Refinancing Equivalent Debt as parties thereto, as expressly contemplated by the terms of such Second Lien Intercreditor Agreement, such Third Lien Intercreditor Agreement, such Subordination Agreement or such other intercreditor

agreement or arrangement permitted under this Agreement, as applicable (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (ii) that is expressly contemplated by the Second Lien Intercreditor Agreement, any Third Lien Intercreditor Agreement, any Subordination Agreement or any other intercreditor agreement or arrangement permitted under this Agreement; *provided, further*, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent.

Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Loans, and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

In addition, notwithstanding the foregoing, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the Replacement Loans (as defined below) to permit the refinancing of all outstanding Loans of any Class ("**Replaced Loans**") with replacement term loans ("**Replacement Loans**") hereunder; *provided* that (a) the aggregate principal amount of such Replacement Loans shall not exceed the aggregate principal amount of such Replaced Loans, plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees and expenses associated with such Replacement Loans, (b) the All-In Yield with respect to such Replacement Loans (or similar interest rate spread applicable to such Replacement Loans) shall not be higher than the All-In Yield for such Replaced Loans (or similar interest rate spread applicable to such Replaced Loans) immediately prior to such refinancing unless the maturity of the Replacement Loans is at least one (1) year later than the maturity of the Replaced Loans, (c) the Weighted Average Life to Maturity of such Replacement Loans shall not be shorter than the Weighted Average Life to Maturity of such Replaced Loans at the time of such refinancing (except by virtue of amortization or prepayment of the Replaced Loans prior to the time of such incurrence) and (d) all other terms applicable to such Replacement Loans shall be substantially identical to, or less favorable to the Lenders providing such Replacement Loans than, those applicable to such Replaced Loans, except to the extent necessary to provide for covenants and other terms applicable to any period after the Latest Maturity Date of the Loans in effect immediately prior to such refinancing. Each amendment to this Agreement providing for Replacement Loans may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent and the Borrower to effect the provisions of this paragraph, and for the avoidance of doubt, this paragraph shall supersede any other provisions in this Section 10.01 to the contrary.

Notwithstanding anything to the contrary contained in this Section 10.01, guarantees, collateral security documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents.

If the Administrative Agent and the Borrower shall have jointly identified an obvious error (including, but not limited to, an incorrect cross-reference) or any error or omission of a technical or immaterial nature, in each case, in any provision of this Agreement or any other Loan Document (including, for the avoidance of doubt, any exhibit, schedule or other attachment to any Loan Document), then the Administrative Agent (acting in its sole discretion) and the Borrower or any other relevant Loan Party shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document. Notification of such amendment shall be made by the Administrative Agent to the Lenders promptly upon such amendment becoming effective.

Section 10.02 Notices and Other Communications; Facsimile Copies.

(a) Notices; Effectiveness; Electronic Communications.

(i) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (C) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(A) if to the Borrower, the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(B) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrower and the Administrative Agent.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (C) below shall be effective as provided in such subsection (C).

(C) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender or has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(b) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to the Loan Parties, any Lender, or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Loan Parties, any Lender, or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(c) Change of Address, Etc. Each of the Borrower and the Administrative Agent, may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(d) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence, willful misconduct or bad faith of such Person, as determined by a final non-appealable judgment of a court of competent jurisdiction. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03 No Waiver; Cumulative Remedies.

No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.09 (subject to the terms of Section 2.13), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided, further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 10.04 Attorney Costs and Expenses.

The Borrower agrees (a) if the Closing Date occurs, to pay or reimburse the Administrative Agent and the other Agents for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs, which shall be limited to Cahill Gordon & Reindel LLP and one local counsel as reasonably necessary in any relevant jurisdiction material to the interests of the Lenders taken as a whole (and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnitees similarly situated) and (b) after the Closing Date, to pay or reimburse the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all respective Attorney Costs, which shall be limited to Attorney Costs of one counsel to the Administrative Agent and the Lenders taken as a whole and one local counsel as reasonably necessary in any relevant jurisdiction material to the interests of the Lenders taken as a whole and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnitees similarly situated). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within thirty (30) days after written demand therefor (together with backup documentation supporting such reimbursement request); *provided* that, with respect to the Closing Date, all amounts due under this Section 10.04 shall be paid on the Closing Date solely to the extent invoiced to the Borrower within three (3) Business Days prior to the Closing Date. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its discretion. For the avoidance of doubt, this Section 10.04 shall not apply to Taxes, except any Taxes that represent costs and expenses arising from any non-Tax claim.

Section 10.05 Indemnification by the Borrower.

The Borrower shall indemnify and hold harmless each Agent, Agent-Related Person, Lender, Arranger and Bookrunner and their Affiliates, and their respective officers, directors, employees, partners, agents, advisors and other representatives of the foregoing (collectively the “**Indemnitees**”) from and against any and all liabilities, losses, damages, claims, or out-of-pocket expenses (including Attorney Costs but limited in the case of legal fees and expenses to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, one local counsel for all Indemnitees taken as a whole in each relevant jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnitees similarly situated) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment or Loan or the use or proposed use of the proceeds therefrom, (c) any actual or alleged Environmental Liability of the Loan Parties or any Subsidiary or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) (a “**Proceeding**”) and regardless of whether any Indemnitee is a party thereto or whether or not such Proceeding is brought by the Borrower or any other Person and, in each case, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee (all of the foregoing, collectively, the “**Indemnified Liabilities**”); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, losses, damages, claims or out-of-pocket expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any of its Related Indemnified Persons, as determined by a final non-appealable judgment of a court of competent jurisdiction, (y) a material breach of any obligations under any Loan Document by such Indemnitee or of any of its Related Indemnified Persons, as determined by a final non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent or arranger or any similar role under any Facility and other than any claims arising out of any act or omission of the Borrower or any of its Affiliates (as determined in a final and non-appealable judgment of a court of competent jurisdiction). No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement (except for direct (as opposed to indirect, special, punitive or consequential) damages resulting from the gross negligence, bad faith or willful misconduct, as determined by a court of competent jurisdiction in a final and non-appealable judgment, of any such Indemnitee), nor shall any Indemnitee, Related Indemnified Person, Loan Party or any Subsidiary have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party, or which are included in a third-party claim, and for any out-of-pocket expenses related thereto). In the case of an investigation, litigation or other

proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, any Subsidiary of any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents are consummated. All amounts due under this Section 10.05 shall be paid within thirty (30) days after written demand therefor (together with backup documentation supporting such reimbursement request); *provided, however*, that such Indemnitee shall promptly refund such amount to the extent that there is a final judicial or arbitral determination that such Indemnitee was not entitled to indemnification rights with respect to such payment pursuant to the express terms of this Section 10.05. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. For the avoidance of doubt, this Section 10.05 shall not apply to Taxes, except any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, demands, actions, prepayments, suits, costs, expenses and disbursements arising from any non-Tax claims.

To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under this Section 10.05 or Section 10.04 to be paid by it to the Administrative Agent (or any sub-agent thereof), or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this paragraph are subject to the provisions of Section 2.12(e).

Section 10.06 Payments Set Aside.

To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, or any Lender, or the Administrative Agent, or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (except as permitted by Section 7.04) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Assignee pursuant to an assignment made in accordance with the provisions of Section 10.07(b) (such an assignee, an “**Eligible Assignee**”) and (A) in the case of any Assignee that, immediately prior to or upon giving effect to such assignment, is an Affiliated Lender, Section 10.07(k), (B) in the case of any Assignee that is Holdings or any of its Subsidiaries, Section 10.07(l), or (C) in the case of any Assignee that, immediately prior to or upon giving effect to such assignment, is a Debt Fund Affiliate, Section 10.07(o), (ii) by way of participation in accordance with the provisions of Section 10.07(e), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(g) or (i) or (iv) to an SPC in accordance with the provisions of Section 10.07(h) (and any other attempted assignment or transfer by any party hereto shall be null and void); *provided, however*, that notwithstanding the foregoing, no Lender may assign or transfer by participation any of its rights or obligations hereunder to (i) any Person that is a Defaulting Lender, (ii) a natural Person or a Disqualified Institution or (iii) to Holdings, the Borrower or any of their respective Subsidiaries (except pursuant to Section 2.05(a)(v) or Section 10.07(l)). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(e) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement. The Administrative Agent shall promptly give notice to the Borrower of any request by a Lender to assign any of its rights or obligations hereunder to any Person that is on the Disqualified Institutions List or, to the extent it has knowledge, any Person that is an Affiliate of a Person on the Disqualified Institutions List.

(b) (i) Subject to the limitations set forth in paragraph (a) above and the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (“**Assignees**”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed, except in connection with a proposed assignment to any Disqualified Institution) of:

(A) the Borrower, *provided* that no consent of the Borrower shall be required for (i) an assignment of all or a portion of the Loans to a Lender, an Affiliate of a Lender or an Approved Fund, (ii) other than with respect to any proposed assignment to any Person that is a Disqualified Institution, if an Event of Default under Section 8.01(a) or, solely with respect to the Borrower, Section 8.01(f) has occurred and is continuing, to any Assignee or (iii) an assignment of all or a portion of the Loans pursuant to Section 10.07(k), Section 10.07(l) or Section 10.07(o); *provided* that, other than with respect to any proposed assignment to any Person that is a Disqualified Institution, the Borrower shall be deemed to have consented to any such assignment of the Loans unless it shall have objected thereto by written notice to the Administrative Agent within fifteen (15) Business Days after having received notice thereof; and

(B) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for an assignment of all or a portion of the Loans pursuant to Section 10.07(k), Section 10.07(l) or Section 10.07(o);

Notwithstanding the foregoing or anything to the contrary set forth herein, to the extent any Lender is required to assign any portion of its Commitments, Loans and other rights, duties and obligations hereunder in order to comply with applicable Laws, such assignment may be made by such Lender without the consent of the Borrower, the Administrative Agent, or any other party hereto so long as such Lender complies with the requirements of Section 10.07(b)(ii).

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than an amount of \$1,000,000, and shall be in increments of an amount of \$1,000,000, in excess thereof unless each of the Borrower and the Administrative Agent otherwise consent; *provided* that such assignments shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (unless waived or reduced by the Administrative Agent in its sole discretion); and

(C) other than in the case of assignments pursuant to Section 10.07(l), the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

This paragraph (b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis among such Facilities.

In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full Pro

Rata Share of all Loans in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(c) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(d), from and after the effective date specified in each Assignment and Assumption, (1) other than in connection with an assignment pursuant to Section 10.07(l), the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and (2) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (c) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(e).

(d) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption, each Affiliated Lender Assignment and Assumption delivered to it, and each notice of cancellation of any Loans delivered by the Borrower pursuant to Section 10.07(k) or Section 10.07(l) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent and any Lender (but in the case of any Lender, such inspection shall be limited to reviewing such Lender's own entry in the Register only), at any reasonable time and from time to time upon reasonable prior notice. This Section 10.07(d) and Section 2.11 shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations). Notwithstanding the foregoing, in no event shall the Administrative Agent be obligated to ascertain, monitor or inquire as to whether any Lender is an Affiliated Lender nor shall the Administrative Agent be obligated to monitor the aggregate amount of Loans or Incremental Loans held by Affiliated Lenders.

(e) Any Lender may at any time sell participations to any Person (other than a natural person, a Disqualified Institution or a Defaulting Lender) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (a) through (f) of the first proviso to Section 10.01 that requires the affirmative vote of such Lender. Subject to Section 10.07(f), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender (subject, for the avoidance of doubt, to the limitations and requirements of those Sections (including Sections 3.01(d) and Sections 3.06 and 3.07) applying to each Participant as if it were a Lender), and it being understood that documentation required under Section 3.01(d) shall be delivered solely to the participating Lender) and had acquired its interest by assignment pursuant to Section 10.07(c). To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. No Lender shall have the obligation to disclose all or a portion of the Participant Register (including the identity of the Participant or any information relating to a Participant's interest in any Loans or other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that any loans are in registered form for U.S. federal income tax purposes.

(f) A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent (not to be unreasonably withheld or delayed; for the avoidance of doubt, the Borrower shall have a reasonable basis for withholding consent if such Participant would result in a materially increased indemnification obligation to the Borrower at such time).

(g) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Notwithstanding anything to the contrary contained herein, any Lender (a “**Granting Lender**”) may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an “**SPC**”) the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof, shall be appropriately reflected in the Participant Register. Each party hereto hereby agrees that (i) an SPC shall be entitled to the benefit of Sections 3.01, 3.04 and 3.05 (subject to the requirements and the limitations of such Sections and Sections 3.06 and 3.07 and it being understood that the documentation required under Section 3.01(d) shall be delivered solely to the Granting Lenders) but neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement except, in the case of Section 3.01, to the extent that the grant to the SPC was made with the prior written consent of the Borrower which may be withheld in the Borrower’s sole and absolute discretion, (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the Lender hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of \$3,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(i) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the Administrative Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(j) [Reserved].

(k) Any Lender may at any time, assign all or a portion of its rights and obligations with respect to Loans under this Agreement to a Person who is or will become, after such assignment, an Affiliated Lender through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis consistent with the procedures set forth in Section 2.05(a)(v) or (y) open market purchase on a non-pro rata basis, in each case subject to the following limitations:

(i) the assigning Lender and the Affiliated Lender purchasing such Lender's Loans shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit J hereto (an "**Affiliated Lender Assignment and Assumption**");

(ii) Affiliated Lenders will not receive information provided solely to Lenders by the Administrative Agent or any Lender and will not be permitted to attend or participate in conference calls or meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices of prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II;

(iii) (A) each Affiliated Lender that purchases any Loans pursuant to clause (x) above shall represent and warrant to the selling Lender and the Administrative Agent (other than any other Affiliated Lender), or shall make a statement that such representation cannot be made, that it does not possess material non-public information with respect to Holdings and its Subsidiaries or the securities of any of them that has not been disclosed to the Lenders generally (other than Lenders who elect not to receive such information) and (B) each Lender (other than any other Affiliated Lender) that assigns any Loans to an Affiliated Lender pursuant to clause (k)(y) above shall deliver to the Administrative Agent and the applicable Affiliated Lender a customary Big Boy Letter;

(iv) the aggregate principal amount of Loans held at any one time by Affiliated Lenders shall not exceed 25% of the original principal amount of all Loans at such time outstanding; (such percentage, the "**Affiliated Lender Cap**"); *provided* that to the extent any assignment to an Affiliated Lender would result in the aggregate principal amount of all Loans held by Affiliated Lenders exceeding the Affiliated Lender Cap, the assignment of such excess amount will be void *ab initio*; and

(v) as a condition to each assignment pursuant to this clause (k), the Administrative Agent and the Borrower shall have been provided a notice in the form of Exhibit E-2 to this Agreement in connection with each assignment to an Affiliated Lender or a Person that upon effectiveness of such assignment would constitute an Affiliated Lender pursuant to which such Affiliated Lender shall waive any right to bring any action in connection with such Loans against the Administrative Agent, in its capacity as such.

Each Affiliated Lender agrees to notify the Administrative Agent promptly (and in any event within ten (10) Business Days) if it acquires any Person who is also a Lender, and each Lender agrees to notify the Administrative Agent promptly (and in any event within ten (10) Business Days) if it becomes an Affiliated Lender. Such notice shall contain the type of information required and be delivered to the same addressee as set forth in Exhibit E-2.

Notwithstanding anything to the contrary contained herein, any Affiliated Lender that has purchased Loans pursuant to this subsection (k) and any Debt Fund Affiliate that has purchased Loans may, in their sole discretion, contribute, directly or indirectly, principal amount of such Loans, plus all accrued and unpaid interest thereon, to the Borrower for the purpose of cancelling and extinguished such Loans. Upon the date of such contribution, assignment or transfer, (x) the aggregate outstanding principal amount of Loans shall reflect such cancellation and extinguishing of the Loans then held by the Borrower and (y) the Borrower shall promptly provide notice to the Administrative Agent of such contribution of such Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Loans in the Register.

(l) Any Lender may, so long as no Default or Event of Default has occurred and is continuing, at any time, assign all or a portion of its rights and obligations with respect to Loans under this Agreement to Holdings or the Borrower through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis consistent with the procedures set forth in Section 2.05(a)(v) or (y) notwithstanding Sections 2.12 and 2.13 or any other provision in this Agreement, open market purchase on a non-pro rata basis; *provided that*:

(i) if Holdings is the assignee, upon such assignment, transfer or contribution, Holdings shall automatically be deemed to have contributed the principal amount of such Loans, plus all accrued and unpaid interest thereon, to the Borrower; and

(ii) (a) the principal amount of such Loans, along with all accrued and unpaid interest thereon, so contributed, assigned or transferred to the Borrower shall be deemed automatically cancelled and extinguished on the date of such contribution, assignment or transfer, (b) the aggregate outstanding principal amount of Loans of the remaining Lenders shall reflect such cancellation and extinguishing of the Loans then held by the Borrower and (c) the Borrower shall promptly provide notice to the Administrative Agent of such contribution, assignment or transfer of such Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Loans in the Register.

(m) Notwithstanding anything in Section 10.01 or the definition of "Required Lenders" or "Required Class Lenders" to the contrary, for purposes of determining whether the Required Lenders and Required Class Lenders (in respect of a Class of Loans) have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, or subject to Section 10.07(n), any plan of reorganization pursuant to the U.S. Bankruptcy Code, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, no Affiliated Lender shall have any right to consent (or not consent), otherwise act or direct or require the Administrative Agent or any Lender to take (or refrain from taking) any such action, and all Loans held by any Affiliated Lenders shall be disregarded for all purposes of calculating whether the Required Lenders, Required Class Lenders (in respect of a Class of Loans) or all Lenders have taken any actions (and shall be deemed to have voted pro rata with other lenders that are not Affiliated Lenders), except that no amendment, modification or waiver of any Loan Document shall, without the consent of the applicable Affiliated Lender, deprive any Affiliated Lender of its Pro Rata Share of any payment to which all Lenders of the applicable Class of Loans are entitled or affect an Affiliated Lender in a manner that is disproportionate to the effect on any Lender of the same Class of Loans.

(n) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, each Affiliated Lender hereby agrees that (and each Affiliated Lender Assignment and Assumption shall provide a confirmation that) if a proceeding under any Debtor Relief Law shall be commenced by or against the Borrower or any other Loan Party at a time when such Lender is an Affiliated Lender, such Affiliated Lender irrevocably authorizes and empowers the Administrative Agent to vote on behalf of such Affiliated Lender with respect to the Loans held by such Affiliated Lender in a manner such that all Affiliated Lenders will be deemed to vote in the same proportion as Lenders that are not Affiliated Lenders, unless the Administrative Agent instructs such Affiliated Lender to vote, in which case such Affiliated Lender shall vote with respect to the Loans held by it in order to provide that all Affiliated Lenders will be deemed to vote in the same proportion as Lenders that are not Affiliated Lenders; *provided* that such Affiliated Lender shall be entitled to vote in accordance with its sole discretion (and not in accordance with the direction of the Administrative Agent) in connection with any plan of reorganization to the extent any such plan of reorganization proposes to treat any Obligations held by such Affiliated Lender in a manner that has a disproportionate effect on such Affiliated Lender as compared to the proposed treatment of similar Obligations held by Lenders that are not Affiliated Lenders.

(o) Although Debt Fund Affiliates shall be Eligible Assignees and shall not be subject to the provisions of Section 10.07(m) or (n), any Lender may, at any time, assign all or a portion of its rights and obligations with respect to Loans under this Agreement to a Person who is or will become, after such assignment, a Debt Fund Affiliate only through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis consistent with the procedures set forth in Section 2.05(a)(v) (for the avoidance of doubt, without requiring any representation as to the possession of material non-public information by such Affiliate and without regard to whether a Default or an Event of Default has occurred and is continuing) or (y) open market purchase on a non-pro rata basis. Notwithstanding anything in Section 10.01 or the definition of "Required Lenders" to the contrary, for purposes of determining whether the Required Lenders have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, (ii) otherwise acted on any matter related to any Loan Document or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, all Loans held by Debt Fund Affiliates, in the aggregate, may not account for more than 49.9% of the Loans of Lenders included in determining whether the Required Lenders have consented to any action pursuant to Section 10.01.

(p) The aggregate outstanding principal amount of the Loans of the applicable Class shall be deemed reduced by the full par value of the aggregate principal amount of the Loans purchased by, or contributed to (in each case, and subsequently cancelled hereunder), the Borrower pursuant to Section 10.07(k) or (l) and the principal repayment on the Maturity Date with respect to the Loans of such Class pursuant to Section 2.07 shall be reduced by the par value of the aggregate principal amount of Loans so purchased or contributed (and subsequently cancelled), with such reduction being applied solely to the Loans of the Lenders which sold such Loans.

Section 10.08 Confidentiality.

Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and its and its Affiliates' managers, administrators, directors, officers, employees, trustees, partners, investors, investment advisors and agents, including accountants, legal counsel, service providers and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any Governmental Authority or self-regulatory authority having or asserting jurisdiction over such Person (including any Governmental Authority regulating any Lender or its Affiliates), *provided* that the Administrative Agent or such Lender, as applicable, agrees that it will notify the Borrower prior to any such disclosure by such Person to the extent practicable (other than at the request of a regulatory authority or any self-regulatory authority having or asserting jurisdiction over such Person) unless such notification is prohibited by law, rule or regulation; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, *provided* that the Administrative Agent or such Lender, as applicable, agrees that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority or any self-regulatory authority having or asserting jurisdiction over such Person) unless such notification is prohibited by law, rule or regulation; (d) to any other party to this Agreement; (e) subject to an agreement containing provisions at least as restrictive as those of this Section 10.08 (or as may otherwise be reasonably acceptable to the Borrower), to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be an Additional Lender, any pledgee referred to in Section 10.07(g), or any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations; (f) with the written consent of the Borrower; (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.08 or becomes available to the Administrative Agent, any Arranger, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than a Loan Party or any Sponsor or their respective related parties (so long as such source is not known to the Administrative Agent, such Arranger, such Lender or any of their respective Affiliates to be bound by confidentiality obligations to any Loan Party); (h) to any rating agency when required by it on a customary basis and after consultation with the Borrower (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to Loan Parties and their Subsidiaries received by it from such Lender); (i) in connection with the exercise of any remedies hereunder, under any other Loan Document or the enforcement of its rights hereunder or thereunder; or (j) to the extent such Information is independently developed by such Person or its Affiliates so long as not based on Information obtained in a manner that would otherwise violate this Section 10.08.

For purposes of this Section 10.08, “**Information**” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof other than as a result of a breach of this Section 10.08; *provided* that all information received after the Closing Date from Holdings, the Borrower or any of its Subsidiaries shall be deemed confidential unless such information is clearly identified at the time of delivery as not being confidential.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower or any of its Subsidiaries, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

Section 10.09 Setoff.

In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates (and the Administrative Agent, in respect of any unpaid fees, costs and expenses payable hereunder) is authorized at any time and from time to time, without prior notice to the Borrower, any such notice being waived by the Borrower (on its own behalf and on behalf of each Loan Party and each of its Subsidiaries) to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates or the Administrative Agent to or for the credit or the account of the respective Loan Parties and their Subsidiaries against any and all Obligations (other than, with respect to any Guarantor, Excluded Swap Obligations of such Guarantor) owing to such Lender and its Affiliates or the Administrative Agent hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; *provided* that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent and each Lender under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent and such Lender may have at Law.

Section 10.10 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “**Maximum Rate**”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.11 Counterparts; Electronic Execution of Assignments and Certain Other Documents.

This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier, .pdf or other electronic imaging means of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Agents may also require that any such documents and signatures delivered by telecopier, .pdf or other electronic imaging means be confirmed by a manually signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by telecopier, .pdf or other electronic imaging means.

The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.12 Integration; Termination.

This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements (other than the Fee Letter) written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided* that the inclusion of supplemental rights or remedies in favor of the Agents or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor

of any party, but rather in accordance with the fair meaning thereof. Notwithstanding anything contained herein or in any Loan Document or any other agreement among the parties or anything else to the contrary, the Fee Letter and all obligations thereunder shall survive the execution, delivery and performance of the Loan Documents and the occurrence of the Closing Date.

Section 10.13 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied (other than Obligations under Secured Hedge Agreements, Treasury Services Agreements or contingent indemnification obligations, in any such case, not then due and payable).

Section 10.14 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.14, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 10.15 GOVERNING LAW.

(a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY (BOROUGH OF MANHATTAN) OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY, EACH AGENT AND EACH LENDER CONSENTS,

FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS AND AGREES THAT IT WILL NOT COMMENCE OR SUPPORT ANY SUCH ACTION OR PROCEEDING IN ANOTHER JURISDICTION. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN OR IN ANY OTHER LOAN DOCUMENT WILL PREVENT ANY LENDER OR THE ADMINISTRATIVE AGENT FROM BRINGING ANY ACTION TO ENFORCE ANY AWARD OR JUDGMENT OR EXERCISE ANY RIGHT UNDER THE SECURITY DOCUMENTS OR AGAINST ANY COLLATERAL OR ANY OTHER PROPERTY OF ANY LOAN PARTY IN ANY OTHER FORUM IN WHICH JURISDICTION CAN BE ESTABLISHED. EACH LOAN PARTY, EACH AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS IN THE MANNER PROVIDED FOR NOTICES (OTHER THAN TELECOPIER) IN SECTION 10.02. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.16 WAIVER OF RIGHT TO TRIAL BY JURY.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.16.

Section 10.17 Binding Effect.

This Agreement shall become effective when (i) it shall have been executed by the Loan Parties and the Administrative Agent and (ii) the Administrative Agent shall have been notified by each Lender that each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Loan Parties, each Agent and each Lender and their respective successors and assigns, in each case in accordance with Section 10.07 (if applicable) and except that no Loan Party shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders except as permitted by Section 7.04.

Section 10.18 USA Patriot Act.

Each Lender that is subject to the USA Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name, address and tax identification number of such Loan Party and other information regarding such Loan Party that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the USA Patriot Act. This notice is given in accordance with the requirements of the USA Patriot Act and is effective as to the Lenders and the Administrative Agent.

Section 10.19 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the other Arrangers are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Administrative Agent, the other Arrangers and the Lenders, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, each other Arranger and each Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for each Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, any other Arranger nor any Lender has any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the other Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Administrative Agent nor any other Arranger nor any Lender has any obligation to disclose any of such interests to the Loan Parties or any of their respective Affiliates. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the other Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.20 INTERCREDITOR AGREEMENTS.

(a) PURSUANT TO THE EXPRESS TERMS OF EACH INTERCREDITOR AGREEMENT, IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE TERMS OF THE RELEVANT INTERCREDITOR AGREEMENT AND ANY OF THE LOAN DOCUMENTS, THE PROVISIONS OF THE RELEVANT INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL.

(b) EACH LENDER AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT TO ENTER INTO THE RELEVANT INTERCREDITOR AGREEMENT ON BEHALF OF SUCH LENDER, AND TO TAKE ALL ACTIONS (AND EXECUTE ALL DOCUMENTS) REQUIRED (OR DEEMED ADVISABLE) BY IT IN ACCORDANCE WITH THE TERMS OF SUCH INTERCREDITOR AGREEMENT(S). EACH LENDER AGREES TO BE BOUND BY AND WILL TAKE NO ACTIONS CONTRARY TO THE PROVISIONS OF THE RELEVANT INTERCREDITOR AGREEMENT.

(c) THE PROVISIONS OF THIS SECTION 10.20 ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF THE RELEVANT INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO THE RELEVANT INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF THE RELEVANT INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NO AGENT (AND NONE OF ITS AFFILIATES) MAKES ANY REPRESENTATION TO ANY LENDER AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN THE RELEVANT INTERCREDITOR AGREEMENT.

(d) THE PROVISIONS OF THIS SECTION 10.20 SHALL APPLY WITH EQUAL FORCE, MUTATIS MUTANDIS, TO THE SECOND LIEN INTERCREDITOR AGREEMENT, THE THIRD LIEN INTERCREDITOR AGREEMENT, THE SUBORDINATION AGREEMENT AND ANY OTHER INTERCREDITOR AGREEMENT OR ARRANGEMENT PERMITTED BY THIS AGREEMENT.

(e) EACH LENDER HEREUNDER (I) ACKNOWLEDGES THAT IT HAS RECEIVED A COPY OF THE SECOND LIEN INTERCREDITOR AGREEMENT AND (II) CONSENTS TO THE SUBORDINATION OF LIENS PROVIDED FOR IN THE SECOND LIEN INTERCREDITOR AGREEMENT.

(f) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, (I) THE LIENS AND SECURITY INTERESTS GRANTED TO THE ADMINISTRATIVE AGENT PURSUANT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT ARE EXPRESSLY SUBJECT AND SUBORDINATE TO THE LIENS AND SECURITY INTERESTS GRANTED IN FAVOR OF THE SENIOR SECURED PARTIES (AS DEFINED IN THE SECOND LIEN INTERCREDITOR AGREEMENT) TO THE EXTENT SET FORTH IN THE SECOND LIEN INTERCREDITOR AGREEMENT, INCLUDING LIENS AND SECURITY INTERESTS GRANTED TO FIRST LIEN ADMINISTRATIVE AGENT, PURSUANT TO OR IN CONNECTION WITH THE FIRST LIEN CREDIT AGREEMENT AND (II) THE EXERCISE OF ANY RIGHT OR REMEDY BY THE ADMINISTRATIVE AGENT HEREUNDER IS SUBJECT TO THE LIMITATIONS AND PROVISIONS OF THE SECOND LIEN INTERCREDITOR AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE SECOND LIEN INTERCREDITOR AGREEMENT AND THE TERMS OF THIS AGREEMENT, THE TERMS OF THE SECOND LIEN INTERCREDITOR AGREEMENT SHALL GOVERN.

ARTICLE XI.
GUARANTEE

Section 11.01 The Guarantee.

Each Guarantor hereby jointly and severally with the other Guarantors guarantees, as a primary obligor and not as a surety, to each Secured Party and their respective successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of (i) the Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code and (ii) any other Debtor Relief Laws) on the Loans made by the Lenders to, and the Notes held by each Lender of, the Borrower, and all other Obligations (excluding, with respect to any Guarantor, any Excluded Swap Obligations of such Guarantor) from time to time owing to the Secured Parties by any Loan Party under any Loan Document or any Secured Hedge Agreement or any Treasury Services Agreement, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the “**Guaranteed Obligations**”). The Guarantors hereby jointly and severally agree that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Section 11.02 Obligations Unconditional.

The obligations of the Guarantors under Section 11.01 shall constitute a guaranty of payment and to the fullest extent permitted by applicable Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower under this Agreement, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(i) at any time or from time to time, without notice to the Guarantors, to the extent permitted by Law, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;

(iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or except as permitted pursuant to Section 11.09, any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien or security interest granted to, or in favor of any Lender or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or

(v) the release of any other Guarantor pursuant to Section 11.09.

The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and, to the extent permitted by Law, all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive, to the extent permitted by Law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other Person at any time of any right or remedy against the Borrower or against any other Person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Lenders, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

Section 11.03 Reinstatement.

The obligations of the Guarantors under this Article XI shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

Section 11.04 Subrogation; Subordination.

Each Guarantor hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 11.01, whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party to any Non-Loan Party permitted pursuant to Section 7.03(b)(ii) or 7.03(d) shall be subordinated to such Loan Party's Obligations in the manner set forth in the Intercompany Note evidencing such Indebtedness.

Section 11.05 Remedies.

The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in Section 8.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 8.02) for purposes of Section 11.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 11.01.

Section 11.06 Instrument for the Payment of Money.

Each Guarantor hereby acknowledges that the guarantee in this Article XI constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

Section 11.07 Continuing Guarantee.

The guarantee in this Article XI is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

Section 11.08 General Limitation on Guarantee Obligations.

In any action or proceeding involving any state corporate limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under Section 11.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, any Loan Party or any other Person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 11.10) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

Section 11.09 Release of Guarantors.

If, in compliance with the terms and provisions of the Loan Documents, (i) all or substantially all of the Equity Interests or property of any Subsidiary Guarantor are sold or otherwise transferred to a Person or Persons none of which is a Loan Party or (ii) any Subsidiary Guarantor becomes an Excluded Subsidiary (any such Subsidiary Guarantor, and any Subsidiary Guarantor referred to in clause (i), a “**Transferred Guarantor**”), such Transferred Guarantor shall, upon the consummation of such sale or transfer or other transaction, be automatically released from its obligations under this Agreement (including under Section 10.05 hereof) and its obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and, in the case of a sale of all or substantially all of the Equity Interests of the Transferred Guarantor, the pledge of such Equity Interests to the Administrative Agent pursuant to the Collateral Documents shall be automatically released, and, so long as the Borrower shall have provided the Agents such certifications or documents as any Agent shall reasonably request, the Administrative Agent shall take such actions as are necessary to effect each release described in this Section 11.09 in accordance with the relevant provisions of the Collateral Documents.

Subject to the immediately preceding paragraph of this Section 11.09, the Guarantees made herein shall remain in full force and effect so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements) hereunder which is accrued and payable shall remain unpaid or unsatisfied.

Section 11.10 Right of Contribution.

Each Guarantor hereby agrees that to the extent that a Subsidiary Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Subsidiary Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Subsidiary Guarantor’s right of contribution shall be subject to the terms and conditions of Section 11.04. The provisions of this Section 11.10 shall in no respect limit the obligations and liabilities of any Subsidiary Guarantor to the Administrative Agent, and the Lenders, and each Subsidiary Guarantor shall remain liable to the Administrative Agent and the Lenders for the full amount guaranteed by such Subsidiary Guarantor hereunder.

Section 11.11 Keepwell.

Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally, and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guaranty in respect of any Swap Obligation (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 11.11 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 11.11, or otherwise under this Guaranty,

voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 11.11 shall remain in full force and effect until the payment in full and discharge of the Guaranteed Obligations. Each Qualified ECP Guarantor intends that this Section 11.11 constitute, and this Section 11.11 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Guarantor for all purposes of section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

PHD MERGER SUB LLC

By: /s/ Joshua A. Lutzker

Name: Joshua A. Lutzker

Title: President

PHD INTERMEDIATE LLC

PORTILLO'S FOOD SERVICE, LLC

GOLDEN DOGS, LLC

PORTILLO'S HOT DOGS, LLC

RICHPORT HOLDINGS, LLC

PORTILLO'S OF ARIZONA, LLC

PORTILLO'S HOT DOGS OF INDIANA, LLC

By: /s/ Karen L. Peterson

Name: Karen L. Peterson

Title: Vice President, Chief Financial Officer
and Treasurer

[Signature Page to Second Lien Credit Agreement]

UBS AG, STAMFORD BRANCH, as Administrative
Agent and as a Lender

By: /s/ Lana Gifas

Name: Lana Gifas

Title: Director

By: /s/ Jennifer Anderson

Name: Jennifer Anderson

Title: Associate Director

[Signature Page to Second Lien Credit Agreement]

AMENDMENT NO. 1 TO SECOND LIEN CREDIT AGREEMENT

AMENDMENT NO. 1 TO SECOND LIEN CREDIT AGREEMENT, dated as of October 25, 2016 (this "Agreement"), by and among Portillo's Holdings, LLC, a Delaware limited liability company (the "Borrower"), PHD Intermediate LLC, a Delaware limited liability company ("Holdings"), each Term B-2 Lender party hereto, each Lender party hereto, UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent"), and each of the other Loan Parties party hereto.

RECITALS:

WHEREAS, reference is hereby made to the Second Lien Credit Agreement, dated as of August 1, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Credit Agreement" and, as amended by this Agreement, the "Credit Agreement"), among Holdings, the Borrower, the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and the Administrative Agent (capitalized terms used but not defined herein having the meanings provided in the Existing Credit Agreement);

WHEREAS, Section 10.01 of the Existing Credit Agreement permits certain amendments to it with the consent of the Required Lenders;

WHEREAS, pursuant to Section 2.14(a) of the Existing Credit Agreement, the Borrower hereby notifies the Administrative Agent that it is requesting Incremental Commitments in an aggregate principal amount of \$25,000,000 (the "Term B-2 Commitments"), which will be available on the Effective Date (as defined below) and which Term B-2 Commitments and the Incremental Loans thereunder (the "Term B-2 Loans") shall constitute Loans under the Credit Agreement and will be treated as the same tranche (and same Class) as the Initial Loans outstanding under the Existing Credit Agreement, the proceeds of which Term B-2 Loans will be used, together with the proceeds of a \$71,000,000 incremental loan pursuant to the First Lien Credit Agreement (the "2016 First Lien Incremental Loan") and cash on hand to pay a distribution to its indirect shareholders (the "Special Distribution") in an amount not to exceed \$110,000,000 and to pay fees and expenses in connection with the transactions contemplated hereby (collectively, the "Transactions");

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

1. **Amendments to Loan Documents.** Effective as of the Effective Date:

- (a) Section 1.01 of the Existing Credit Agreement is hereby amended by inserting in appropriate alphabetical order the following new definitions:

"**Amendment No. 1**" means Amendment No. 1 to this Agreement, dated as of October 25, 2016, among the Borrower, Holdings, the other Loan Parties party thereto, the Administrative Agent and the Lenders party thereto.

"**Amendment No. 1 Effective Date**" shall mean the "Effective Date" under and as defined in Amendment No. 1.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“De Novo Store” means any store that has been continuously operational for less than six consecutive fiscal quarters.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“First Lien Credit Agreement Amendment No. 1” means that certain Amendment No. 1 to First Lien Credit Agreement, dated as of October 25, 2016, by and among Holdings, the Borrower, the other Guarantors party thereto, the lenders party thereto in their capacities as lenders and the First Lien Administrative Agent.

“Special Distribution” shall mean the “Special Distribution” under and as defined in Amendment No. 1.

“Term B-2 Loan Commitment” means, as to any Lender, its obligation to make a Term B-2 Loan to the Borrower pursuant to Amendment No. 1 in an aggregate amount not to exceed the amount set forth opposite such Lender’s name on Schedule I to Amendment No. 1 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including Section 2.14). The aggregate amount of the Lenders’ Term B-2 Loan Commitments on the Amendment No. 1 Effective Date (immediately prior to the incurrence of the Term B-2 Loans on such date) is \$25,000,000.

“Term B-2 Loan” means the term loans made by the Term B-2 Lenders to the Borrower pursuant to Section 2.14 on the Amendment No. 1 Effective Date.

“**Term B-2 Lenders**” means any Lender with a Term B-2 Loan Commitment or an outstanding Term B-2 Loan.

“**Write-Down and Conversion Powers**” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

- (b) The definition of “Applicable Rate” contained in Section 1.01 of the Existing Credit Agreement is hereby amended in its entirety to read as follows:

“**Applicable Rate**” means with respect to the Initial Loans and Term B-2 Loans, a percentage per annum equal to (A) for Eurocurrency Rate Loans, 8.00% and (B) for Base Rate Loans, 7.00%.

- (c) Clause (a)(xiv) of the definition of “Consolidated EBITDA” contained in Section 1.01 of the Existing Credit Agreement is hereby amended in its entirety to read as follows:

(xiv) other adjustments and add-backs of the type identified in the Quality of Earnings Analysis dated June 25, 2014, including without limitation, if greater than zero, an amount equal to the pro forma “run rate” Consolidated EBITDA attributable to any De Novo Store, which will be assumed to be (A)(1) the median Consolidated EBITDA margin before cash rent expense of comparable stores that have been operating for at least six consecutive fiscal quarters for such period multiplied by (2) the projected (in the good faith determination of the Borrower) mature annual revenue of such De Novo Store, minus (b)(i) the annual cash rent expense of the relevant De Novo Store and (B) the actual Consolidated EBITDA generated by the relevant De Novo Store;

- (d) Clause (a)(i) of the definition of “Cumulative Credit” contained in Section 1.01 of the Existing Credit Agreement is hereby amended in its entirety to read as follows:

\$12,000,000, *plus* subject, at the time of the proposed use of such component of the Cumulative Credit, to compliance on a Pro Forma Basis with a Total Net Leverage Ratio as of the most recently ended Test Period that is no greater than 5.80:1.00, \$24,000,000, *plus*

- (e) Clause (d)(i) of the definition of “Defaulting Lender” contained in Section 1.01 of the Existing Credit Agreement is hereby amended in its entirety to read as follows:

(i) become the subject of a proceeding under any Debtor Relief Law or a Bail-In Action,

- (f) The definition of “First Lien Incremental Usage Amount” contained in Section 1.01 of the Existing Credit Agreement is hereby amended in its entirety to read as follows:

“**First Lien Incremental Usage Amount**” means, at any time, the sum of (x) the aggregate principal amount of “Incremental Commitments” (as defined in the First Lien Credit Agreement) established at or before such time pursuant to Section 2.14(d)(iii)(B) of the First Lien Credit Agreement (as in effect as of the date hereof but after giving effect to First Lien Credit Agreement Amendment No. 1) and (y) the aggregate principal amount of “Incremental Equivalent Debt” (as defined in the First Lien Credit Agreement) incurred at or before such time pursuant to Section 2.14(h)(i)(B) of the First Lien Credit Agreement (as in effect as of the date hereof but after giving effect to First Lien Credit Agreement Amendment No. 1).

- (g) The definition of “Loan” contained in Section 1.01 of the Existing Credit Agreement is hereby amended in its entirety to read as follows:
“**Loan**” means any Initial Loan, Term B-2 Loan, Incremental Loan, Refinancing Loan or Extended Loan, as the context may require.
- (h) The definition of “Maturity Date” contained in Section 1.01 of the Existing Credit Agreement is hereby amended in its entirety to read as follows:
“**Maturity Date**” means (i) with respect to the Initial Loans and the Term B-2 Loans, the eighth anniversary of the Closing Date; (ii) with respect to any Class of Extended Loans, the final maturity date as specified in the applicable Extension Request accepted by the respective Lender or Lenders, (iii) with respect to any Refinancing Loans, the final maturity date as specified in the applicable Refinancing Amendment and (iv) with respect to any Incremental Loans, the final maturity date as specified in the applicable Incremental Amendment; *provided* that, in each case, if such day is not a Business Day, the Maturity Date shall be the Business Day immediately succeeding such day.
- (i) Section 2.05(a)(vi) of the Existing Credit Agreement is hereby amended in its entirety to read as follows:
If any Initial Loans or Term B-2 Loans are voluntarily prepaid pursuant to Section 2.05(a)(i) or mandatorily prepaid pursuant to Section 2.05(b)(iii) or (iv), such prepayments shall be made at 101% of the aggregate principal amount of Initial Loans and Term B-2 Loans prepaid if such prepayment occurs before the first anniversary of the Amendment No. 1 Effective Date. If, prior to the first anniversary of the Amendment No. 1 Effective Date, any Lender that is a Non-Consenting Lender is replaced pursuant to Section 3.07 in connection with any amendment, amendment and restatement or other modification of this Agreement, the primary purpose of which is to reduce the All-In Yield applicable to the Loans (other than any amendment, amendment and restatement or other modification effecting a reduction of the All-In Yield applicable to the Loans in connection with any Qualified IPO, Permitted Acquisition or transaction that would result in a Change of Control), such Lender (and not any Person who replaces such Lender pursuant to Section 3.07) shall receive its portion (as determined immediately prior to it being so replaced) of the prepayment premium or fee described in the preceding sentence as if the Loans held by such Lender were voluntarily prepaid. Any amounts due to any Lender pursuant to this clause (vi) shall be due and payable on the date of such voluntary prepayment or effectiveness of such amendment for which such Lender was a Non-Consenting Lender, as applicable.
- (j) Section 2.14(d)(iii) of the Existing Credit Agreement is hereby amended by inserting the following immediately after “\$85,000,000”:
(provided, that such amount shall not be reduced by the Term B-2 Loans, Additional Commitments (as defined in First Lien Credit Agreement Amendment No. 1) or the 2016 First Lien Incremental Loan (as defined in Amendment No. 1))

- (k) Section 2.14(h) of the Existing Credit Agreement is hereby amended by inserting the following immediately after “\$85,000,000”:
(provided, that such amount shall not be reduced by the Term B-2 Loans, Additional Commitments (as defined in the First Lien Credit Agreement Amendment No. 1) or the 2016 First Lien Incremental Loan (as defined in Amendment No. 1))
- (l) Section 7.06 of the Existing Credit Agreement is hereby amended by (i) deleting “and” at the end of clause (l) thereof, (ii) deleting “.” at the end of clause (m) thereof and inserting in its place “; and” and (iii) inserting a new clause (n) at the end thereof as follows:
- (n) the Special Distribution in an amount not to exceed \$110 million.
- (m) Article X of the Existing Credit Agreement is amended by inserting a new Section 10.21 at the end thereof as follows:
Section 10.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:
- (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and
 - (b) the effects of any Bail-In Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

2. **Term B-2 Loans.**

- (a) **Terms Generally.** Subject to the satisfaction of the conditions set forth in Section 3 of this Agreement, each Term B-2 Lender hereby acknowledges and agrees that it has a Term B-2 Commitment in the amount set forth on Schedule I to this Agreement and agrees to make Term B-2 Loans on the Effective Date in accordance with Section 2.14 of the Existing Credit Agreement. From and after the Effective Date, each Term B-2 Lender shall be a Lender for all purposes under the Credit Agreement and the other Loan Documents. The Initial Loans and the Term B-2 Loans shall be a single tranche of Loans for all purposes under the Credit Agreement and payments of the Initial Loans or Term B-2 Loans of interest, principal (whether optional or mandatory) and premiums shall be made on pro rata basis among the Initial Loans and Term B-2 Loans. The Term B-2 Loans shall have identical terms as the existing Initial Loans and shall rank *pari passu* in right of payment and security with the existing Loans, and in furtherance thereof and for the avoidance of doubt, each reference to the Initial Loans in the Loan Documents (other than in the preliminary statements to the Credit Agreement, the definitions of “Equity Contribution”, “Initial Commitment”, “Initial Loan” and “Transactions” in the Credit Agreement, and Sections 2.06, 2.09(b) and 4.01(c) of the Credit Agreement) shall be deemed to include the Term B-2 Loans.
- (b) **Administrative Matters.** Each of the parties hereto hereby agrees that the Administrative Agent may take any and all action as may be reasonably necessary to ensure that all such Term B-2 Loans, when originally made, are a single tranche (and Class) with the outstanding Initial Loans for all purposes under the Loans Documents and are included in each Borrowing of outstanding Initial Loans on a pro rata basis. This may be accomplished at the discretion of the Administrative Agent by allocating a portion of each such Term B-2 Loan to each outstanding Eurocurrency Rate Loan that is an Initial Loan of the same Type on a pro rata basis, even though as a result thereof such Term B-2 Loan may effectively have a shorter Interest Period than the Term B-2 Loans included in the Borrowing of which they are a part (and notwithstanding any other provision of the Credit Agreement that would prohibit such an initial Interest Period). This Section 2(b) is for administrative purposes only and shall, under no circumstances, result in any additional obligations, expenses or fees for the Borrower.

3. **Effective Date Conditions.** This Agreement will become effective on the date (the “Effective Date”) on which each of the following conditions have been satisfied (or waived) in accordance with the terms herein:

- (a) the Administrative Agent shall have received counterparts of this Agreement executed by (i) Term B-2 Lenders with Term B-2 Commitments representing 100% of the Term B-2 Commitments, (ii) the Required Lenders and (iii) the Borrower and each other Loan Party;
- (b) for the ratable benefit of each Term B-2 Lender providing a Term B-2 Loan as of the Effective Date, an upfront fee (the “Upfront Fee”) in an amount equal to 2.00% of the stated principal amount of such Term B-2 Lender’s Term B-2 Loan, earned and due and payable to such Term B-2 Lender on the Effective Date. The Term B-2 Loans may be net funded on the Effective Date to account for the Upfront Fee;
- (c) the Administrative Agent shall have received payment from or on behalf of the Borrower for the account of each Lender that shall have consented to this Agreement by delivering a counterpart signature page to this Agreement to the Administrative Agent prior to 5:00 p.m., New York City time, on October 17, 2016, of an amendment fee for each such Lender in an amount equal to 0.25% of the outstanding principal amount of the Initial Loans of such Lender;

- (d) the representations and warranties in Section 4 of this Agreement shall be true and correct in all material respects as of the Effective Date;
 - (e) no Default or Event of Default shall exist, or would result from the incurrence of the Term B-2 Loans and the consummation of the Transactions contemplated hereby, including from the application of the proceeds therefrom;
 - (f) the Administrative Agent shall have received a certificate, in form and substance reasonably satisfactory to the Administrative Agent, of the Borrower dated as of the Effective Date signed by a Responsible Officer of the Borrower (i) (A) certifying and attaching the resolutions or similar consents adopted by the Borrower approving or consenting to this Agreement and the Term B-2 Loans, (B) certifying that the certificate of formation and limited liability company agreement of the Borrower either (x) has not been amended since the Closing Date or (y) is attached as an exhibit to such certificate, and (C) certifying as to the incumbency and specimen signature of each officer executing this Agreement and any related documents on behalf of the Borrower and (ii) certifying as to the matters set forth in clauses (d) and (e) above;
 - (g) the Administrative Agent shall have received, on behalf of itself, the Term B-2 Lenders on the Effective Date, a favorable written opinion of Weil, Gotshal & Manges LLP, counsel for Holdings, the Borrower and each other Loan Party, (A) dated the Effective Date, (B) addressed to the Administrative Agent and the Term B-2 Lenders and (C) in form and substance reasonably satisfactory to the Administrative Agent and covering such matters relating to this Agreement as the Administrative Agent shall reasonably request;
 - (h) the Administrative Agent shall have received a Borrowing Request executed by the Borrower;
 - (i) all fees and out-of-pocket expenses for which invoices have been presented at least three business day prior to the Effective Date (including the reasonable fees and expenses of legal counsel) required to be paid or reimbursed by the Borrower pursuant to Section 10.04 of the Credit Agreement in connection with this Agreement shall have been paid or reimbursed by (or on behalf of) the Borrower; and
 - (j) The borrowing of the 2016 First Lien Incremental Loans under First Lien Credit Agreement Amendment No. 1 shall have been consummated.
4. **Representations and Warranties.** By its execution of this Agreement, each Loan Party hereby represents and warrants that:
- (a) the execution, delivery and performance of this Agreement is within such Loan Party's corporate or other organizational powers and has been duly authorized by all necessary corporate or other organizational action of such Loan Party;
 - (b) this Agreement has been duly executed and delivered by such Loan Party and is a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity and principles of good faith and dealing; and

- (c) the execution and delivery of this Agreement by such Loan Party and the performance by such Loan Party hereof do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01 of the Credit Agreement), or require any payment to be made under (x) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject or (iii) violate any Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) (A) referred to in clauses (ii) and (iii), to the extent that such violation, conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect.
5. **Reference to and Effect on Loan Documents; Reaffirmation of the Loan Parties.**
- (a) On and after the effectiveness of this Agreement, each reference in the Existing Credit Agreement and the other Loan Documents to any of the Loan Documents, "this Agreement", "hereunder", "hereof" or words of like import referring to any Loan Document shall mean and be a reference to the applicable Loan Document, as specifically amended by this Agreement.
- (b) Each Loan Party hereby consents to the amendment of the Existing Credit Agreement and the Loan Documents effected hereby and confirms and agrees that, notwithstanding the effectiveness of this Agreement, each Loan Document to which such Loan Party is a party is, and the obligations of such Loan Party contained in the Existing Credit Agreement, this Agreement or in any other Loan Document to which it is a party are, and shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects, in each case as amended by this Agreement. For greater certainty and without limiting the foregoing, each Loan Party hereby confirms and reaffirms, as of the date hereof, (i) that the existing security interests granted by such Loan Party in favor of the Administrative Agent for the benefit of the Secured Parties (including without limitation the Term B-2 Lenders) pursuant to the Loan Documents in the Collateral described therein shall continue to secure the Obligations as and to the extent provided in the Loan Documents and (ii) its Guaranty of the Obligations and the covenants and agreements contained in each of the other Loan Documents to which it is a party, including, in each case, such security interest, covenants and agreements as in effect immediately after giving to this Agreement and the transactions contemplated hereby. Neither the modification of the Existing Credit Agreement effected pursuant to this Agreement nor the execution, delivery, performance or effectiveness of this Agreement (i) impairs the validity, effectiveness or priority of the Liens granted pursuant to any Loan Document, and such Liens continue unimpaired with the same priority to secure repayment of all Obligations, whether heretofore or hereafter incurred; or (ii) requires that any new filings be made or other action taken to perfect or to maintain the perfection of such Liens.
6. **Amendment, Modification and Waiver.** This Agreement may not be amended, modified or waived except as permitted by Section 10.01 of the Credit Agreement.

7. **Entire Agreement.** This Agreement, the engagement letter among certain of the parties hereto (or their respective affiliates) related to the transactions described herein, the Credit Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties or any of them with respect to the subject matter hereof. The parties hereto acknowledge and agree that the amendment of the Credit Agreement pursuant to this Agreement and all other Loan Documents amended and/or executed and delivered in connection herewith shall not constitute a novation of the Existing Credit Agreement and the other Loan Documents as in effect prior to the Effective Date.
8. **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.
9. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
10. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier, .pdf or other electronic imaging means of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement.
11. **WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.
12. **Loan Document.** On and after the Effective Date, this Agreement shall constitute a "Loan Document" for all purposes of the Credit Agreement and the other Loan Documents (it being understood that for the avoidance of doubt this Agreement may be amended or waived solely by the parties hereto as set forth in Section 6 above).

[signature pages to follow]

IN WITNESS WHEREOF, each of the undersigned has caused its duly authorized officer to execute and deliver this Agreement as of the date first set forth above.

PHD INTERMEDIATE LLC

By: /s/ Tom Stoltz
Name: Tom Stoltz
Title: Chief Financial Officer

PORTILLO'S HOLDINGS, LLC

By: /s/ Tom Stoltz
Name: Tom Stoltz
Title: Chief Financial Officer

GOLDEN DOGS, LLC
PORTILLO'S HOT DOGS, LLC
RICHPORT HOLDINGS, LLC

By: /s/ Tom Stoltz
Name: Tom Stoltz
Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to
Second Lien Credit Agreement]

By: /s/ Kenneth Chin

Name: Kenneth Chin

Title: Director

By: /s/ Darlene Arias

Name: Darlene Arias

Title: Director

[Portillo's – Signature Page to Amendment No. 1 to
Second Lien Credit Agreement]

By: /s/ Kenneth Chin

Name: Kenneth Chin

Title: Director

By: /s/ Darlene Arias

Name: Darlene Arias

Title: Director

[Portillo's – Signature Page to Amendment No. 1 to
Second Lien Credit Agreement]

[Second Lien Lender Signature Page]

AIC FINANCE PARTNERSHIP, LP,
as a Lender

By: /s/ Rob Stobo
Name: Rob Stobo
Title: Manager

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

BOC Pension Investment Fund

as a Lender

BY: Invesco Senior Secured Management, Inc. as Attorney
in Fact

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Covenant Credit Partners CLO I, Ltd., as a Lender

By: /s/ Chris Brogdon

Name: Chris Brogdon

Title: Asst. Portfolio Manager

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): _____

Covenant Credit Partners CLO II, Ltd., as a Lender

By: /s/ Chris Brogdon

Name: Chris Brogdon

Title: Asst. Portfolio Manager

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): _____

Credit Suisse Loan Funding LLC, as a Lender

By: /s/ Michael Wotanowski _____

Name: Michael Wotanowski

Title: Authorized Signatory

Name of Fund Manager (if any): _____

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Diversified Credit Portfolio Ltd.

as a Lender

BY: Invesco Senior Secured Management, Inc. as
Investment Adviser

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

First Trust Senior Floating Rate Income Fund II

as a Lender

By: First Trust Advisors L.P., its investment manager

By: /s/ Ryan Kommers

Name: Ryan Kommers

Title: Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): First Trust Advisors L.P.

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

First Trust Short Duration High Income Fund

as a Lender

BY: First Trust Advisors L.P., its investment manager

By: /s/ Ryan Kommers

Name: Ryan Kommers

Title: Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): First Trust Advisors L.P.

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

First Trust Tactical High Yield ETF

as a Lender

By: First Trust Advisors L.P., its Investment Advisor

By: /s/ Ryan Kommers

Name: Ryan Kommers

Title: Vice President

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): First Trust Advisors L.P.

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Invesco BL Fund, Ltd.

as a Lender

By: Invesco Management S.A. As Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Invesco Dynamic Credit Opportunities Fund

as a Lender

BY: Invesco Senior Secured Management, Inc, as
Sub-advisor

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Invesco Floating Rate Fund

as a Lender

BY: Invesco Senior Secured Management, Inc. as
Sub-Adviser

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Invesco Senior Income Trust

as a Lender

BY: Invesco Senior Secured Management, Inc. as
Sub-advisor

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Invesco Senior Loan Fund

as a Lender

BY: Invesco Senior Secured Management, Inc. as
Sub-advisor

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Invesco Zodiac Funds - Invesco US Senior Loan Fund

as a Lender

By: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

ISL Loan Trust II

as a Lender

BY: Voya Investment Management Co. LLC, as its
investment advisor

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Kaiser Foundation Hospitals

as a Lender

By: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Kaiser Permanente Group Trust

as a Lender

By: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

[Second Lien Lender Signature Page]

LCM XII Limited Partnership
By: LCM Asset Management LLC
As Collateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

[Second Lien Lender Signature Page]

LCM XIV Limited Partnership
By: LCM Asset Management LLC
As Collateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

[Second Lien Lender Signature Page]

LCM XV Limited Partnership
By: LCM Asset Management LLC
As Collateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

[Second Lien Lender Signature Page]

LCM XVI Limited Partnership
By: LCM Asset Management LLC
As Collateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

[Second Lien Lender Signature Page]

LCM XVII Limited Partnership
By: LCM Asset Management LLC
As Collateral Manager

as a Lender (type name of the legal entity)

LCM Asset Management LLC

By: /s/ Alexander B. Kenna

Name: Alexander B. Kenna

Title:

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Linde Pension Plan Trust

as a Lender

By: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Loomis Sayles Senior Floating Rate & Fixed Income Fund

as a Lender

By: Loomis, Sayles & Company, L.P., Its Investment Manager

By: Loomis, Sayles & Company, Incorporated, Its General Partner

By: /s/ Mary McCarthy

Name: Mary McCarthy

Title: Vice President, Legal and Compliance Analyst

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Loomis Sayles

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

NHIT: Senior Floating Rate and Fixed Income Trust

as a Lender

By: Loomis Sayles Trust Company, LLC, its Trustee

By: /s/ Mary McCarthy

Name: Mary McCarthy

Title: Vice President, Legal and Compliance Analyst

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Loomis Sayles

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

NN(L) Flex - Senior Loans

as a Lender

BY: Voya Investment Management Co. LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

OHA CREDIT PARTNERS IX, LTD.

as a Lender

By: Oak Hill Advisors, L.P.

as Portfolio Manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

OHA CREDIT PARTNERS VI, LTD.

as a Lender

By: Oak Hill Advisors, L.P. As its portfolio manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

OHA CREDIT PARTNERS VII, LTD.

as a Lender

BY: Oak Hill Advisors, L.P., as Portfolio Manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

OHA LOAN FUNDING 2012-1, LTD.

as a Lender

By: Oak Hill Advisors, L.P.

As Portfolio Manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

OHA LOAN FUNDING 2013-1, LTD.

as a Lender

By: Oak Hill Advisors, L.P.

as Portfolio Manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

OHA LOAN FUNDING 2013-2, LTD.

as a Lender

By: Oak Hill Advisors, L.P.

As Portfolio Manager

By: /s/ Glenn August

Name: Glenn August

Title: Authorized Signatory

If a second signature is necessary:

By: _____

Name: _____

Title: _____

Name of Fund Manager (if any): Oak Hill Advisors, L.P.

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

[Second Lien Lender Signature Page]

OZLM Funding III, Ltd.,
as a Lender

By: Och-Ziff Loan Management LP, its collateral manager
By: Och-Ziff Loan Management LLC, its general partner

By: /s/ Joel Frank
Name: Joel Frank
Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

OZLM VI, Ltd.,
as a Lender

By: Och-Ziff Loan Management LP, its collateral manager
By: Och-Ziff Loan Management LLC, its general partner

By: /s/ Joel Frank
Name: Joel Frank
Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

[Second Lien Lender Signature Page]

OZLM VII, Ltd.,
as a Lender

By: Och-Ziff Loan Management LP, its collateral manager
By: Och-Ziff Loan Management LLC, its general partner

By: /s/ Joel Frank
Name: Joel Frank
Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

[Second Lien Lender Signature Page]

OZLM VIII, Ltd.,
as a Lender

By: Och-Ziff Loan Management LP, its collateral manager
By: Och-Ziff Loan Management LLC, its general partner

By: /s/ Joel Frank
Name: Joel Frank
Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

[Second Lien Lender Signature Page]

OZLM IX, Ltd.,
as a Lender

By: Och-Ziff Loan Management LP, its collateral manager
By: Och-Ziff Loan Management LLC, its general partner

By: /s/ Joel Frank
Name: Joel Frank
Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

[Second Lien Lender Signature Page]

OZLM XI, Ltd.,
as a Lender

By: Och-Ziff Loan Management LP, its collateral manager
By: Och-Ziff Loan Management LLC, its general partner

By: /s/ Joel Frank
Name: Joel Frank
Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

[Second Lien Lender Signature Page]

OZLM XIII, Ltd.,
as a Lender

By: Och-Ziff Loan Management LP, its collateral manager
By: Och-Ziff Loan Management LLC, its general partner

By: /s/ Joel Frank

Name: Joel Frank

Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

[Second Lien Lender Signature Page]

OZLM XIV, Ltd.,
as a Lender

By: Och-Ziff Loan Management LP, its collateral manager
By: Och-Ziff Loan Management LLC, its general partner

By: /s/ Joel Frank
Name: Joel Frank
Title: Chief Financial Officer

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Sentry Insurance a Mutual Company

as a Lender

BY: Invesco Senior Secured Management, Inc. as
Sub-Advisor

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Invesco

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Silver Rock Financial LLC

By: /s/ Jeffrey Green

Name: Jeffrey Green

Title: Management Committee Member

Name of Fund Manager (if any): Silver Rock Financial LLC

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

The City of New York Group Trust

as a Lender

BY: Invesco Senior Secured Management, Inc. as
Investment Manager

By: /s/ Kevin Egan

Name: Kevin Egan

Title: Authorized Individual

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Invesco

UBS AG, Stamford Branch as a Lender

By: /s/ Darlene Arias

Name: Darlene Arias

Title: Director

If a second signature is necessary:

By: /s/ Housseem Daly

Name: Housseem Daly

Title: Associate Director Banking Products Services, US

Name of Fund Manager (if any): _____

Voya CLO 2012-2, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya CLO 2012-3, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya CLO 2012-4, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya CLO 2013-1, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya CLO 2013-2, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya CLO 2013-3, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya CLO 2014-1, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya CLO 2014-2, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya CLO 2014-3, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya CLO 2014-4, Ltd.

as a Lender

BY: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya CLO 2015-1, Ltd.

as a Lender

By: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya CLO 2015-2, Ltd.

as a Lender

By: Voya Alternative Asset Management LLC,
as its investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya CLO 2015-3, Ltd.

as a Lender

By: Voya Alternative Asset Management LLC,
as its investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya CLO 2016-1, Ltd.

as a Lender

By: Voya Alternative Asset Management LLC,
as its investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya CLO 2016-2, Ltd.

as a Lender

By: Voya Alternative Asset Management LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya Floating Rate Fund

as a Lender

BY: Voya Investment Management Co. LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya Investment Trust Co. Plan for Common Trust Funds - Voya Senior Loan Common Trust Fund

as a Lender

BY: Voya Investment Trust Co. as its trustee

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

**Voya Investment Trust Co. Plan for Employee Benefit
Investment Funds - Voya Senior Loan Trust Fund**

as a Lender

BY: Voya Investment Trust Co. as its trustee

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

Voya Prime Rate Trust

as a Lender

BY: Voya Investment Management Co. LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

Voya Senior Income Fund

as a Lender

BY: Voya Investment Management Co. LLC, as its
investment manager

By: /s/ Mark Haak

Name: Mark Haak

Title: Senior Vice President

If a second signature is necessary:

By: _____

Name:

Title:

Name of Fund Manager (if any): Voya Investment Management

[Portillo's – Signature Page to Amendment No. 1 to Second Lien Credit Agreement]

AMENDMENT NO. 2 TO SECOND LIEN CREDIT AGREEMENT

AMENDMENT NO. 2 TO SECOND LIEN CREDIT AGREEMENT, dated as of December 6, 2019 (this "Amendment"), by and among Portillo's Holdings, LLC, a Delaware limited liability company (the "Borrower"), PHD Intermediate LLC, a Delaware limited liability company ("Holdings"), UBS AG, Stamford Branch, as administrative agent (in such capacity, the "Administrative Agent"), the Persons listed under the column "Additional Term B-3 Lender" on Schedule I hereto (in such capacity, the "Additional Term B-3 Lenders"), and each of the other Loan Parties party hereto and amendment to the SECOND LIEN SECURITY AGREEMENT dated as of August 1, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Security Agreement") among the Borrower, the Grantors identified therein and the Administrative Agent.

RECITALS:

WHEREAS, reference is hereby made to the Second Lien Credit Agreement, dated as of August 1, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Credit Agreement" and, as amended by this Amendment, the "Credit Agreement"), among Holdings, the Borrower, the Subsidiaries of the Borrower from time to time party thereto, the lenders or other financial institutions or entities from time to time party thereto and the Administrative Agent (capitalized terms used but not defined herein having the meanings provided in the Existing Credit Agreement or the Credit Agreement, as the case may be);

WHEREAS, the Borrower has requested the Additional Term B-3 Lender to make the Additional Term B-3 Loans;

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

- Amendments to Loan Documents.** The Existing Credit Agreement is, effective as of the Amendment No. 2 Effective Date (as defined below), hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Existing Credit Agreement attached as Exhibit A hereto. Each Person party to this Amendment (other than UBS AG, Stamford Branch in its capacity as a Lender and any Loan Party) by its execution of a Consent, authorizes the Administrative Agent to approve the Agreement on its behalf and agrees that UBS AG, Stamford Branch's execution of this Amendment in its capacity as Administrative Agent constitutes such Person's irrevocable approval of this Amendment (or, if such Person was not a Lender immediately prior to the Amendment No. 2 Effective Date, constitutes such Person's irrevocable agreement to become a Lender as of the Amendment No. 2 Effective Date).
- Execution of Consents.** Each Lender with an Initial Loan or a Term B-2 Loan that has executed a consent to this Amendment in the form attached hereto (a "Consent") in its capacity as an Initial Lender or a Term B-2 Lender, as the case may be, and that has checked the box "Initial/Term B-2 Lender Conversion Option" on such Consent has agreed to consent to the Amendment and to have such Initial Lender's or Term B-2 Lender's, as the case may be, Allocated Amount of outstanding Initial Loans or Term B-2 Loans, as the case may be, converted in each case to Term B-3 Loans on the Amendment No. 2 Effective Date ("Allocated Amount", as to any Initial Lender or Term B-2 Lender, is the aggregate principal amount of such Initial Lender's Initial Loans or Term B-2 Lender's Term B-2 Loans, as the case may be, or such lesser principal amount allocated to such Initial Lender or Term B-2 Lender, as the case may be, by the Administrative Agent in the allocation of the Term B-3 Loans) (and, for the avoidance of doubt, the Allocated Amount of Initial Loans and Term B-2 Loans shall each be converted into Term B-3 Loans).

3. **Consent and Cash Out Lenders.** Each Lender with Initial Loans or Term B-2 Loans that has executed a Consent in its capacity as an Initial Lender or Term B-2 Lender, as the case may be, and checked the box “Initial/Term B-2 Lender Consent and Cash-Out Option” on such Consent has agreed to consent to the Amendment but has not agreed to have its outstanding Initial Loans or Term B-2 Loans, as the case may be, converted to Term B-3 Loans on the Amendment No. 2 Effective Date (and such Initial Loans or Term B-2 Loans, as the case may be, shall be repaid in cash upon the Amendment No. 2 Effective Date);
4. **Effective Date Conditions.** This Amendment will become effective on the date (the “Amendment No. 2 Effective Date”) on which each of the following conditions have been satisfied (or waived) in accordance with the terms herein:
- (a) the Administrative Agent shall have received executed signature pages to (or consents authorizing the relevant party’s consent to) this Amendment from (i) the Additional Term B-3 Lender and (ii) the Borrower and each other Loan Party;
 - (b) the representations and warranties in Section 6 of this Amendment shall be true and correct in all material respects as of the Amendment No. 2 Effective Date;
 - (c) no Default or Event of Default shall exist, or would result from the incurrence of the Term B-3 Loans and the consummation of the transactions contemplated hereby, including from the application of the proceeds therefrom;
 - (d) the Administrative Agent shall have received a certificate, in form and substance reasonably satisfactory to the Administrative Agent, of the Borrower dated as of the Amendment No. 2 Effective Date signed by a Responsible Officer of the Borrower (i) (A) certifying and attaching the resolutions or similar consents adopted by the Borrower approving or consenting to this Amendment and the Term B-3 Loans, (B) certifying that the certificate of formation and limited liability company agreement of the Borrower either (x) has not been amended since the Closing Date or (y) is attached as an exhibit to such certificate, and (C) certifying as to the incumbency and specimen signature of each officer executing this Amendment and any related documents on behalf of the Borrower and (ii) certifying as to the matters set forth in clauses (b) and (c) above;
 - (e) the Administrative Agent shall have received, on behalf of itself and the Term B-3 Lenders, on the Amendment No. 2 Effective Date, a favorable written opinion of Weil, Gotshal & Manges LLP, counsel for Holdings, the Borrower and each other Loan Party, (A) dated the Amendment No. 2 Effective Date, (B) addressed to the Administrative Agent and the Term B-3 Lenders and (C) in form and substance reasonably satisfactory to the Administrative Agent and covering such matters relating to this Agreement as the Administrative Agent shall reasonably request;
 - (f) to the extent requested by the Administrative Agent or any Lender not less than five (5) Business Days prior to the Amendment No. 2 Effective Date, the Administrative Agent or such Lender shall have received not less than three (3) days prior to the Amendment No. 2 Effective Date (x) all documentation and other information about the Borrower and the Guarantors as the Administrative Agent or such Lender reasonably determines is

required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act, and (y) a certification regarding beneficial ownership as required by 31 C.F.R. § 1010.230 (the “Beneficial Ownership Regulation”) in relation to the Borrower if it qualifies as a “legal entity customer” under the Beneficial Ownership Regulation;

- (g) the Administrative Agent shall have received a Committed Loan Notice executed by the Borrower with respect to the Term B-3 Loans to be incurred by the Borrower as of the Amendment No. 2 Effective Date; and
- (h) the Administrative Agent shall have received (or, in the case of clause (A) below, shall substantially simultaneously with the occurrence of the Amendment No. 2 Effective Date shall receive from the proceeds of the Term B-3 Loans made by the Additional Term B-3 Lender) from the Borrower funds sufficient to (A) repay the aggregate principal amount of all Initial Loans that are not converted to Term B-3 Loans and all Term B-2 Loans that are not converted to Term B-3 Loans, (B) pay all accrued and unpaid interest through but excluding the Amendment No. 2 Effective Date on the Initial Loans and the Term B-2 Loans, (C) pay all out-of-pocket expenses for which invoices have been presented at least three Business Days prior to the Amendment No. 2 Effective Date (including the reasonable fees and expenses of legal counsel) required to be paid or reimbursed by the Borrower pursuant to Section 10.04 of the Existing Credit Agreement in connection with this Amendment, and (D) pay all fees payable to any Lenders or any of their respective Affiliates in connection with the Amendment.

For the avoidance of doubt, the Amendment No. 2 Effective Date is December 6, 2019.

- 5. **Change to Security Agreement.** The Security Agreement shall be amended as of the Amendment No. 2 Effective Date by adding the following text to the end of Section 6.11(b) immediately prior to the period appearing in such Section: “; *provided* that notwithstanding the foregoing, if any Grantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of “Excluded Subsidiary” in the Credit Agreement, such Grantor shall not be released from its obligations hereunder or any other Loan Document unless (x) such Grantor would no longer be a direct or indirect Subsidiary of the Borrower or (y) after giving pro forma effect to such release and the consummation of the relevant transaction, the Borrower would be permitted to make an Investment in such Person to be so released pursuant to clause (1) of the definition of “Permitted Investments” in the Credit Agreement (and, if this clause (y) shall be applicable, Borrower shall have been deemed to make such an Investment in such Person pursuant to such clause (1)).
- 6. **Representations and Warranties.** By its execution of this Amendment, each Loan Party hereby represents and warrants that:
 - (a) the execution, delivery and performance of this Amendment is within such Loan Party’s corporate or other organizational powers and has been duly authorized by all necessary corporate or other organizational action of such Loan Party;
 - (b) this Amendment has been duly executed and delivered by such Loan Party and is a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws affecting creditors’ rights generally and to general principles of equity and principles of good faith and dealing; and

- (c) the execution and delivery of this Amendment by such Loan Party and the performance by such Loan Party hereof do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01 of the Credit Agreement), or require any payment to be made under (x) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject or (iii) violate any Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clauses (ii) and (iii), to the extent that such violation, conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect.

7. Reference to and Effect on Loan Documents; Reaffirmation of the Loan Parties.

- (a) On and after the effectiveness of this Amendment, each reference in the Existing Credit Agreement and the other Loan Documents to any of the Loan Documents, "this Agreement", "hereunder", "hereof" or words of like import referring to any Loan Document shall mean and be a reference to the applicable Loan Document, as specifically amended by this Amendment.
- (b) Each Loan Party hereby consents to the amendment of the Existing Credit Agreement and the Loan Documents effected hereby and confirms and agrees that, notwithstanding the effectiveness of this Amendment, each Loan Document to which such Loan Party is a party is, and the obligations of such Loan Party contained in the Existing Credit Agreement, this Amendment or in any other Loan Document to which it is a party are, and shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects, in each case as amended by this Amendment. For greater certainty and without limiting the foregoing, each Loan Party hereby confirms and reaffirms, as of the date hereof, (i) that the existing security interests granted by such Loan Party in favor of the Administrative Agent for the benefit of the Secured Parties (including, without limitation, the Term B-3 Lenders) pursuant to the Loan Documents in the Collateral described therein shall continue to secure the Obligations as and to the extent provided in the Loan Documents and (ii) its Guaranty of the Obligations and the covenants and agreements contained in each of the other Loan Documents to which it is a party, including, in each case, such security interest, covenants and agreements as in effect immediately after giving to this Amendment and the transactions contemplated hereby. Neither the modification of the Existing Credit Agreement effected pursuant to this Amendment nor the execution, delivery, performance or effectiveness of this Amendment (i) impairs the validity, effectiveness or priority of the Liens granted pursuant to any Loan Document, and such Liens continue unimpaired with the same priority to secure repayment of all Obligations, whether heretofore or hereafter incurred; or (ii) requires that any new filings be made or other action taken to perfect or to maintain the perfection of such Liens.
- (c) Each Lender party hereto or which signs and delivers a Consent hereby waives its right to reimbursement under Section 3.05 of the Existing Credit Agreement solely as it relates to any prepayment of any Initial Loan or Term B-2 Loan on the Amendment No. 2 Effective Date

8. **Amendment, Modification and Waiver.** This Amendment may not be amended, modified or waived except as permitted by Section 10.01 of the Credit Agreement.
9. **Entire Agreement.** This Amendment, the Credit Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties or any of them with respect to the subject matter hereof. The parties hereto acknowledge and agree that the amendment of the Existing Credit Agreement and the Security Agreement pursuant to this Amendment and all other Loan Documents amended and/or executed and delivered in connection herewith shall not constitute a novation of the Existing Credit Agreement, the Security Agreement or any other Loan Document as in effect prior to the Amendment No. 2 Effective Date.
10. **GOVERNING LAW.** THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.
11. **Severability.** If any provision of this Amendment is held to be illegal, invalid or unenforceable (a) the legality, validity and enforceability of the remaining provisions of this Amendment shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
12. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier, .pdf or other electronic imaging means of an executed counterpart of a signature page to this Amendment shall be effective as delivery of an original executed counterpart of this Amendment.
13. **WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13.
14. **Loan Document.** On and after the Amendment No. 2 Effective Date, this Amendment shall constitute a "Loan Document" for all purposes of the Credit Agreement and the other Loan Documents (it being understood that for the avoidance of doubt this Amendment may be amended or waived solely by the parties hereto as set forth in Section 8 above).
15. **Tax Treatment.** On and after the Amendment No. 2 Effective Date, the initial Term B-3 Loans, whether issued for cash or in exchange for Initial Loans or Term B-2 Loans, shall be treated as a single fungible tranche for U.S. federal income tax purposes

16. **Refinancing Amendment.** Section 2 of this Amendment and Section 2.01(a) of the Credit Agreement shall constitute a “Refinancing Amendment” under the Existing Credit Agreement (such Sections shall be collectively referred to herein as the “2019 Refinancing Amendment”) and the 2019 Refinancing Amendment shall constitute a “Refinancing Loan Request” delivered pursuant to the Existing Credit Agreement. The Initial Loans and Term B-2 Loans shall constitute “Refinanced Debt” under the Existing Credit Agreement. The Consent of each Initial Lender and Term B-2 Lender to convert into Term B-3 Loans and the Additional Term B-3 Commitment shall constitute “Refinancing Commitments” under the Existing Credit Agreement (and the Term B-3 Lenders with respect thereto shall constitute “Refinancing Lenders” under the Existing Credit Agreement), in each case to the extent that the Term B-3 Loans do not exceed the principal amount of such Refinanced Debt. The Loan Parties and all Lenders under the Credit Agreement immediately after giving effect to such 2019 Refinancing Amendment hereby approve all other amendments to the Existing Credit Agreement contained in this Amendment and the Credit Agreement and hereby approve the amount of the Additional Term B-3 Commitment and the Term B-3 Loans and hereby agree that any and all requirements of Section 2.15 of the Existing Credit Agreement and the Credit Agreement, solely as such Section 2.15 of either the Existing Credit Agreement or the Credit Agreement relate to the establishment and incurrence of the Term B-3 Loans on the Amendment No. 2 Effective Date, shall have been satisfied.

[signature pages to follow]

IN WITNESS WHEREOF, each of the undersigned has caused its duly authorized officer to execute and deliver this Amendment as of the date first set forth above.

**PHD INTERMEDIATE LLC
PORTILLO'S HOLDINGS, LLC
PORTILLO'S HOT DOGS, LLC**

By: /s/ Thomas W. Stoltz
Name: Thomas W. Stoltz
Title: Chief Financial Officer

PHD CARD SERVICES, LLC

By: /s/ Tim Benson
Name: Tim Benson
Title: President

[Portillo's – Signature Page to Amendment No. 2 to Second Lien Credit Agreement]

By: /s/ Darlene Arias

Name: Darlene Arias

Title: Director

By: /s/ Housseem Daly

Name: Housseem Daly

Title: Associate Director

[Portillo's – Signature Page to Amendment No. 2 to Second Lien Credit Agreement]

UBS AG, STAMFORD BRANCH, as Additional Term B-3
Lender

By: /s/ Darlene Arias

Name: Darlene Arias

Title: Director

By: /s/ Housseem Daly

Name: Housseem Daly

Title: Associate Director

[Portillo's – Signature Page to Amendment No. 2 to Second Lien Credit Agreement]

AMENDED CREDIT AGREEMENT

[See attached.]

SECOND LIEN CREDIT AGREEMENT

Dated as of August 1, ~~2014~~2014,
as amended by Amendment No. 1 dated as of October 25, 2016, and
as Amendment No. 2 dated as of December 6, 2019

Among

PHD INTERMEDIATE LLC,
as Holdings,

PHD MERGER SUB LLC
(to be merged with and into PORTILLO'S HOLDINGS, LLC),
as the Borrower,

UBS AG, STAMFORD BRANCH,
as Administrative Agent,

and

THE OTHER LENDERS PARTY HERETO FROM TIME TO TIME

UBS SECURITIES LLC and
JEFFERIES FINANCE LLC,
as Joint Arrangers,

UBS SECURITIES LLC and
JEFFERIES FINANCE LLC,
as Joint Lead Bookrunners,

and

JEFFERIES FINANCE LLC,
as Syndication Agent

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SECOND LIEN CREDIT AGREEMENT

This SECOND LIEN CREDIT AGREEMENT is entered into as of August 1, 2014, among PHD INTERMEDIATE LLC, a Delaware limited liability company (“**Holdings**”), PHD MERGER SUB LLC, a Delaware limited liability company (“**Merger Sub**”), to be merged with and into PORTILLO’S HOLDINGS, LLC, a Delaware limited liability company (the “**Company**”), the other Guarantors party hereto from time to time, UBS AG, STAMFORD BRANCH, as Administrative Agent, and each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”).

PRELIMINARY STATEMENTS

Pursuant to the Agreement and Plan of Merger, dated as of June 27, 2014 (the “**Merger Agreement**”), by and among Holdings, Merger Sub, the Company, and RP & SP Holdings, Inc., a Delaware corporation, Merger Sub will, immediately following the initial funding hereunder, be merged with and into the Company with the Company surviving (the “**Merger**”).

The Borrower ~~has~~ requested that, substantially simultaneously with the consummation of (and in order to fund a portion of the consideration for) the Merger, the Lenders extend credit to the Borrower in the form of the Initial Loans (as this and other capitalized terms used in these preliminary statements are defined in Section 1.01 below) on the Closing Date in an initial aggregate principal amount of \$80,000,000.

~~The proceeds of the Initial Loans, together with (i) the proceeds of the First Lien Initial Term Loans, (ii) the proceeds of the First Lien Initial Revolving Borrowing, (iii) the proceeds from the issuance of the Superholdco Preferred Stock and (iv) the proceeds of the Equity Contribution, will be used by the Borrower to pay the Merger Consideration and Transaction Expenses and to refinance certain Indebtedness.~~

On the Amendment No. 1 Effective Date, the Borrower requested and the Lenders made \$25,000,000 in aggregate principal amount of Term B-2 Loans and other amendments to this Agreement were made on such date.

On the Amendment No. 2 Effective Date, the Initial Loans and the Term B-2 Loans were either repaid or converted into Term B-3 Loans (and the aggregate principal amount of Term B-3 Loans as of the Amendment No. 2 Effective Date was \$155,000,000) and other amendments to this Agreement set forth in Amendment No. 2 were effectuated.

The Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I.
DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

“**Acceptable Discount**” has the meaning set forth in Section 2.05(a)(v)(D)(2).

“**Acceptable Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Acceptance and Prepayment Notice**” means a notice of the Borrower’s acceptance of the Acceptable Discount in substantially the form of Exhibit E-3.

“**Acceptance Date**” has the meaning set forth in Section 2.05(a)(v)(D)(2).

“**Acquired Indebtedness**” means, with respect to any specified Person,

(a) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

(b) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“**Acquisition**” means the acquisition of the Company pursuant to the Merger Agreement.

“**Additional Lender**” means any Person that is not an existing Lender and has agreed to provide Incremental Commitments pursuant to Section 2.14 or Refinancing Commitments pursuant to Section 2.15.

“**Additional Term B-3 Commitment**” means the commitment of the Additional Term B-3 Lender(s) to make a term loan on the Amendment No. 2 Effective Date in an aggregate amount equal to \$155,000,000 minus the sum of (A) the aggregate principal amount of the Converted Initial Loans and (B) the aggregate principal amount of Converted Term B-2 Loans of all Lenders (which aggregate amount of Additional Term B-3 Commitment is equal to \$155,000,000).

“**Additional Term B-3 Lender(s)**” means the Person(s) identified as such in Amendment No. 2.

“**Adjustment**” has the meaning specified in Section 3.03(c).

“**Administrative Agent**” means UBS, in its capacity as administrative agent and collateral agent under any of the Loan Documents, or any successor administrative agent and collateral agent.

“**Administrative Agent’s Office**” means the Administrative Agent’s address and account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. “**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Affiliated Lender**” means, at any time, any Lender that is the Sponsor or an Affiliate of the Sponsor, but in any event excluding (1) Holdings, the Borrower or any of their respective Subsidiaries and (2) any Debt Fund Affiliate.

“**Affiliated Lender Assignment and Assumption**” has the meaning set forth in Section 10.07(k)(i).

“**Affiliated Lender Cap**” has the meaning set forth in Section 10.07(k)(iv).

“**Agent Parties**” has the meaning specified in Section 10.02(b).

“**Agent-Related Distress Event**” means, with respect to the Administrative Agent or any Person that directly or indirectly Controls the Administrative Agent (each, a “**Distressed Agent-Related Person**”), a voluntary or involuntary case with respect to such Distressed Agent-Related Person under any Debtor Relief Law, or a custodian, conservator, receiver or similar official is appointed for such Distressed Agent-Related Person or any substantial part of such Distressed Agent-Related Person’s assets, or such Distressed Agent-Related Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Agent-Related Person to be, insolvent or bankrupt; *provided* that an Agent-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in the Administrative Agent or any Person that directly or indirectly Controls the Administrative Agent by a Governmental Authority or an instrumentality thereof.

“**Agent-Related Persons**” means the Agents, together with their respective Affiliates, officers, directors, employees, partners, agents, advisors and other representatives.

“**Agents**” means, collectively, the Administrative Agent, the Syndication Agent, the Arrangers and the Bookrunners.

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” means this Second Lien Credit Agreement, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“**All-In Yield**” means, as to any Indebtedness, the yield thereof, whether in the form of interest rate, margin, OID, upfront fees, a Eurocurrency Rate or Base Rate floor, or otherwise, in each case, incurred or payable by the Borrower generally to all lenders of such Indebtedness; *provided* that OID and upfront fees shall be equated to interest rate assuming a four (4)-year life to maturity (e.g. 100 basis points of original issue discount equals 25 basis points of interest rate margin for a four (4) year average life to maturity); and *provided, further*, that “**All-In Yield**” shall not include amendment fees, arrangement fees, structuring fees, ticking fees, unused line fees, commitment fees, underwriting fees and similar fees or other fees not paid generally to all lenders in the primary syndication of such Indebtedness.

“**Allocated Amount**” has the meaning assigned to such term in Amendment No. 2.

“**Amendment No. 1**” means Amendment No. 1 to this Agreement, dated as of October 25, 2016, among the Borrower, Holdings, the other Loan Parties party thereto, the Administrative Agent and the Lenders party thereto.

“**Amendment No. 1 Effective Date**” shall mean the “Effective Date” under and as defined in Amendment No. 1.

“**Amendment No. 2**” means Amendment No. 2 to this Agreement, dated as of December 6, 2019, among the Borrower, Holdings, the other Loan Parties party thereto, the Administrative Agent, the Additional Term B-3 Lender and the other Persons party thereto.

“**Amendment No. 2 Effective Date**” shall mean the “Amendment No. 2 Effective Date” under and as defined in Amendment No. 2. For the avoidance of doubt, the Amendment No. 2 Effective Date is December 6, 2019.

“**Anti-Corruption Laws**” means all laws, rules, and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption applicable to Holdings or its Subsidiaries by virtue of such Person being organized or operating in such jurisdiction.

“**Applicable Discount**” has the meaning set forth in Section 2.05(a)(v)(C)(2).

“**Applicable ECF Percentage**” means, for any fiscal year, (a) 50% if the Secured Net Leverage Ratio as of the last day of such fiscal year is greater than 5.50 to 1.00, (b) 25% if the Secured Net Leverage Ratio as of the last day of such fiscal year is less than or equal to 5.50 to 1.00 and greater than 5.00 to 1.00 and (c) 0% if the Secured Net Leverage Ratio as of the last day of such fiscal year is less than or equal to 5.00 to 1.00.

“**Applicable Rate**” means with respect to the ~~Initial Loans and~~ Term B-~~23~~ Loans, a percentage per annum equal to (A) for Eurocurrency Rate Loans, ~~8.00~~9.50% and (B) for Base Rate Loans, ~~7.00~~8.50%.

“**Appropriate Lender**” means, at any time, with respect to Loans of any Class, the Lenders of such Class of Loans.

“**Approved Bank**” has the meaning set forth in clause (c) of the definition of “Cash Equivalents.”

“**Approved Fund**” means ~~any Fund~~, with respect to any Lender, any Person (other than a natural person) that is administered, advised or managed (including pursuant to a separately managed account) by (a) asuch Lender, (b) ~~an~~any Affiliate of asuch Lender or (c) ~~an~~any entity or ~~an~~any Affiliate of ~~an~~any entity that administers, advises or manages asuch Lender.

“**Arrangers**” means each of UBS Securities LLC and Jefferies Finance LLC, each in its capacity as a joint lead arranger under this Agreement.

“**Assignees**” has the meaning set forth in Section 10.07(b)(i).

“**Assignment and Assumption**” means an Assignment and Assumption substantially in the form of Exhibit E-1 hereto.

“**Assignment Taxes**” has the meaning set forth in Section 3.01(b).

“**Attorney Costs**” means all reasonable and documented fees, expenses and disbursements of any law firm or other external legal counsel.

“**Attributable Indebtedness**” means, subject to the second paragraph of Section 1.03, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“**Auction Agent**” means (a) the Administrative Agent or (b) any other financial institution or advisor employed by the Borrower (whether or not an Affiliate of the Administrative Agent) with the consent of the Administrative Agent (not to be unreasonably withheld or delayed) to act as an arranger in connection with any Discounted Loan Prepayment pursuant to Section 2.05(a)(v); *provided* that the Borrower shall not designate the Administrative Agent as the Auction Agent without the prior written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Agent); *provided, further*, that neither the Borrower nor any of its Affiliates may act as the Auction Agent.

“**Audited Financial Statements**” has the meaning specified in the Merger Agreement (as in effect on the ~~date hereof~~Closing Date).

“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“**Bail-In Legislation**” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“**Base Rate**” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as the Administrative Agent’s “prime rate” and (c) the Eurocurrency Rate plus 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day); *provided* that in no event shall the Base Rate with respect to ~~Initial Loans~~ [Term B-3](#) be less than ~~2.00~~[2.25](#)% per annum. The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate made by the Administrative Agent shall take effect at the opening of business on the day of such change.

“**Base Rate Loan**” means a Loan that bears interest based on the Base Rate.

[“Beneficial Ownership Certification” means a certification regarding individual beneficial ownership solely to the extent expressly required by the Beneficial Ownership Regulation.](#)

[“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.](#)

“**Big Boy Letter**” means a letter from a Lender (i) acknowledging that (1) an Affiliated Lender may have information regarding Holdings and its Subsidiaries that has not previously been disclosed to the Administrative Agent and the Lenders (“**Excluded Information**”), (2) the Excluded Information may not be available to such Lender, (3) such Lender has independently and without reliance on any other party made its own analysis and determined to assign Loans to an Affiliated Lender pursuant to Section 10.07(k) notwithstanding its lack of knowledge of the Excluded Information and (4) such Lender waives and releases any claims it may have against the Administrative Agent, such Affiliated Lender, Holdings and its Subsidiaries with respect to the nondisclosure of the Excluded Information; or (ii) otherwise in form and substance reasonably satisfactory to the Administrative Agent, such Affiliated Lender and the assigning Lender.

“**Board of Directors**” means, for any Person, the board of directors or managers, the managing member or other governing body of such Person or, if such Person does not have such governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, “**Board of Directors**” means the Board of Directors of the Borrower.

“**Bookrunner**” means each of UBS Securities LLC and Jefferies Finance LLC, each in its capacity as a joint bookrunner.

“**Borrower**” means (a) prior to the consummation of the Merger, Merger Sub and (b) upon and after the consummation of the Merger, the Company.

“**Borrower Materials**” has the meaning specified in Section 6.01.

“**Borrower Offer of Specified Discount Prepayment**” means the offer by any Company Party to make a voluntary prepayment of Loans at a Specified Discount to par pursuant to Section 2.05(a)(v)(B).

“**Borrower Retained Prepayment Amounts**” has the meaning specified in Section 2.05(b)(vii).

“**Borrower Solicitation of Discount Range Prepayment Offers**” means the solicitation by any Company Party of offers for, and the corresponding acceptance by a Lender of, a voluntary prepayment of Loans at a specified range of discounts to par pursuant to Section 2.05(a)(v)(C).

“**Borrower Solicitation of Discounted Prepayment Offers**” means the solicitation by any Company Party of offers for, and the subsequent acceptance, if any, by a Lender of, a voluntary prepayment of Loans at a discount to par pursuant to Section 2.05(a)(v)(D).

“**Borrowing**” means a borrowing under a Facility consisting of Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Lenders under such Facility.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, New York City, and if such day relates to any Eurocurrency Rate Loan, means any such day that is also a London Banking Day.

“**Capital Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Leases) by the Borrower and its Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries.

“**Capitalized Lease Obligation**” means, subject to the second paragraph of Section 1.03, at the time any determination thereof is to be made, the amount of the liability in respect of a Capitalized Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

“**Capitalized Leases**” means, subject to the second paragraph of Section 1.03, all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; *provided* that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“**Capitalized Software Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and the Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries.

“**Captive Insurance Subsidiary**” means any Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

“**Cash Collateral Account**” means a blocked account at the Administrative Agent (or another commercial bank selected by the Administrative Agent) in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

“**Cash Equivalents**” means to the extent owned by Holdings, the Borrower or any Restricted Subsidiary:

(a) (1) Dollars, pound sterling, Canadian dollars, yen or euros or any national currency of any Participating Member State of the EMU; and

(2) in the case of any Foreign Subsidiary that is a Restricted Subsidiary or any jurisdiction in which the Borrower and its Restricted Subsidiaries conducts business, such local currencies held by it from time to time in the ordinary course of business and not for speculation;

(b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of the United States having average maturities of not more than twenty-four (24) months from the date of acquisition thereof; *provided* that the full faith and credit of the United States is pledged in support thereof;

(c) time deposits or eurodollar time deposits with, insured certificates of deposit, bankers’ acceptances or overnight bank deposits of, or letters of credit issued by, any commercial bank that (i) is a Lender or (ii) (A) is organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development or is the principal banking Subsidiary of a bank holding company organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development and is a member of the Federal Reserve System, and (B) has combined capital and surplus of not less than \$250,000,000 in the case of U.S. domestic banks and \$100,000,000 (or the Dollar equivalent as of the date of determination) in the case of foreign banks (any such bank in the foregoing clause (i) or (ii) being an “**Approved Bank**”), in each case with maturities not exceeding twenty four (24) months from the date of acquisition thereof;

(d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation (other than structured investment vehicles and other than corporations used in structured financing transactions) rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody’s, in each case with average maturities of not more than twenty-four (24) months from the date of acquisition thereof;

(e) marketable short-term money market and similar funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower);

(f) repurchase obligations for underlying securities of the types described in clauses (b), (c) and (e) above entered into with any Approved Bank;

(g) securities with average maturities of twenty-four (24) months or less from the date of acquisition issued or fully guaranteed (i) by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by (ii) any foreign government, in each case, having an investment grade rating from either S&P or Moody's (or the equivalent thereof);

(h) Investments (other than in structured investment vehicles and structured financing transactions) with average maturities of twelve (12) months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;

(i) securities with maturities of twelve (12) months or less from the date of acquisition backed by standby letters of credit issued by any Approved Bank;

(j) instruments equivalent to those referred to in clauses (a) through (i) above denominated in euros or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized in such jurisdiction;

(k) Investments, classified in accordance with GAAP as Current Assets of the Borrower or any Restricted Subsidiary, in money market investment programs which are registered under the Investment Company Act of 1940 or which are administered by financial institutions having capital of not less than \$250,000,000 in the case of U.S. domestic banks and \$100,000,000 (or the Dollar equivalent as of the date of determination) in the case of foreign banks, and, in either case, the portfolios of which are limited such that substantially all of such Investments are of the character, quality and maturity described in clauses (a) through (i) of this definition; and

(l) investment funds investing at least 90% of their assets in securities of the types described in clauses (a) through (k) above.

In the case of Investments by any Foreign Subsidiary that is a Restricted Subsidiary or Investments made in a country outside the United States, Cash Equivalents shall also include (i) investments of the type and maturity described in clauses (a) through (l) (other than clause (g)(ii) above) above of foreign obligors, which Investments or obligors (or the parents of such obligors)

have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries that are Restricted Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (a) through (l) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those specified in clause (a) above; *provided* that such amounts are converted into any currency listed in clause (a) above as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

“Cash Management Obligations” means obligations owed by the Borrower or any Restricted Subsidiary to any Lender, any Agent or any Affiliate of a Lender or an Agent and to any Person that was a Lender, an Agent or an Affiliate of a Lender or an Agent at the time of entering into any such services in respect of any overdraft and related liabilities arising from treasury, depository and cash management services or any automated clearing house transfers of funds.

“Casualty Event” means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or Real Property (including any improvements thereon) to replace or repair such equipment, fixed assets or Real Property.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“CFC Holdco” means any Domestic Subsidiary that has no material assets other than equity interests (or equity interests and indebtedness) of one or more Foreign Subsidiaries that are CFCs or any other Domestic Subsidiary that itself is a CFC Holdco.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. It is understood and agreed that (i) the Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173), all Laws relating thereto, all interpretations and applications thereof and any request, rule, guideline or directive relating thereto and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall, in each case, for the purposes of this Agreement, be deemed to be adopted and taking effect subsequent to the date of this Agreement; *provided* that a Lender shall be entitled to compensation with respect to any such adoption or taking effect, change, administration, interpretation or application, making or issuance, in each case, becoming effective after the date of this Agreement only if it is the applicable Lender’s general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

“Change of Control” shall be deemed to occur if:

(a) (i) at any time prior to a Qualified IPO, the Permitted Holders cease to own, in the aggregate, directly or indirectly, beneficially, Equity Interests representing at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings, or

(ii) at any time upon or after the consummation of a Qualified IPO (1) any person (other than a Permitted Holder) or (2) Persons (other than one or more Permitted Holders) constituting a “group” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended, but excluding any employee benefit plan of such person and its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), becomes the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under such Act), directly or indirectly, of Equity Interests representing more than 40% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of Holdings beneficially owned, directly or indirectly, in the aggregate by the Permitted Holders;

unless, in the case of either clause (a)(i) or (a)(ii) above, the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the Board of Directors of Holdings;

(b) a “change of control” (or similar event) shall occur in any document pertaining to the First Lien Credit Agreement, any Incremental Equivalent Debt, any Refinancing Equivalent Debt, any First Lien Incremental Equivalent Debt, any First Lien Refinancing Equivalent Debt or, in each case, any Permitted Refinancing thereof and, in the case of any such Indebtedness which is unsecured or secured by a Lien on the Collateral which is junior to the Lien securing the ~~Initial~~ Term B-3 Loans, such Indebtedness is in an aggregate outstanding principal amount in excess of the Threshold Amount; or

(c) Holdings shall cease to own 100% of the Equity Interests of the Borrower free of Liens (other than nonconsensual Liens permitted under Section 7.01 and Liens permitted under Sections 7.01(a), (bb) (solely to the extent the Obligations under the ~~Initial~~ Term B-3 Loans shall be secured on a *pari passu* or senior basis with such Liens), (dd) and (gg)).

“Chicagoland” means the following counties (x) located in the State of Illinois: Cook (including the City of Chicago), Lake, McHenry, DeKalb, DuPage, Kane, Kendall, Grundy, Will and Kankakee and (y) located in the State of Indiana: Lake, Porter and LaPorte.

“**Class**” means (i) with respect to Commitments or Loans, those of such Commitments or Loans that have the same terms and conditions (without regard to differences in the Type of Loan, Interest Period, upfront fees, OID or similar fees paid or payable in connection with such Commitments or Loans, or differences in tax treatment (e.g., “fungibility”)); *provided* that such Commitments or Loans may be designated in writing by the Borrower and Lenders holding such Commitments or Loans as a separate Class from other Commitments or Loans that have the same terms and conditions and (ii) with respect to Lenders, those of such Lenders that have Commitments or Loans of a particular Class. [For the avoidance of doubt, the Term B-3 Loans shall constitute a “Class” of Loans.](#)

“**Closing Date**” means August 1, 2014.

~~“**Closing Fee**” has the meaning set forth in Section 2.09(c).~~

“**Co-Investor**” means (a) any Person (other than any Sponsor or Management Stockholder) who becomes a holder of Equity Interests in Holdings (or any of the direct or indirect parent companies of Holdings) on the Closing Date in connection with the Acquisition, (b) a Person, if any, that acquires, within sixty (60) days of the Closing Date, any Equity Interests in Holdings (or any of the direct or indirect parent companies of Holdings) held by any Sponsor as of the Closing Date, and (c) in each of clauses (a) and (b), an Affiliate of any such Person; *provided*, that, for purposes of the definition of “Permitted Holder”, Co-Investors shall only include for purposes of clauses (a) and (b) those Persons that have been disclosed in writing prior to the Closing Date to (and, solely in the case of clause (b) above, are reasonably acceptable to) the Arrangers.

“**Code**” means the U.S. Internal Revenue Code of 1986, and the United States Treasury Department regulations promulgated thereunder, as amended from time to time.

“**Collateral**” means the “Collateral” as defined in the Security Agreement and all the “Collateral” or “Pledged Assets” as defined in any other Collateral Document and any other assets pledged pursuant to any Collateral Document.

“**Collateral and Guarantee Requirement**” means, at any time, the requirement that:

(a) the Administrative Agent shall have received each Collateral Document required to be delivered (i) on the Closing Date, pursuant to Section 4.01(a)(iv) and (ii) at such time as may be designated therein, pursuant to the Collateral Documents, Section 6.11 or 6.13, subject, in each case, to the limitations and exceptions of this Agreement and the Collateral Documents, duly executed by each Loan Party thereto;

(b) all Obligations (other than, with respect to any Guarantor, any Excluded Swap Obligations of such Guarantor) shall have been unconditionally guaranteed by Holdings and each Restricted Subsidiary of the Borrower that is a wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) including those that are listed on [Schedule I](#) hereto (each, a “**Guarantor**”);

(c) the Obligations and the Guaranty shall have been secured by a second-priority security interest (subject to Liens permitted by Section 7.01) in (i) all the Equity Interests of the Borrower, (ii) all Equity Interests of each Restricted Subsidiary that is a Domestic Subsidiary (other than a Domestic Subsidiary described in the

following clause (iii)(A) or (B)) that is directly owned by the Borrower or any Subsidiary Guarantor and (iii) 65% of the issued and outstanding Equity Interests directly owned by the Borrower or any Subsidiary Guarantor of (A) each Restricted Subsidiary that is a CFC Holdco, (B) each Restricted Subsidiary that is a Disregarded Domestic Person and (C) each Restricted Subsidiary that is a Foreign Subsidiary that is a CFC;

(d) except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 7.01, or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected second-priority security interest (to the extent such security interest may be perfected by delivering Mortgages, certificated securities or instruments, filing financing statements under the Uniform Commercial Code or making any necessary filings with the United States Patent and Trademark Office or United States Copyright Office or to the extent required in the Security Agreement) in substantially all tangible and intangible assets of the Borrower and each Guarantor (including accounts receivable, inventory, equipment, investment property, contract rights, applications and registrations of intellectual property filed in the United States, other general intangibles, Material Real Property, intercompany notes and proceeds of the foregoing), in each case, with the priority required by the Collateral Documents, in each case subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents; and

(e) the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Material Real Property required to be delivered pursuant to Section 6.11 and Section 6.13 (the "**Mortgaged Properties**") duly executed and delivered by the applicable Loan Party, (ii) a title insurance policy or a marked-up commitment or signed pro forma thereof for such property available in each applicable jurisdiction (the "**Mortgage Policies**") insuring the Lien of each such Mortgage as a valid second-priority Lien on the property described therein, free of any other Liens except as expressly permitted by Section 7.01, together with such endorsements, coinsurance and reinsurance and in such amounts as the Administrative Agent may reasonably request and which are available at commercially reasonable rates in the jurisdiction where the Mortgaged Property is located, (iii) a completed Life-of-Loan Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and the applicable Loan Party if any improvements on any Mortgaged Property are located within an area designated a "special flood hazard area") and if any improvements on such Mortgaged Property are so located in a "special flood hazard area," copy of, or a certificate as to coverage under, and a copy of the flood insurance policy and a declaration page relating to, the insurance policies required by Section 6.07 and the applicable provisions of the Collateral Documents and shall be in form and substance reasonably satisfactory to the Administrative Agent, (iv) either ALTA surveys in form and substance reasonably acceptable to the Administrative Agent or such existing surveys together with no change affidavits sufficient for the title company to remove all standard survey exceptions from the Mortgage Policies and issue the endorsements required in (ii) above to the extent such coverage and endorsements are available in the applicable jurisdictions and at commercially reasonable rates, (v) copies of any existing abstracts and existing

appraisals, (vi) opinions, addressed to the Administrative Agent and the Lenders, from local counsel in each jurisdiction (i) where a Mortgaged Property is located regarding the enforceability of the Mortgage and (ii) where the applicable Loan Party granting the Mortgage on said Mortgaged Property is organized, regarding the due authorization, execution and delivery of such Mortgage, and in each case, such other matters as may be in form and substance reasonably satisfactory to the Administrative Agent, (vii) evidence reasonably acceptable to the Administrative Agent of payment by Obligor of all Mortgage Policy premiums, search and examination charges, escrow charges and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgage and issuance of the Mortgage Policies referred to above and (viii) such other documents as the Administrative Agent may reasonably request with respect to any such Mortgaged Property;

provided, however, that the foregoing definition shall not require and the Loan Documents shall not contain any requirements as to the creation or perfection of pledges of, security interests in, Mortgages on, or the obtaining of title insurance, surveys, abstracts or appraisals or taking other actions with respect to any Excluded Assets.

The Administrative Agent may grant extensions of time for the perfection of security interests in, or the delivery of the Mortgages and the obtaining of title insurance and surveys with respect to, particular assets and the delivery of assets (including extensions beyond the Closing Date for the perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents. Notwithstanding any provision of any Loan Document to the contrary, if a mortgage tax or any similar tax or charge will be owed on the entire amount of the Obligations evidenced hereby, then the amount secured by the applicable Mortgage shall be limited to 100% of the fair market value of the Mortgaged Property at the time the Mortgage is entered into if such limitation results in such mortgage tax or similar tax or charge being calculated based upon such fair market value.

No actions in any non-U.S. jurisdiction or required by the Laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the U.S. or to perfect such security interests, including any intellectual property registered in any non-U.S. jurisdiction (it being understood that there shall be no security agreements or pledge agreements governed under the Laws of any non-U.S. jurisdiction). No actions shall be required with respect to Collateral requiring perfection through control agreements or perfection by "control" (as defined in the UCC) (including deposit accounts or other bank accounts or securities accounts) or possession, other than in respect of (i) certificated Equity Interests of the Borrower and wholly owned Restricted Subsidiaries that are Material Subsidiaries directly owned by the Borrower or by any Subsidiary Guarantor otherwise required to be pledged pursuant to the provisions of clause (c) of this definition of "Collateral and Guarantee Requirement" and not otherwise constituting an Excluded Asset ~~and~~, (ii) Pledged Debt (as defined in the Security Agreement) to the extent required to be delivered to the Administrative Agent pursuant to the terms of the Security Agreement and (iii) the Cash Collateral Account.

It is understood and agreed that to the extent the First Lien Administrative Agent is satisfied with or agrees to any deliveries of possessory collateral in respect of Collateral, the Administrative Agent shall be deemed to be satisfied with such deliveries. So long as the Second Lien Intercreditor Agreement is in effect, (A) a Loan Party may satisfy its obligations to deliver Collateral to the Administrative Agent by delivering such Collateral to (x) prior to the First Lien Termination Date, the Designated Senior Representative (as defined in the Second Lien Intercreditor Agreement) or its agent, designee or bailee, and on or after the First Lien Termination Date, the Designated Second Priority Representative (as defined in the Second Lien Intercreditor Agreement), in each case, in accordance with the terms of the Second Lien Intercreditor Agreement and (B) if the First Lien Administrative Agent grants an extension of time pursuant to a provision in the First Lien Loan Documents that is substantially similar to the second preceding paragraph or exercises its discretion under the First Lien Loan Documents to determine that any Subsidiary of the Borrower shall be excluded from the requirements of the Collateral and Guarantee Requirement or that any property shall be an "Excluded Asset" (in each case as defined in the First Lien Credit Agreement), the Administrative Agent shall automatically be deemed to accept such determination hereunder and shall execute any documentation, if applicable, in connection therewith.

"Collateral Documents" means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Mortgages, collateral assignments, Security Agreement Supplements, security agreements, pledge agreements, intellectual property security agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 4.01(a)(iv), Section 6.11 or Section 6.13, the Intercreditor Agreements (if any) and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

"Commitment" means, as to each Lender, its obligation to make Loans to the Borrower hereunder, as such commitment may be reduced or increased from time to time pursuant to (i) assignments by or to such Lender pursuant to an Assignment and Assumption, (ii) an Incremental Amendment, (iii) a Refinancing Amendment or (iv) an Extension. The amount of each Lender's Commitment [as of the Closing Date](#) is set forth in [Schedule 1.01A](#) under the caption "Initial Commitment" or in the Assignment and Assumption, Incremental Amendment, Extension Amendment or Refinancing Amendment pursuant to which such Lender shall have assumed, increased or decreased its Commitment, as the case may be.

"Committed Loan Notice" means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of [Exhibit A](#) hereto.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Company" has the meaning specified in the introductory paragraph to this Agreement.

"Company Parties" means the collective reference to Holdings and its Subsidiaries, including the Borrower, and **"Company Party"** means any one of them.

“**Compensation Period**” has the meaning set forth in Section 2.12(c)(ii).

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit D-1 hereto.

“**Consent**” has the meaning assigned to such term in Amendment No. 2.

“**Consolidated Cash Interest Coverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated EBITDA to (b) Consolidated Interest Expense.

“**Consolidated EBITDA**” means, for any period, the Consolidated Net Income for such period, plus:

(a) without duplication and, except with respect to clauses (viii), (x) and, to the extent consisting of “run-rate” cost savings, (xiv) below, to the extent deducted (and not added back or excluded) in arriving at such Consolidated Net Income, the sum of the following amounts for such period with respect to the Borrower and its Restricted Subsidiaries:

(i) total interest expense determined in accordance with GAAP and, to the extent not reflected in such total interest expense, any expense or loss on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations, and costs of surety bonds in connection with financing activities (whether amortized or immediately expensed),

(ii) provision for taxes and Tax Distributions based on income, profits or capital gains of the Borrower and the Restricted Subsidiaries, including, without limitation, federal, state, local, franchise and similar taxes and foreign withholding taxes paid or accrued during such period including penalties and interest related to such taxes or arising from any tax examinations,

(iii) depreciation and amortization (including amortization of intangible assets, including Capitalized Software Expenditures),

(iv) (A) duplicative running costs, relocation costs or expenses, integration costs, site acquisition costs, transition costs, pre-opening, opening, closing and consolidation costs for facilities, signing, retention and completion bonuses, costs associated with preparations for and implementation of compliance with the requirements of the Sarbanes-Oxley Act of 2002 and other Public Company Costs, costs incurred in connection with any strategic initiatives, costs incurred in connection with acquisitions and non-recurring product and intellectual property development, other business optimization expenses (including costs and expenses relating to business optimization programs and new systems design, retention charges, systems establishment costs (including information technology systems) and implementation costs), project start-up costs, severance and other restructuring charges representing cash items (including restructuring costs related to acquisitions and to closure of facilities, and excess pension charges), and litigation settlements or losses and related expenses,

(B) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses, compensation or otherwise) and adjustments thereof and purchase price adjustments, in each case in connection with acquisitions and

(C) Transaction Expenses,

(v) the amount of any expense or reduction of Consolidated Net Income consisting of Restricted Subsidiary income attributable to minority interests or non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary,

(vi) the amount of management, monitoring, consulting and advisory fees (including transaction and termination fees) and related expenses and indemnities paid or accrued to the Sponsor under the Sponsor Management Agreement,

(vii) any Equity Funded Employee Plan Costs,

(viii) (i) cost savings, operating expense reductions and synergies related to the Transactions that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within twenty-four (24) months after the Closing Date (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period) and (ii) cost savings, operating expense reductions and synergies related to mergers and other business combinations, acquisitions, divestitures, restructurings, cost savings initiatives and other similar initiatives and actions that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within twenty-four (24) months after a merger or other business combination, acquisition or divestiture is consummated or any other restructuring, cost savings initiative or other initiative or action (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period), net of the amount of actual benefits realized during such period from such actions; *provided* that no cost savings, operating expense reductions and synergies shall be added back pursuant to this clause (viii) to the extent duplicative of any expenses or charges otherwise added back to Consolidated EBITDA, whether through a *pro forma* adjustment or otherwise, for such period,

(ix) any expense or net loss from asset retirement obligations, disposed, abandoned or discontinued operations (excluding held-for-sale discontinued operations until actually disposed of),

(x) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (b) below for any previous period and not added back,

(xi) non-cash expenses (including the excess of GAAP rent expense over actual cash rent paid, including the benefit of lease incentives, during such period), charges and losses (including reserves, impairment charges or asset write-offs, write-offs of deferred financing fees, losses from investments recorded using the equity method, stock-based awards compensation expense), in each case other than (A) any non-cash charge representing amortization of a prepaid cash item that was paid and not expensed in a prior period and (B) any non-cash charge relating to write-offs, write-downs or reserves with respect to accounts receivable in the normal course or inventory; *provided* that if any non-cash charges referred to in this clause (xi) represents an accrual or reserve for potential cash items in any future period, (1) the Borrower may elect not to add back such non-cash charge in the current period and (2) to the extent the Borrower elects to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA in such future period to such extent paid,

(xii) pre-opening, opening, consolidation and closing costs, losses and expenses, in each case, for restaurants and other facilities, start-up losses, charges and expenses for new restaurants and other new facilities and losses, charges and expenses for closed restaurants and other closed facilities,

(xiii) the amount of loss on sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Financing; and

(xiv) other adjustments and add-backs of the type identified in the Quality of Earnings Analysis dated June 25, 2014, ~~including without limitation, if greater than zero, an amount equal to the pro forma "run rate" Consolidated EBITDA attributable to any De Novo Store, which will be assumed to be (A)(1) the median Consolidated EBITDA margin before cash rent expense of comparable stores that have been operating for at least six consecutive fiscal quarters for such period multiplied by (2) the projected (in the good faith determination of the Borrower) mature annual revenue of such De Novo Store, minus (b)(i) the annual cash rent expense of the relevant De Novo Store and (B) the actual Consolidated EBITDA generated by the relevant De Novo Store;~~ 2014

less (b) without duplication and to the extent included in arriving at such Consolidated Net Income, (i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period or the amortization of income associated with a prior period cash receipt), (ii) any net gain from disposed, abandoned or discontinued operations (excluding held-for-sale discontinued operations until actually disposed of) and (iii) the amount of any minority interest income consisting of Restricted Subsidiary losses attributable to minority interests or non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary; *provided that*, for the avoidance of doubt, any gain representing the reversal of any non-cash charge referred to in clause (a) (xi)(B) above for a prior period shall be added (together with, without duplication, any amounts received in respect thereof to the extent not increasing Consolidated Net Income) to Consolidated EBITDA in any subsequent period to such extent so reversed (or received);

provided that:

(A) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA (x) currency translation or transaction gains and losses related to currency remeasurements of Indebtedness (including the net loss or gain (i) resulting from Swap Contracts for currency exchange risk and (ii) resulting from intercompany indebtedness) and (y) all other foreign currency translation or transaction gains or losses to the extent such gains or losses are non-cash items,

(B) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any adjustments resulting from the application of FASB Accounting Standards Codification 815 and International Accounting Standard No. 39 and their respective related pronouncements and interpretations,

(C) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated EBITDA for any period any income (loss or expenses) for such period attributable to the early extinguishment of (i) Indebtedness, (ii) obligations under any Swap Contracts or (iii) other derivative instruments.

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated EBITDA under this Agreement (A) for any period that includes any of the fiscal quarters ended June 30, 2014, March 31, 2014, December 31, 2013 and September 30, 2013, Consolidated EBITDA for such fiscal quarters shall be \$20,900,000, \$12,600,000, \$18,200,000 and \$18,100,000, respectively, in each case, as may be subject to addbacks and adjustments (without duplication) pursuant to clauses (a)(iv)(A) and (a)(viii) above and Section 1.09(c) for the applicable Test Period and (B) the Consolidated EBITDA derived from any De Novo Store for the four-fiscal quarter period then being measured shall be deemed to equal (X) if such De Novo Store is located in Chicagoland, \$2,000,000 and (Y) if such De Novo Store is not located in Chicagoland, \$500,000; provided that (1) this clause (B) shall apply to the Consolidated

EBITDA of such De Novo Store only for so long as such Store constitutes a De Novo Store and (II) no amounts shall be added to Consolidated EBITDA in respect of or that are attributable to a De Novo Store for so long as Store constitutes a De Novo Store other than the applicable amounts set forth in the immediately preceding clause (X) or (Y). For the avoidance of doubt but subject to the immediately preceding sentence. Consolidated EBITDA shall be calculated, including pro forma adjustments, in accordance with Section 1.09.

“**Consolidated First Lien Net Leverage Ratio**” means “Consolidated First Lien Net Leverage Ratio” as defined under, and calculated in accordance with, the First Lien Credit Agreement (as in effect on the date hereof).

“**Consolidated Interest Expense**” means, for any period, the sum, without duplication, of:

(i) the cash interest expense (including that attributable to Capitalized Leases), net of cash interest income, of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, with respect to all outstanding Indebtedness of the Borrower and its Restricted Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net cash costs under Swap Contracts, and

(ii) any cash payments made during such period in respect of obligations referred to in clause (b) below relating to Funded Debt that were amortized or accrued in a previous period;

provided that there shall be excluded from Consolidated Interest Expense for any period:

(a) deferred financing costs, debt issuance costs, commissions, fees (including amendment and contract fees) and expenses and, in each case, the amortization thereof, and any other amounts of non-cash interest,

(b) the accretion or accrual of discounted liabilities and any prepayment premium or penalty during such period,

(c) non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations under Swap Contracts or other derivative instruments pursuant to FASB Accounting Standards Codification 815,

(d) any cash costs associated with breakage in respect of hedging agreements for interest rates,

(e) all non-recurring cash interest expense consisting of liquidated damages for failure to timely comply with registration rights obligations and financing fees, all as calculated on a consolidated basis in accordance with GAAP,

(f) Transaction Expenses,

- (g) annual agency fees paid to the Administrative Agent and the First Lien Administrative Agent,
- (h) costs associated with obtaining Swap Contracts,
- (i) any expense resulting from the discounting of any Indebtedness in connection with the application of recapitalization accounting or, if applicable, acquisition accounting in connection with the Transactions or any acquisition,
- (j) the cash interest expense (or income) of all Unrestricted Subsidiaries for such period to the extent otherwise included in Consolidated Interest Expense, and
- (k) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Qualified Securitization Financing.

Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated Interest Expense (i) for any period ending prior to the first anniversary of the [Closing Amendment No.2 Effective](#) Date, Consolidated Interest Expense shall be an amount equal to actual Consolidated Interest Expense from the [Closing Amendment No.2 Effective](#) Date through the date of determination multiplied by a fraction the numerator of which is three hundred sixty-five (365) and the denominator of which is the number of days from the [Closing Amendment No.2 Effective](#) Date through the date of determination and (ii) shall exclude the acquisition accounting effects described in the last sentence of the definition of Consolidated Net Income.

“Consolidated Net Income” means, for any period, the net income (loss) of the Borrower and the Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; *provided, however*, that, without duplication:

- (a) any after-tax (including after Tax Distributions) effect of extraordinary, non-recurring or unusual items (including gains or losses and all fees and expenses relating thereto) for such period shall be excluded,
- (b) the cumulative effect of a change in accounting principles during such period to the extent included in Consolidated Net Income shall be excluded,
- (c) any fees and expenses incurred during such period (including, without limitation, any premiums, make-whole or penalty payments), or any amortization thereof for such period, in connection with any acquisition, investment, asset disposition, issuance or repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of any debt instrument (in each case, including any such transaction consummated on or prior to the Closing Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for the avoidance of doubt the effects of expensing all transaction related expenses in accordance with FASB Accounting Standards Codification 805 and gains or losses associated with FASB Accounting Standards Codification 460) shall be excluded,

(d) accruals and reserves that are established or adjusted within two (2) years after the Closing Date that are so required to be established as a result of the Transactions (or within two (2) years after the closing of any acquisition that are so required to be established as a result of such acquisition) in accordance with GAAP shall be excluded,

(e) any net after-tax (including after Tax Distributions) effect of gains or losses on disposed, abandoned or discontinued operations shall be excluded,

(f) any net after-tax (including after Tax Distributions) effect of gains or losses (less all fees, expenses and charges relating thereto) attributable to asset dispositions or abandonments or the sale or other disposition of any Equity Interests of any Person in each case other than in the ordinary course of business, as determined in good faith by the Borrower, shall be excluded,

(g) the net income (loss) for such period of any Person that is not a Subsidiary of the Borrower, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; *provided* that Consolidated Net Income of the Borrower shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent subsequently converted into cash or Cash Equivalents) to the Borrower or a Restricted Subsidiary thereof in respect of such period,

(h) any impairment charge or asset write-off or write-down, including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets, investments in debt and equity securities or as a result of a change in law or regulation, in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(i) any non-cash compensation charge or expense, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights or equity incentive programs or any other equity-based compensation shall be excluded, and any cash charges associated with the rollover, acceleration or payout of Equity Interests by management of the Borrower or any of its direct or indirect parents in connection with the Transactions, shall be excluded,

(j) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within three hundred sixty-five (365) days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such three hundred sixty-five (365) day period), shall be excluded,

(k) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is in fact reimbursed within three hundred sixty-five (365) days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such three hundred sixty-five (365) days), expenses, charges or losses with respect to liability or casualty events or business interruption shall be excluded,

(l) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of FASB Accounting Standards Codification 712 and 715, Statement on Financial Accounting Standards Nos. 87, 106 and 112, and any other items of a similar nature, shall be excluded,

(m) the income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary of Borrower or is merged into or consolidated with Borrower or any of its Subsidiaries or that Person's assets are acquired by Borrower or any of its Restricted Subsidiaries shall be excluded (except to the extent required for any calculation of Consolidated EBITDA on a Pro Forma Basis in accordance with Section 1.09),

(n) solely for the purpose of determining the Cumulative Credit pursuant to clause (a) of the definition thereof, the income of any Restricted Subsidiary of Borrower that is not a Guarantor to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary (which has not been waived) shall be excluded, except (solely to the extent permitted to be paid) to the extent of the amount of dividends or other distributions actually paid to Borrower or any of its Restricted Subsidiaries that are Guarantors by such Person during such period in accordance with such documents and regulations, and

(o) any gains or losses in connection with Sale Leaseback Transactions shall be excluded.

There shall be excluded from Consolidated Net Income for any period the acquisition accounting effects of adjustments in component amounts required or permitted by GAAP pursuant to FASB Accounting Standards Codification 805 (including, but not limited to, in the inventory, property and equipment, fair value of leased property, software, goodwill, intangible assets, in-process research and development, deferred revenue, deferred rent, contingent considerations and debt line items thereof) and related authoritative pronouncements (including the effects of such adjustments pushed down to the Borrower and the Restricted Subsidiaries), as a result of the Transactions, any acquisition constituting an Investment permitted under this Agreement consummated prior to or after the Closing Date, or the amortization or write-off of any amounts thereof. For the avoidance of doubt, Consolidated Net Income shall be calculated, including pro forma adjustments, in accordance with Section 1.09.

“Consolidated Secured Net Debt” means, as of any date of determination, (1) any Indebtedness described in clause (a) of the definition of “Consolidated Total Net Debt” outstanding on such date that is secured by a Lien on Collateral minus (2) the aggregate amount of Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01, Liens permitted by Section 7.01(a), Section 7.01(b), clauses (ii) and (iii) of Section 7.01(k), Section 7.01(m), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(v), Section 7.01(w), Section 7.01(aa), Section 7.01(bb), Section 7.01(cc), Section 7.01(dd) and Section 7.01(gg)); *provided* that Consolidated Secured Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided further* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Secured Net Debt until three (3) Business Days after such amount is drawn, (ii) Unrestricted Subsidiaries and (iii) any Qualified Securitization Financing; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated Secured Net Debt.

“Consolidated Total Net Debt” means, as of any date of determination, (a) the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of acquisition accounting in connection with the Transactions or any acquisition constituting an Investment permitted under this Agreement) consisting of Indebtedness for borrowed money, Attributable Indebtedness, and debt obligations evidenced by promissory notes or similar instruments and all Guarantees of Indebtedness of such type that is owed by a Person that is not the Borrower or a Restricted Subsidiary, minus (b) the aggregate amount of Cash Equivalents (other than Restricted Cash), in each case, included on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries as of such date, free and clear of all Liens (other than nonconsensual Liens permitted by Section 7.01, Liens permitted by Section 7.01(a), Section 7.01(b), clauses (ii) and (iii) of Section 7.01(k), Section 7.01(m), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(v), Section 7.01(w), Section 7.01(aa), Section 7.01(bb), Section 7.01(cc), Section 7.01(dd) and Section 7.01(gg)); *provided* that Consolidated Total Net Debt shall not include Indebtedness in respect of (i) letters of credit, except to the extent of unreimbursed amounts thereunder; *provided further* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Total Net Debt until three (3) Business Days after such amount is drawn, (ii) Unrestricted Subsidiaries and (iii) any Qualified Securitization Financing; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated Total Net Debt.

“Consolidated Working Capital” means, with respect to the Borrower and its Restricted Subsidiaries on a consolidated basis at any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; *provided* that increases or decreases in Consolidated Working Capital shall be calculated without regard to (i) any changes in Current Assets or Current Liabilities as a result of any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent and (ii) the application of acquisition accounting.

“**Contingent Obligations**” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (“**primary obligations**”) of any other Person (for purposes of this definition, the “**primary obligor**”) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent,

(a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(b) to advance or supply funds

(i) for the purchase or payment of any such primary obligation, or

(ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“**Contract Consideration**” has the meaning set forth in the definition of “Excess Cash Flow.”

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“**Control**”, “**Controlled**” and “**Controlling**” have the meaning specified in the definition of “Affiliate.”

“**Converted Initial Loan**” means the Allocated Amount of each Initial Loan held by an Initial Converting Lender on the Amendment No. 2 Effective Date immediately prior to the effectiveness of Amendment No. 2. The aggregate principal amount of Converted Initial Loans and Converted Term B-2 Loans is \$0.

“**Converted Term B-2 Loan**” means the Allocated Amount of each Term B-2 Loan held by a Term B-2 Converting Lender on the Amendment No. 2 Effective Date immediately prior to the effectiveness of Amendment No. 2. The aggregate principal amount of Converted Initial Loans and Converted Term B-2 Loans is \$0.

“**Cumulative Credit**” means, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

(a) (i) \$12,000,000, *plus* subject, at the time of the proposed use of such component of the Cumulative Credit, to compliance on a Pro Forma Basis with a Total Net Leverage Ratio as of the most recently ended Test Period that is no greater than 5.80:1.00, \$24,000,000 (ii) the Cumulative Retained Excess Cash Flow Amount at such time, plus

(b) (i) the cumulative amount of Cash Equivalent proceeds from the sale of Qualified Equity Interests of the Borrower or Equity Interests of any direct or indirect parent of the Borrower after the Closing Date and on or prior to such time (including upon exercise of warrants or options) (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of "Permitted Investments", (x) designated as a Cure Amount (as defined in the First Lien Credit Agreement), (y) used for Equity Funded Employee Plan Costs or (z) used to incur Indebtedness pursuant to Section 7.03(x)), which proceeds have been contributed as common equity to the capital of the Borrower and (ii) in the event that Qualified Equity Interests of the Borrower (or Equity Interests of any direct or indirect parent of Borrower) (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of "Permitted Investments", (x) designated as a Cure Amount (as defined in the First Lien Credit Agreement), (y) used for Equity Funded Employee Plan Costs or (z) used to incur Indebtedness pursuant to Section 7.03(x)) have been issued upon conversion of Indebtedness (other than Indebtedness that is contractually subordinated to the Obligations) of the Borrower or any Restricted Subsidiary of the Borrower owed to a Person other than a Loan Party or a Restricted Subsidiary of a Loan Party in satisfaction of such Indebtedness, the aggregate principal amount of such Indebtedness, plus

(c) 100% of the aggregate amount of contributions to the common capital of the Borrower received in Cash Equivalents after the Closing Date (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of "Permitted Investments", (x) designated as a Cure Amount (as defined in the First Lien Credit Agreement), (y) used for Equity Funded Employee Plan Costs or (z) used to incur Indebtedness pursuant to Section 7.03(x)), plus

(d) 100% of the aggregate amount received by the Borrower or any Restricted Subsidiary of the Borrower after the Closing Date in Cash Equivalents from:

(A) the sale (other than to the Borrower or any such Restricted Subsidiary) of the Equity Interests of an Unrestricted Subsidiary or any minority Investments, or

(B) any dividend or other distribution by an Unrestricted Subsidiary or received in respect of minority Investments, or

(C) any interest, returns of principal, repayments and similar payments by such Unrestricted Subsidiary or received in respect of any minority Investments;

provided that in the case of clauses (A), (B), and (C), in each case, to the extent that the Investment corresponding to the designation of such Subsidiary as an Unrestricted Subsidiary or any subsequent Investment in such Unrestricted Subsidiary or minority Investment, as applicable, was made pursuant to Section 7.06(g)(y), plus

(e) in the event any Unrestricted Subsidiary has been re-designated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary, the fair market value of the Investments of the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable) so long as such Investments were originally made pursuant to Sections 7.06(g)(y), plus

(f) an amount equal to any returns in Cash Equivalents (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received by the Borrower or any Restricted Subsidiary in respect of any Investments made pursuant to Section 7.06(g)(y), plus

(g) Borrower Retained Prepayment Amounts, plus

(h) the amount actually paid by the applicable Affiliated Lender or Debt Fund Affiliate in respect of Loans and First Lien Term Loans contributed, assigned or transferred by such Affiliated Lender or any Debt Fund Affiliate, directly or indirectly, to the Borrower and cancelled pursuant to the last paragraph of Section 10.07(k) (or pursuant to the last paragraph of Section 10.07(k) of the First Lien Credit Agreement), minus

(i) any amount of the Cumulative Credit used to make Restricted Payments pursuant to Section 7.06(f)(A) or 7.06(g) after the Closing Date and prior to such time, minus

(j) any amount of the Cumulative Credit used to make payments or distributions in respect of Junior Financings pursuant to Section 7.13 after the Closing Date and prior to such time.

“Cumulative Retained Excess Cash Flow Amount” means, at any time, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to the aggregate cumulative sum of the Retained Percentage of Excess Cash Flow for all Excess Cash Flow Periods ending after the Closing Amendment No.2 Effective Date and prior to such datetime.

“Current Assets” means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all assets (other than cash and Cash Equivalents) that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current assets at such date of determination, other than amounts related to current or deferred Taxes based on income or profits, assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees and derivative financial instruments.

“Current Liabilities” means, with respect to the Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries as current liabilities at such date of determination (including deferred revenue), other than (a) the current portion of any Funded Debt and derivative financial instruments, (b) the current portion of accrued interest, (c) liabilities relating to current or

deferred Taxes based on income or profits, (d) accruals of any costs or expenses related to restructuring reserves or severance, (e) any other liabilities that are not Indebtedness and will not be settled in cash or Cash Equivalents during the next succeeding twelve (12) month period after such date, (f) any Revolving Credit Exposure, Revolving Credit Loans or any loans or letters of credit under any other revolving facility, (g) liabilities in respect of unpaid earn-outs, (h) accrued litigation settlement costs, (i) non-cash compensation costs and expenses and (j) the current portion of any other long-term liabilities.

“**De Novo Store**” means any ~~store~~ Store that has been continuously operational for less than ~~six~~ four consecutive fiscal quarters.

“**Debt Fund Affiliate**” means any Sponsor that is a bona fide debt fund or an investment vehicle that is engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of business, in each case with respect to which the persons making investment decisions for such applicable affiliate are not primarily engaged in the making, acquiring or holding of equity investments in Holdings or any of its Subsidiaries.

“**Debtor Relief Laws**” means the Bankruptcy Code of the United States and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“**Declined Proceeds**” has the meaning specified in Section 2.05(b)(vii).

“**Default**” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“**Default Rate**” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate, if any, applicable to Base Rate Loans plus (c) 2.0% per annum; *provided* that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2.0% per annum, in each case, to the fullest extent permitted by applicable Laws.

“**Defaulting Lender**” means, subject to Section 2.17(b), any Lender that, as reasonably determined by the Administrative Agent (a) has refused (which refusal may be given verbally or in writing and has not been retracted) or failed to perform any of its funding obligations hereunder, including in respect of its Loans, which refusal or failure is not cured within one (1) Business Day after the date of such refusal or failure, (b) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or

indirect parent company that has, after the date of this Agreement, (i) become the subject of a proceeding under any Debtor Relief Law or a Bail-In Action (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17(b)) upon delivery of written notice of such determination to the Borrower and each Lender.

“**Deferred Loan Party**” has the meaning set forth in Section 4.01(a).

“**Discount Prepayment Accepting Lender**” has the meaning set forth in Section 2.05(a)(v)(B)(2).

“**Discount Range**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Discount Range Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Discount Range Prepayment Notice**” means a written notice of a Borrower Solicitation of Discount Range Prepayment Offers made pursuant to Section 2.05(a)(v)(C) substantially in the form of Exhibit E-4.

“**Discount Range Prepayment Offer**” means the irrevocable written offer by a Lender, substantially in the form of Exhibit E-5, submitted in response to an invitation to submit offers following the Auction Agent’s receipt of a Discount Range Prepayment Notice.

“**Discount Range Prepayment Response Date**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Discount Range Proration**” has the meaning set forth in Section 2.05(a)(v)(C)(3).

“**Discounted Loan Prepayment**” has the meaning set forth in Section 2.05(a)(v)(A).

“**Discounted Prepayment Determination Date**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“Discounted Prepayment Effective Date” means in the case of a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offer or Borrower Solicitation of Discounted Prepayment Offer, five (5) Business Days following the Specified Discount Prepayment Response Date, the Discount Range Prepayment Response Date or the Solicited Discounted Prepayment Response Date, as applicable, in accordance with Section 2.05(a)(v)(B)(1), Section 2.05(a)(v)(C)(1) or Section 2.05(a)(v)(D)(1), respectively, unless a shorter period is agreed to between the Borrower and the Auction Agent.

“Disposition” or **“Dispose”** means the sale, transfer, license, lease or other disposition (including any Sale Leaseback and any sale or issuance of Equity Interests in a Restricted Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, whether in a single transaction or a series of related transactions; provided that “Disposition” and “Dispose” shall not include any issuance by Holdings of any of its Equity Interests to another Person.

“Disqualified Equity Interests” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements) that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests and other than as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements) that are accrued and payable and the termination of the Commitments), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Latest Maturity Date at the time of issuance of such Equity Interests; *provided*, that if such Equity Interests are issued pursuant to a plan for the benefit of future, current or former employees, directors, officers, members of management or consultants of Holdings (or any direct or indirect parent thereof), the Borrower or the Restricted Subsidiaries or by any such plan to such employees, directors, officers, members of management or consultants, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be permitted to be repurchased by the Borrower or its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s, director’s, officer’s, management member’s or consultant’s termination of employment or service, as applicable, death or disability.

“Disqualified Institutions” means those Persons (the list of all such Persons, the **“Disqualified Institutions List”**) that are (i) identified in writing by the Borrower to the Administrative Agent prior to the initial allocation of the loans to be funded [or converted](#) on the [Closing Amendment No. 2 Effective](#) Date, (ii) competitors of the Borrower and its Subsidiaries

(other than bona fide fixed income investors or debt funds) that are identified in writing by the Borrower from time to time or (iii) Affiliates of such Persons set forth in clauses (i) and (ii) above (in the case of Affiliates of such Persons set forth in clause (ii) above, other than bona fide fixed income investors or debt funds) that are either (a) identified in writing by the Borrower or the Sponsor from time to time or (b) reasonably identifiable as an Affiliate thereof; *provided, that*, to the extent Persons are identified as Disqualified Institutions in writing by the Borrower to the Administrative Agent after the ~~Closing~~ [Amendment No. 2 Effective](#) Date pursuant to clauses (ii) or (iii)(a), the inclusion of such Persons as Disqualified Institutions shall not retroactively apply to prior assignments or participations in respect of any Loan under this Agreement. Until the disclosure of the identity of a Disqualified Institution to the Lenders generally by the Administrative Agent, such Person shall not constitute a Disqualified Institution for purposes of a sale of a participation in a Loan (as opposed to an assignment of a Loan) by a Lender; *provided*, that no disclosure of the Disqualified Institutions List (or the identity of any Person that constitutes a Disqualified Institution) to the Lenders shall be made by the Administrative Agent without the prior written consent of the Borrower. Notwithstanding the foregoing, the Borrower, by written notice to the Administrative Agent, may from time to time in its sole discretion remove any entity from the Disqualified Institutions List (or otherwise modify such list to exclude any particular entity), and such entity removed or excluded from the Disqualified Institutions List shall no longer be a Disqualified Institution for any purpose under this Agreement or any other Loan Document.

“**Disqualified Institutions List**” has the meaning set forth in the definition of Disqualified Institutions.

“**Disregarded Domestic Person**” means any Domestic Subsidiary that is a “disregarded entity” for federal income tax purposes substantially all of whose assets consists of Equity Interests in one or more Foreign Subsidiaries that ~~is a CFC~~ [are CFCs](#).

“**Dollar**” and “**\$**” mean lawful money of the United States.

“**Domestic Subsidiary**” means any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“**Duly Authorized Documents**” has the meaning set forth in Section 4.01(a).

“**EEA Financial Institution**” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in [clause \(a\)](#) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in [clauses \(a\) or \(b\)](#) of this definition and is subject to consolidated supervision with its parent.

“**EEA Member Country**” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” has the meaning set forth in Section 10.07(a)(i). For the avoidance of doubt, “Eligible Assignee” shall not include any Disqualified Institution.

“EMU” means the economic and monetary union as contemplated in the Treaty on European Union.

“Environment” means indoor air, ambient air, surface water, groundwater, drinking water, land surface, subsurface strata, and natural resources such as wetlands, flora and fauna.

“Environmental Laws” means any applicable Law relating to the prevention of pollution or the protection of the Environment and natural resources, and the protection of human health and safety as it relates to Hazardous Materials.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of investigation and remediation, fines, penalties or indemnities), of the Loan Parties or any Restricted Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage or treatment of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Contribution” means, collectively, the direct or indirect contribution on the Closing Date by the Sponsor, Co-Investors and Management Stockholders to the Borrower of an aggregate amount of cash and rollover equity (which, in respect of any equity of the Borrower other than common equity, shall be on terms reasonably acceptable to the Arrangers) that represents not less than 30% of the sum of (1) the aggregate gross proceeds of Initial Loans, excluding the aggregate gross proceeds of any increase in the Initial Loans to fund OID or upfront fees, (2) the aggregate gross proceeds received from the First Lien Initial Revolving Borrowing to the extent funding the Transactions or fees and expenses related to the Transactions (excluding OID or upfront fees resulting from the exercise of “Market Flex” by the Arrangers as set forth in the Fee Letter), (3) the aggregate gross proceeds of the First Lien Initial Term Loans, excluding any increase in the gross proceeds of the First Lien Initial Term Loans to fund OID or upfront fees and (4) the amount of such cash and rollover equity contributed, in each case on the Closing Date (such sum, the **“Funded Capitalization”**).

“Equity Funded Employee Plan Costs” means cash costs or expenses, incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent funded with cash proceeds contributed to the capital of the Borrower or net cash proceeds

of an issuance of Qualified Equity Interests of the Borrower or Equity Interests of any direct or indirect parent of the Borrower (other than any amount (w) used to make an Investment pursuant to clause (9) of the definition of “Permitted Investments”, (x) designated as a Cure Amount (under and as defined in the First Lien Credit Agreement), (y) used to make Investments, Restricted Payments or prepayments, redemptions, purchase, defeasance or other payments of Junior Financings in reliance on clause (b) or (c) of the definition of “Cumulative Credit” or (z) used to incur Indebtedness pursuant to Section 7.03(x)).

“**Equity Interests**” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

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

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that is under common control with a Loan Party within the meaning of Section 414(b) or (c) of the Code or Section 4001 of ERISA (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“**ERISA Event**” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by a Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by a Loan Party or any ERISA Affiliate from a Multiemployer Plan or written notification that a Multiemployer Plan is in reorganization (within the meaning of Section 4241 of ERISA) or insolvent (within the meaning of Section 4245 of ERISA) or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) a written determination that any Pension Plan is in “at risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (e) the filing of a notice of intent to terminate, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for, and that could reasonably be expected to result in, the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) with respect to a Pension Plan, the failure to satisfy the minimum funding standard of Section 412 of the Code, whether or not waived; (h) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to a Loan Party; or (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon a Loan Party or any ERISA Affiliate.

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Eurocurrency Rate” means:

(a) for any Interest Period with respect to a Eurocurrency Rate Loan, the rate per annum equal to (i) the ICE Benchmark Administration LIBOR Rate or such other rate per annum as is widely recognized as the successor thereto if the ICE Benchmark Administration is no longer making a LIBOR Rate available (“**LIBOR**”), as published by Bloomberg (or such other commercially available source providing quotations of LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (ii) if such published rate is not available at such time for any reason, then the “Eurocurrency Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the Eurocurrency Rate Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by the Administrative Agent’s London Branch to major banks in the London interbank Eurodollar market at their request at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to (i) LIBOR, at approximately 11:00 a.m., London time determined two (2) London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one (1) month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in Same Day Funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one (1) month would be offered by the Administrative Agent’s London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination;

provided that in the case of clause (a), the Eurocurrency Rate with respect to **Initial Term B-3** Loans shall not be less than ~~1.00~~**1.25**% per annum.

“Eurocurrency Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurocurrency Rate.”

“Event of Default” has the meaning specified in Section 8.01.

“Excess Cash Flow” means, for any period, an amount equal to:

- (a) the sum, without duplication, of
 - (i) Consolidated Net Income for such period,

(ii) an amount equal to the amount of all non-cash charges (including depreciation and amortization) to the extent deducted in arriving at such Consolidated Net Income, but excluding any such non-cash charges representing an accrual or reserve for potential cash items in any future period,

(iii) decreases in Consolidated Working Capital for such period (other than any such decreases arising from acquisitions or Dispositions by the Borrower and its Restricted Subsidiaries completed during such period or the application of acquisition accounting),

(iv) an amount equal to the aggregate net non-cash loss on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income,

(v) an amount equal to all cash received for such period on account of any net non-cash gain or income from Investments deducted in a previous period pursuant to clause (b)(iv)(B) of this definition,

(vi) an amount deducted as tax expense in determining Consolidated Net Income to the extent in excess of cash taxes paid in such period,

(vii) cash payments received in respect of Swap Contracts during such period to the extent not included in arriving at such Consolidated Net Income, and

(viii) the aggregate net non-cash loss or expense on Dispositions in connection with Sale Leaseback Transactions,

minus

(b) the sum, without duplication, of

(i) an amount equal to (x) the amount of all non-cash credits (including, to the extent constituting non-cash credits, without limitation, amortization of deferred revenue acquired as a result of any Permitted Acquisition) included in arriving at such Consolidated Net Income (but excluding any non-cash credit to the extent representing the reversal of an accrual or reserve described in clause (a)(ii) above) and (y) cash charges, losses or expenses excluded in arriving at such Consolidated Net Income by virtue of clauses (a) through (m) of the definition of Consolidated Net Income,

(ii) without duplication of amounts deducted pursuant to clause (xi) below in prior periods, the amount of Capital Expenditures or acquisitions of intellectual property to the extent not expensed and Capitalized Software Expenditures accrued or made in cash during such period, to the extent financed with Internally Generated Cash,

(iii) the aggregate amount of all principal payments and repayments of Indebtedness of the Borrower and its Restricted Subsidiaries to the extent financed with Internally Generated Cash, but in any event excluding principal payments and repayments of (A) Revolving Credit Loans, Swing Line Loans and Letters of Credit (each term in this clause (A) as defined in the First Lien Credit Agreement) ~~(unless there is a corresponding reduction in the aggregate Revolving Credit Commitments)~~, (B) Indebtedness in respect of any other revolving credit facility ~~(unless there is a corresponding reduction in commitments thereunder)~~, (C) Loans pursuant to Section 2.05(b) and First Lien Term Loans pursuant to Section 2.05(b) of the First Lien Credit Agreement (other than pursuant to Section 2.05(b)(ii) or Section 2.05(b)(ii) of the First Lien Credit Agreement, as applicable, to the extent required due to a Disposition or Casualty Event that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase), (D) Indebtedness to the extent otherwise deducted from the Applicable ECF Percentage of Excess Cash Flow pursuant to Section 2.05(b)(i)(B) and (E) any Junior Financing ~~to the extent not permitted to be made pursuant to Section 7.13(a)~~,

(iv) an amount equal to the sum of (A) the aggregate net non-cash gain on Dispositions by the Borrower and its Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income, (B) the aggregate net non-cash gain or income from Investments (other than Investments made in the ordinary course of business) to the extent included in arriving at Consolidated Net Income and (C) the aggregate net non-cash gain or income on Dispositions in connection with Sale Leaseback Transactions,

(v) increases in Consolidated Working Capital for such period (other than any such increases arising from acquisitions or Dispositions by the Borrower and its Restricted Subsidiaries completed during such period or the application of acquisition accounting),

(vi) cash payments by the Borrower and its Restricted Subsidiaries during such period in respect of long-term liabilities (including pension, deferred compensation and other post-retirement obligations) of the Borrower and its Restricted Subsidiaries other than Indebtedness to the extent such payments are not expensed during such period or are not deducted (or were excluded) in calculating Consolidated Net Income and to the extent financed with Internally Generated Cash,

(vii) without duplication of amounts deducted pursuant to clause (xi) below in prior periods, the amount of Investments made pursuant to clauses ~~(3), (13)~~, (15), (16), (19) (to the extent not deducted in arriving at such Consolidated Net Income), (24) and (25) (other than with respect to Restricted Payments pursuant to Section 7.06(g)), of the definition of "Permitted Investment" to the extent such Investments were financed with Internally Generated Cash,

(viii) the amount of Restricted Payments paid during such period pursuant to Sections 7.06(f), ~~(g)-(h)~~, ~~(i)-(j)~~(i) and (k) to the extent such Restricted Payments were financed with Internally Generated Cash,

(ix) the aggregate amount of expenditures actually made by the Borrower and its Restricted Subsidiaries from Internally Generated Cash of the Borrower and its Restricted Subsidiaries during such period (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such period or are not deducted (or were excluded) in calculating Consolidated Net Income,

(x) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and its Restricted Subsidiaries during such period that are required to be made in connection with any prepayment of Indebtedness,

(xi) without duplication of amounts deducted from Excess Cash Flow in prior periods and, at the option of the Borrower, the aggregate consideration required to be paid in cash by the Borrower and its Restricted Subsidiaries pursuant to binding contracts (the "**Contract Consideration**") entered into prior to or during such period relating to Permitted Acquisitions, Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property to the extent expected to be consummated or made, in each case during the period of four consecutive fiscal quarters of the Borrower following the end of such period provided that to the extent the aggregate amount of Internally Generated Cash actually utilized to finance such Permitted Acquisitions, Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property during such period of four consecutive fiscal quarters is less than the Contract Consideration, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive fiscal quarters,

(xii) the amount of cash taxes and Tax Distributions paid in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(xiii) cash expenditures in respect of Swap Contracts during such period to the extent not deducted in arriving at such Consolidated Net Income, and

(xiv) any payment of cash to be amortized or expensed over a future period and recorded as a long-term asset.

Notwithstanding anything in the definition of any term used in the definition of Excess Cash Flow to the contrary, all components of Excess Cash Flow shall be computed for the Borrower and its Restricted Subsidiaries on a consolidated basis. [For the avoidance of doubt, any prepayment or conversion of any Loans hereunder or any loans under the First Lien Credit Agreement on the Amendment No. 2 Effective Date shall not operate to reduce Excess Cash Flow.](#)

“Excess Cash Flow Period” means (i) each fiscal year of the Borrower commencing with and including the fiscal year ending December 31, 2015 but in all cases for purposes of calculating the Cumulative Retained Excess Cash Flow Amount shall only include such fiscal years for which financial statements and a Compliance Certificate have been delivered in accordance with Sections 6.01(a) and 6.02(a) and for which any prepayments required by Section 2.05(b)(i) (if any) have been made (it being understood that the Retained Percentage of Excess Cash Flow for any Excess Cash Flow Period [ending after the Amendment No. 2 Effective Date](#) shall be included in the Cumulative Retained Excess Cash Flow Amount regardless of whether a prepayment is required by Section 2.05(b)(i)).

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Assets” means (i) any fee owned Real Property (other than Material Real Properties) and any leasehold rights and interests in Real Property (including landlord waivers, estoppels and collateral access letters), (ii) motor vehicles, aircraft and other assets subject to certificates of title, except to the extent a security interest therein can be perfected by the filing of a UCC financing statement, (iii) commercial tort claims where the amount of damages claimed by the applicable Loan Party is less than \$2,500,000, (iv) governmental licenses or state or local franchises, charters and authorizations and any other property and assets to the extent that the Administrative Agent may not validly possess a security interest therein under applicable Laws (including, without limitation, rules and regulations of any Governmental Authority or agency) or the pledge or creation of a security interest in which would require governmental consent, approval, license or authorization, other than to the extent such prohibition or limitation is rendered ineffective under the UCC or other applicable Law notwithstanding such prohibition, (v) any particular asset or right under contract, if the pledge thereof or the security interest therein is prohibited or restricted by applicable Law (including, without limitation, rules and regulations of any Governmental Authority or agency) or any third party (so long as any agreement with such third party that provides for such prohibition or restriction was not entered into in contemplation of the acquisition of such assets or entering into of such contract or for the purpose of creating such prohibition or restriction), other than to the extent such prohibition or restriction is rendered ineffective under the UCC or other applicable Law, notwithstanding such prohibition, (vi) any written agreement, license or lease or any property subject to a purchase money security interest, capital lease obligations or similar arrangement permitted hereunder, in each case, to the extent the grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money or similar arrangement or would give rise to a termination right in favor of any other party thereto (other than Holdings or any of its Subsidiaries) after giving effect to the applicable anti-assignment provisions of the UCC or other applicable Laws, in each case, only to the extent that such limitation on such pledge or security interest is otherwise permitted under Section 7.09, other than proceeds and receivable thereof, the assignment of which is expressly deemed effective under the UCC or other applicable Laws, notwithstanding such prohibition, (vii) (A) Margin Stock, (B) Equity Interests in any Unrestricted Subsidiaries and (C) Equity Interests in any non-wholly owned Subsidiaries and any entities which do not constitute Subsidiaries, but only to the extent that (x) the Organizational Documents or other agreements with equity holders of such non-wholly owned Restricted Subsidiaries or other entities do not permit or restrict the pledge of such Equity Interests, or (y) the pledge of such Equity Interests (including any exercise of remedies) would result in a change of control, repurchase obligation or other adverse consequence to any of the Loan Parties or such non-wholly owned Restricted

Subsidiary or other entity, (viii) any property or assets for which the creation or perfection of pledges of, or security interests in, pursuant to the Collateral Documents would result in material adverse tax consequences to Holdings, the Borrower or any of its Subsidiaries, as reasonably determined by the Borrower in consultation with the Administrative Agent, (ix) letter of credit rights, except as to which perfection of the security interest is accomplished by the filing of a UCC financing statement (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a UCC financing statement), (x) (A) payroll and other employee wage and benefit accounts, (B) tax accounts, including, without limitation, sales tax accounts, (C) escrow accounts, and (D) fiduciary or trust accounts and, in the case of clauses (A) through (D), the funds or other property held in or maintained in any such account (as long as the accounts described in clauses (A) through (D) are used solely for such purposes), (xi) any intent-to-use trademark application prior to the filing of a “Statement of Use” or “Amendment to Allege Use” with respect thereto, to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law and (xii) assets in circumstances where the cost of obtaining a security interest in such assets, including, without limitation, the cost of title insurance, surveys or flood insurance (if necessary) would be excessive in light of the practical benefit to the Lenders afforded thereby as reasonably determined by the Borrower and the Administrative Agent; *provided, however*, that Excluded Assets shall not include any Proceeds, substitutions or replacements of any Excluded Assets referred to in clause (i) through (xii) (unless such Proceeds, substitutions or replacements would independently constitute Excluded Assets referred to in clauses (i) through (xii)).

“**Excluded Subsidiary**” means (a) any Subsidiary that is not a wholly owned Subsidiary of the Borrower or a Guarantor, (b) any Subsidiary that is prohibited by applicable Law or by Contractual Obligations existing on the Closing Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from guaranteeing the Obligations or if guaranteeing the Obligation would require governmental (including regulatory) consent, approval, license or authorization, (c) any Subsidiary where the Administrative Agent and the Borrower agree that the cost of obtaining a Guarantee by such Subsidiary would be excessive in light of the practical benefit to the Lenders afforded thereby, (d) any Foreign Subsidiary, (e) any non-for-profit Subsidiaries, (f) any Unrestricted Subsidiaries, (g) any special purpose securitization vehicle (or similar entity), including any Securitization Subsidiary or special purpose vehicle used to effectuate a Sale Leaseback Transaction, (h) any CFC Holdco, (i) any Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC, (j) any Disregarded Domestic Person, (k) any Subsidiary which holds no material assets other than the Sale Leaseback Properties that are the subject of any Sale Leaseback Transaction, (l) any Subsidiary, the obtaining of a Guarantee with respect to which would result in material adverse tax consequences as reasonably determined by the Borrower in consultation with the Administrative Agent and (m) any Captive Insurance Subsidiary.

“**Excluded Swap Obligation**” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, as applicable, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (a) by virtue of such Guarantor’s failure to constitute an “eligible

contract participant,” as defined in the Commodity Exchange Act and the regulations thereunder, at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation or (b) in the case of a Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Guarantor is a “financial entity,” as defined in section 2(h)(7)(C) of the Commodity Exchange Act, at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such guarantee or security interest is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof).

“**Existing Tranche**” has the meaning provided in Section 2.16.

“**Extended Commitment**” means a Commitment to provide an Extended Loan.

“**Extending Lender**” has the meaning provided in Section 2.16(c).

“**Extended Loans**” has the meaning provided in Section 2.16(a).

“**Extension**” means the establishment of an Extension Series by amending a Loan pursuant to Section 2.16 and the applicable Extension Amendment.

“**Extension Amendment**” has the meaning provided in Section 2.16(d).

“**Extension Election**” has the meaning provided in Section 2.16(c).

“**Extension Minimum Condition**” means a condition to consummating any Extension that a minimum amount (to be determined and specified in the relevant Extension Request, in the Borrower’s sole discretion) of any or all applicable Classes be submitted for Extension.

“**Extension Request**” has the meaning provided in Section 2.16(a).

“**Extension Series**” has the meaning provided in Section 2.16(a).

“**Facility**” means a given Class of Loans, as the context may require.

“**fair market value**” means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Borrower in good faith.

“**FATCA**” means current Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version thereof that is substantively comparable) ~~or~~, any Treasury regulations or other administrative guidance promulgated thereunder, [any agreement entered into pursuant to Section 1471\(b\) of the Code as of the date of this Agreement \(or any amended or successor version described above\)](#) and any intergovernmental or foreign financial institution agreement [\(and any related legislation or official administrative guidance\)](#) implementing the foregoing.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“Fee Letter” means the Amended and Restated Fee Letter, dated as of July 23, 2014, among Merger Sub, UBS AG, Stamford Branch, UBS Securities LLC, and Jefferies Finance LLC.

“Financial Covenant” has the meaning set forth in the First Lien Credit Agreement.

“First Lien Administrative Agent” means UBS AG, Stamford Branch, in its capacity as administrative agent and collateral agent under the First Lien Loan Documents, or any successor administrative agent and collateral agent under the First Lien Loan Documents.

“First Lien Credit Agreement” means the First Lien Credit Agreement dated as of August 1, 2014 by and among Holdings, the Borrower, and guarantors party thereto, the lenders party thereto in their capacities as lenders thereunder, the First Lien Administrative Agent, as agent and the other agents party thereto, as the same may be amended, restated, modified, supplemented, extended, renewed, refunded, replaced or refinanced from time to time in one or more agreements (in each case with the same or new lenders, institutional investors or agents), including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof, in each case as and to the extent not prohibited by this Agreement and the Second Lien Intercreditor Agreement.

“First Lien Credit Agreement Amendment No. 13” means that certain Amendment No. 1 to First Lien Credit Agreement, dated as of ~~October 25, 2016~~, [December 6, 2019](#), by and among Holdings, the Borrower, the other Guarantors party thereto, the lenders party thereto in their capacities as lenders and the First Lien Administrative Agent.

“First Lien Incremental Equivalent Debt” has the meaning assigned to the term “Incremental Equivalent Debt” in the First Lien Credit Agreement.

“First Lien Incremental Revolving Commitments” means the “Incremental Revolving Commitments” as such term is defined in the First Lien Credit Agreement.

“First Lien Incremental Revolving Loans” means the “Incremental Revolving Loans” as such term is defined in the First Lien Credit Agreement.

“First Lien Incremental Usage Amount” means, at any time, the sum of (x) the aggregate principal amount of “Incremental Commitments” (as defined in the First Lien Credit Agreement) established at or before such time pursuant to Section 2.14(d)(iii)(B) of the First Lien Credit Agreement (as in effect as of the ~~date hereof but~~ [Amendment No. 2 Effective Date](#) after giving effect to First Lien Credit Agreement Amendment No. ~~43~~ 43) and (y) the aggregate principal amount of “Incremental Equivalent Debt” (as defined in the First Lien Credit Agreement) incurred at or before such time pursuant to Section 2.14(h)(i)(B) of the First Lien Credit Agreement (as in effect as of the ~~date hereof but~~ [Amendment No. 2 Effective Date](#) after giving effect to First Lien Credit Agreement Amendment No. ~~43~~ 43).

“First Lien Initial Revolving Borrowing” means the “Initial Revolving Borrowing” as such term is defined in the First Lien Credit Agreement.

“First Lien Initial Term Loans” has the meaning assigned to the term “Term B Loans” in the First Lien Credit Agreement.

“First Lien Loan Documents” means the First Lien Credit Agreement, the Second Lien Intercreditor Agreement and the other “Loan Documents” (or other equivalent term) (as defined in the First Lien Credit Agreement).

“First Lien Obligations” means the “Senior Obligations” as defined in the Second Lien Intercreditor Agreement.

“First Lien Refinancing Equivalent Debt” has the meaning assigned to the term “Refinancing Equivalent Debt” in the First Lien Credit Agreement.

“First Lien Revolving Credit Commitments” means the “Revolving Credit Commitments” as such term is defined in the First Lien Credit Agreement.

“First Lien Revolving Credit Loans” means “Revolving Credit Loans” as such term is defined in the First Lien Credit Agreement.

“First Lien Swing Line Loans” means “Swing Line Loans” as such term is defined in the First Lien Credit Agreement.

“First Lien Term Loans” has the meaning assigned to the term “Term Loans” in the First Lien Credit Agreement.

“First Lien Termination Date” means the date on which the Discharge of Senior Obligations (as such term is defined in the Second Lien Intercreditor Agreement) has occurred.

“Flood Insurance Laws” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“**Foreign Casualty Event**” has the meaning specified in Section 2.05(b)(viii).

“**Foreign Disposition**” has the meaning set forth in Section 2.05(b)(viii).

“**Foreign Subsidiary**” means any direct or indirect Restricted Subsidiary of the Borrower which is not a Domestic Subsidiary.

“**Fund**” means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

“**Funded Debt**” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one (1) year from the date of its creation or matures within one (1) year from such date that is renewable or extendable, at the option of such Person, to a date more than one (1) year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one (1) year from such date, including Indebtedness in respect of the Loans.

“**GAAP**” means generally accepted accounting principles in the United States of America, as in effect from time to time; *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof (including through conforming changes made consistent with IFRS) on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof (including through conforming changes made consistent with IFRS), then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Granting Lender**” has the meaning specified in Section 10.07(h).

“**Guarantee**” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the

purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“**Guaranteed Obligations**” has the meaning specified in Section 11.01.

“**Guarantors**” has the meaning set forth in the definition of “Collateral and Guarantee Requirement” and shall include each Restricted Subsidiary that shall have become a Guarantor pursuant to Section 6.11. For avoidance of doubt, the Borrower in its sole discretion may cause any Restricted Subsidiary that is not a Guarantor to Guarantee the Obligations by causing such Restricted Subsidiary to execute a joinder to this Agreement in form and substance reasonably satisfactory to the Administrative Agent, and any such Restricted Subsidiary shall be a Guarantor, Loan Party and Subsidiary Guarantor hereunder for all purposes. In addition, the Borrower shall be a Guarantor in respect of Secured Hedge Agreements and Treasury Services Agreements to which the Borrower is not party.

“**Guaranty**” means, collectively, the guaranty of the Obligations by the Guarantors pursuant to this Agreement.

“**Hazardous Materials**” means all materials, pollutants, contaminants, chemicals, compounds, constituents, substances or wastes, in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, mold, electromagnetic radio frequency or microwave emissions that are regulated pursuant to, or which could give rise to liability under, applicable Environmental Law.

“**Hedge Bank**” means any Person which is a party to a Secured Hedge Agreement or a Treasury Services Agreement and that is a Lender, an Agent or an Affiliate of a Lender or an Agent on the Closing Date or at the time it enters into such Secured Hedge Agreement or a Treasury Services Agreement, as applicable, in its capacity as a party thereto and that, in the case

of a Secured Hedge Agreement is designated a “Hedge Bank” with respect to such Secured Hedge Agreement in a writing from the Borrower to the Administrative Agent, and (other than a Person already party hereto as a Lender) that delivers to the Administrative Agent a letter agreement reasonably satisfactory to it (i) appointing the Administrative Agent as its agent under the applicable Loan Documents and (ii) agreeing to be bound by Sections 10.05, 10.15 and 10.16 and Article IX as if it were a Lender.

“**Holdings**” has the meaning specified in the introductory paragraph to this Agreement.

“**Identified Participating Lenders**” has the meaning set forth in Section 2.05(a)(v)(C)(3).

“**Identified Qualifying Lenders**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**IFRS**” means international accounting standards as promulgated by the International Accounting Standards Board.

“**Incremental Amendment**” has the meaning set forth in Section 2.14(f).

“**Incremental Amendment Date**” has the meaning set forth in Section 2.14(d).

“**Incremental Commitments**” has the meaning set forth in Section 2.14(a).

“**Incremental Equivalent Debt**” has the meaning specified in Section 2.14(h).

“**Incremental Facility Closing Date**” has the meaning set forth in Section 2.14(b).

“**Incremental Lenders**” has the meaning set forth in Section 2.14(c).

“**Incremental Loan**” has the meaning set forth in Section 2.14(b).

“**Incremental Loan Request**” has the meaning set forth in Section 2.14(a).

“**Incremental Revolving Loan**” has the meaning set forth in the First Lien Credit Agreement.

“**Indebtedness**” means, as to any Person at a particular time, without duplication, all of the following:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all outstanding letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) any earn-out or similar obligation, unless such obligation has not been paid within thirty (30) days after becoming due and payable and becomes a liability on the balance sheet of such Person in accordance with GAAP and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Equity Interests; if and to the extent that the foregoing would constitute indebtedness or a liability in accordance with GAAP; and

(h) to the extent not otherwise included above, all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (A) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Net Debt and (B) in the case of the Borrower and its Subsidiaries, exclude all intercompany Indebtedness having a term not exceeding three hundred sixty-four (364) days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby.

"Indemnified Liabilities" has the meaning set forth in Section 10.05.

"Indemnified Taxes" means, with respect to any Agent or any Lender, all Taxes imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document, other than (i) any Taxes imposed on or measured by its income, however denominated, and franchise (and similar) Taxes imposed on it in lieu of net income Taxes, imposed, in each case, by a jurisdiction as a result of such recipient being organized in or having its principal office or applicable lending office in such jurisdiction, or as a result of any other connection between such Lender or Agent and such jurisdiction other than any connections arising solely from executing, delivering, being a party to, engaging in any transactions pursuant

to, performing its obligations under, receiving payments under, receiving or perfecting a security interest under, engaging in any other transaction pursuant to, and/or enforcing, any Loan Document, (ii) any Taxes (other than Taxes described in clause (i) above) imposed by a jurisdiction as a result of such recipient being organized in or having its principal office or applicable lending office in such jurisdiction, or as a result of any other connection between such Lender or Agent and such jurisdiction other than any connections arising from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, receiving payments under, receiving or perfecting a security interest under, engaging in any other transaction pursuant to, and/ or enforcing, any Loan Document, (iii) any Taxes attributable to the failure by such Agent or Lender to comply with Section 3.01(d), (iv) any branch profits Taxes imposed by the United States under Section 884(a) of the Code or any similar Tax imposed by any other jurisdiction described in (i), (v) in the case of a Lender (other than an assignee pursuant to a request by Borrower under Section 3.07(a)), any U.S. federal Tax required to be withheld imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date (which, for the avoidance of doubt, is no earlier than the date hereof) on which such Lender (a) acquires such interest in the applicable Commitment or, if such Lender did not fund the applicable Loan pursuant to a prior Commitment, on the date such Lender acquires its interest in such Loan or (b) or designates a new Lending Office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender immediately before it designated a new Lending Office, (vi) any Taxes imposed under FATCA and (vii) for the avoidance of doubt, interest, penalties, and additions to tax on the amounts described in clauses (i) through (vi) hereof.

“**Indemnitees**” has the meaning set forth in Section 10.05.

“**Independent Financial Advisor**” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Borrower, qualified to perform the task for which it has been engaged and that is independent of the Borrower and its Affiliates.

“**Information**” has the meaning set forth in Section 10.08.

“**Initial Commitment**” means, as to each Lender, its obligation to make an Initial Loan to the Borrower pursuant to Section 2.01(a) in an aggregate amount not to exceed the amount set forth opposite such Lender's name in Schedule 1.01A under the caption “Initial Commitment.” The initial aggregate amount of the Initial Commitment is \$80,000,000.

“**Initial Converting Lender**” means each Initial Lender that, in accordance with Amendment No. 2, provided the Administrative Agent with a Consent to Amendment No. 2 executed by such Lender with the box “Initial/Term B-2 Lender Conversion Option” checked.

“**Initial Lender**” means any Person that holds an Initial Loan immediately prior to giving effect to Amendment No. 2.

“Initial Loans” means ~~the term loans made by the Lenders on the Closing Date to the Borrower pursuant to Section 2.01(a)~~ each “Initial Loan” under and as defined in this Agreement immediately prior to giving effect to Amendment No. 2.

“Intellectual Property Security Agreement” has the meaning set forth in the Security Agreement.

“Intercompany Note” means a promissory note substantially in the form of Exhibit G.

“Intercreditor Agreements” means the Second Lien Intercreditor Agreement, the Third Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement and the Subordination Agreement, collectively, in each case to the extent in effect.

“Interest Payment Date” means, (a) as to any Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; *provided* that if any Interest Period for a Eurocurrency Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made.

“Interest Period” means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two, three or six (6) months thereafter or, to the extent agreed by each Lender of such Eurocurrency Rate Loan, twelve (12) months or less than one (1) month thereafter, as selected by the Borrower in its Committed Loan Notice; *provided* that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period (other than an Interest Period having a duration of less than one (1) month) that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the applicable Maturity Date.

“Internally Generated Cash” means, with respect to any Person, funds of such Person and its Restricted Subsidiaries not constituting (x) proceeds of the issuance of (or contributions in respect of) Equity Interests of or a capital contribution to such Person, (y) proceeds of the incurrence of Indebtedness (other than the incurrence of First Lien Revolving Credit Loans or extensions of credit under any other revolving credit or similar facility) by such Person or any of its Restricted Subsidiaries or (z) proceeds of Dispositions and Casualty Events.

“Investment” means, as to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, manufacturers and consultants, in each case made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person (excluding, in the case of the Borrower and its Subsidiaries, intercompany loans, advances or Indebtedness having a term not exceeding three hundred sixty-four (364) days (inclusive of any roll over or extensions of terms) and made in the ordinary course of business). For purposes of the definition of “Unrestricted Subsidiary” and the covenants described under Sections 6.14 and 7.06:

(1) “Investments” shall include the portion (proportionate to the Borrower’s Equity Interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Borrower at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Borrower shall be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Borrower’s “Investment” in such Subsidiary at the time of such redesignation; less

(b) the portion (proportionate to the Borrower’s Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Borrower or a Restricted Subsidiary in respect of such Investment.

“IP Rights” has the meaning set forth in Section 5.15.

“Junior Financing” has the meaning set forth in Section 7.13(a).

“Junior Financing Documentation” means any documentation governing any Junior Financing.

“Junior Lien Intercreditor Agreement” means an intercreditor agreement among the Administrative Agent and one or more Senior Representatives for the holders of Indebtedness secured on a *pari passu* basis to the Obligations under the Initial Loans, in form and substance reasonably acceptable to the Administrative Agent and the Borrower. Wherever in this Agreement a Senior Representative is required to become party to the Junior Lien Intercreditor Agreement, if the related Indebtedness is the initial Indebtedness incurred by the Borrower or any

Restricted Subsidiary to be secured by a Lien *pari passu* to the Liens securing the Obligations under the Initial Loans, then the Borrower, Holdings, the Subsidiary Guarantors, the Administrative Agent, the Senior Representative for such Indebtedness shall execute and deliver the Junior Lien Intercreditor Agreement and the Administrative Agent shall be authorized to execute and deliver the Junior Lien Intercreditor Agreement.

“**Latest Maturity Date**” means, at any date of determination and with respect to the specified Loans or Commitments (or in the absence of any such specification, all outstanding Loans and Commitments hereunder), the latest Maturity Date applicable to any Loan hereunder at such time, including the latest maturity date of any Extended Loan, any Incremental Loans, or any Refinancing Loans, in each case as extended in accordance with this Agreement from time to time.

“**Laws**” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“**Lender**” has the meaning specified in the introductory paragraph to this Agreement and, as to any Lender, its successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender.”

“**Lending Office**” means, as to any Lender, such office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“**LIBOR**” has the meaning set forth in clause (a) of the definition of “Eurocurrency Rate”.

“**LIBOR Screen Rate**” means the LIBOR quote on the applicable screen page the Administrative Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

“**LIBOR Successor Rate**” has the meaning specified in Section 3.03(c).

“**LIBOR Successor Rate Conforming Changes**” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters as may be appropriate, in the discretion of the Administrative Agent and the Borrower, to reflect the adoption and implementation of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent and the Borrower determine is reasonably necessary in connection with the administration of this Agreement).

“**Lien**” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing); provided that in no event shall an operating lease in and of itself be deemed a Lien.

“**Limited Condition Transaction**” means (i) any Permitted Acquisition whose consummation is not conditioned on the availability of, or on obtaining, third party financing and (ii) any redemption or repayment of Indebtedness requiring irrevocable notice in advance of such redemption or repayment.

“**Limited Originator Recourse**” means a letter of credit, cash collateral account or other such credit enhancement issued in connection with the incurrence of Indebtedness by a Securitization Subsidiary under a Qualified Securitization Financing.

“**Loan**” means any ~~Initial Loan~~, Term B-~~23~~ Loan, Incremental Loan, Refinancing Loan or Extended Loan, as the context may require.

“**Loan Documents**” means, collectively, (i) this Agreement, (ii) the Notes, (iii) the Collateral Documents and (iv) any Refinancing Amendment, Incremental Amendment or Extension Amendment.

“**Loan Increase**” has the meaning set forth in Section 2.14(a).

“**Loan Parties**” means, collectively, the Borrower and each Guarantor.

“**London Banking Day**” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“**Make Whole Premium**” shall mean, with respect to a prepayment of Term B-3 Loans as of any date, an amount equal to the present value, as determined by the Administrative Agent in its reasonable judgment in accordance with accepted financial practice at such date of (i) all required interest payable on the aggregate principal amount of the Term B-3 Loans subject to such prepayment from the date of such prepayment through but excluding the first anniversary of the Amendment No. 2 Effective Date calculated using an interest rate equal to (x) the Eurodollar Rate for an Interest Period of three months in effect on the third Business Day prior to such prepayment (the “**Three Month Eurodollar Rate**”) plus (y) the Applicable Rate for Term B-3 Loans that are Eurodollar Rate Loans in effect as of such prepayment date, plus (ii) any prepayment premium that would be payable pursuant to Section 2.05(a)(vi) on the aggregate principal amount of the Term B-3 Loans subject to such prepayment if such prepayment were to be made on the first anniversary of the Amendment No. 2 Effective Date, in each case, discounted to the date of prepayment using a discount rate equal to the Treasury Rate as of such prepayment date plus 0.50%.

“Management Stockholders” means the members of management of Holdings, the Borrower or any of its Subsidiaries who are investors in Holdings or any direct or indirect parent thereof.

“Margin Stock” shall have the meaning assigned to such term in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“Master Agreement” has the meaning specified in the definition of “Swap Contract.”

“Material Adverse Effect” means a (a) material adverse effect on the business, operations, assets or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole; (b) material adverse effect on the ability of the Loan Parties (taken as a whole) to fully and timely perform any of their payment obligations under any Loan Document to which the Borrower or any of the Loan Parties is a party; or (c) material adverse effect on the rights and remedies available to the Lenders or the Administrative Agent under any Loan Document.

“Material Domestic Subsidiary” means, at any date of determination, each of the Borrower’s Domestic Subsidiaries (a) whose total assets (when combined with the assets of such Subsidiary’s Subsidiaries after eliminating intercompany obligations) at the last day of the most recent Test Period were equal to or greater than 2.5% of Total Assets at such date or (b) whose gross revenues (when combined with the revenues of such Subsidiary’s Subsidiaries, after eliminating intercompany obligations) for such Test Period were equal to or greater than 2.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; provided that if, at any time and from time to time after the Closing Date, Domestic Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in clause (a) or (b) comprise in the aggregate more than 5% of Total Assets as of the end of the most recently ended fiscal quarter of the Borrower for which financial statements have been delivered pursuant to Section 6.01 or more than 5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such quarter are required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Domestic Subsidiaries as “Material Domestic Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 applicable to such Subsidiary.

“Material Foreign Subsidiary” means, at any date of determination, each of the Borrower’s Foreign Subsidiaries (a) whose total assets (when combined with the assets of such Subsidiary’s Subsidiaries after eliminating intercompany obligations) at the last day of the most recent Test Period were equal to or greater than 2.5% of Total Assets at such date or (b) whose gross revenues (when combined with the revenues of such Subsidiary’s Subsidiaries, after eliminating intercompany obligations) for such Test Period were equal to or greater than 2.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such period, in each case determined in accordance with GAAP; *provided* that if, at any time and from time to time after the Closing Date, Foreign Subsidiaries not meeting the thresholds set forth in clause (a) or (b) comprise in the aggregate more than 5% of Total Assets as of the end of the most recently ended fiscal quarter of the Borrower for which financial statements have been delivered

pursuant to Section 6.01 or more than 5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such quarter are required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Foreign Subsidiaries as “Material Foreign Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of the definition of “Collateral and Guarantee Requirement.”

“**Material Real Property**” means any fee-owned Real Property (other than any Sale Leaseback Properties) located in the United States that is owned by any Loan Party and that has a fair market value in excess of \$5,000,000 (at the Closing Date or, with respect to fee-owned Real Property located in the United States acquired after the Closing Date, at the time of acquisition).

“**Material Subsidiary**” means any Material Domestic Subsidiary or any Material Foreign Subsidiary.

“**Maturity Date**” means (i) with respect to the ~~Initial Loans and the~~ Term B-23 Loans, ~~the eighth anniversary of the Closing Date~~ December 6, 2024; (ii) with respect to any Class of Extended Loans, the final maturity date as specified in the applicable Extension Request accepted by the respective Lender or Lenders, (iii) with respect to any Refinancing Loans, the final maturity date as specified in the applicable Refinancing Amendment and (iv) with respect to any Incremental Loans, the final maturity date as specified in the applicable Incremental Amendment; *provided* that, in each case, if such day is not a Business Day, the Maturity Date shall be the Business Day immediately succeeding such day.

“**Maximum Rate**” has the meaning specified in Section 10.10.

“**Merger**” has the meaning specified in the preliminary statements to this Agreement.

“**Merger Agreement**” has the meaning specified in the preliminary statements to this Agreement.

“**Merger Consideration**” means the total funds required to consummate the Acquisition.

“**Merger Sub**” has the meaning specified in the preliminary statements to this Agreement.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor thereto.

“**Mortgage Policies**” has the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“**Mortgaged Properties**” has the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“Mortgages” means, collectively, the deeds of trust, trust deeds, hypothecs and mortgages made by the Loan Parties in favor or for the benefit of the Administrative Agent on behalf of the Secured Parties creating and evidencing a Lien on a Mortgaged Property in form and substance reasonably satisfactory to the Administrative Agent (taking account of relevant local Law matters), and any other mortgages executed and delivered pursuant to Section 6.11, in each case, as the same may from time to time be amended, restated, supplemented or otherwise modified.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which a Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding six (6) plan years, has made or been obligated to make contributions.

“Net Proceeds” means:

(a) 100% of the cash proceeds actually received by the Borrower or any of the Restricted Subsidiaries (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation awards, but in each case only as and when received) from any Disposition or Casualty Event, net of (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith, (ii) the principal amount of any Indebtedness that is secured by a Lien (other than a Lien that ranks *pari passu* with or is subordinated to the Liens securing the Obligations) on the asset subject to such Disposition or Casualty Event and that is required to be repaid in connection with such Disposition or Casualty Event (other than Indebtedness under the Loan Documents), together with any applicable premium, penalty, interest and breakage costs, (iii) in the case of any Disposition or Casualty Event by a non-wholly owned Restricted Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (iii)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Restricted Subsidiary as a result thereof, (iv) taxes and Tax Distributions paid or reasonably estimated to be payable, directly or indirectly, as a result thereof (including taxes that are or would be imposed on the distribution or repatriation of any such Net Proceeds), and (v) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of the Restricted Subsidiaries including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (*provided, however*, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition or Casualty Event occurring on the date of such reduction); *provided that*, at the option of the Borrower, the Borrower may use all or any portion of such proceeds to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Borrower or its Restricted Subsidiaries or to make Permitted Acquisitions (or any subsequent Investment made in a Person, division or line of business previously

acquired), in each case within twelve (12) months of such receipt, and such proceeds shall not constitute Net Proceeds except to the extent not, within twelve (12) months of such receipt, so used or contractually committed to be so used (it being understood that if any portion of such proceeds are not so used within such twelve (12) month period but within such twelve (12) month period are contractually committed to be used, then upon the termination of such contract or if such Net Proceeds are not so used within such twelve (12) month period or, if later, one hundred eighty (180) days from the entry into such contractual commitment, then such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso); *provided, further*, that no proceeds realized in a single transaction or series of related transactions shall constitute Net Proceeds unless (x) such proceeds shall exceed \$12,000,000 or (y) the aggregate net proceeds exceed \$24,000,000 in any fiscal year (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (a)), and

(b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any of the Restricted Subsidiaries of any Indebtedness, net of all taxes and Tax Distributions paid or reasonably estimated to be payable, directly or indirectly, as a result thereof and fees (including investment banking fees, underwriting fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to the Borrower shall be disregarded.

“**Non-Consenting Lender**” has the meaning set forth in Section 3.07.

“**Non-Defaulting Lender**” means, at any time, a Lender that is not a Defaulting Lender.

“**Non-Loan Party**” means any Restricted Subsidiary of the Borrower that is not a Loan Party.

“**Note**” means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit C hereto, evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the Loans made by such Lender.

“**Obligations**” means all (x) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party and its Restricted Subsidiaries arising under any Loan Document or otherwise with respect to any Loan or, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or Restricted Subsidiary of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding and (y) obligations of any Loan Party arising under any Secured Hedge Agreement or any Treasury Services Agreement. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and of their Restricted Subsidiaries to the extent they have obligations under the Loan Documents) include (a) the

obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

“**Offered Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Offered Discount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**OID**” means original issue discount. “**Organization Documents**” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Other Applicable Indebtedness**” has the meaning specified in Section 2.05(b)(ii).

“**Other Taxes**” has the meaning specified in Section 3.01(b).

“**Outstanding Amount**” means with respect to the Loans on any date, the outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

“**Overnight Rate**” means, for any day, the greater of the Federal Funds Rate and an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

“**Participant**” has the meaning specified in Section 10.07(e).

“**Participant Register**” has the meaning specified in Section 10.07(e).

“**Participating Lender**” has the meaning set forth in Section 2.05(a)(v)(C)(2).

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“**Pension Plan**” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA or Section 412 of the Code and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five (5) plan years.

“Perfection Certificate” means a certificate in the form of Exhibit II to the Security Agreement or any other form reasonably approved by the Administrative Agent, as the same shall be supplemented from time to time.

“Permitted Acquisition” means any Investment of the type described in clause (3) of the definition of “Permitted Investments” and any Investment or other acquisition by Borrower or a Restricted Subsidiary of assets constituting a business unit, line of business or division of, or all or substantially all of the Equity Interests of, another Person.

“Permitted Holder” means the Sponsor, any Management Stockholders and any of the Co-Investors; *provided* that if Management Stockholders own beneficially or of record more than 20% of the outstanding voting stock of Holdings in the aggregate, they shall be treated as Permitted Holders of only 20% of the outstanding voting stock of Holdings at such time.

“Permitted Holdings Debt” means unsecured Indebtedness of Holdings (A) that is not subject to any Guarantee by any Subsidiary of Holdings, (B) that will not mature until after the Latest Maturity Date in effect on the date of issuance or incurrence thereof, (C) that is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligation (other than customary offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) prior to the Latest Maturity Date (it being understood that such Indebtedness may have mandatory prepayment, repurchase or redemption provisions satisfying the requirements of clause (D) below prior to such date), (D) that does not require any payments in cash of interest or other amounts in respect of the principal thereof prior to the earlier to occur of (1) a date that is four (4) years from the date of the issuance or incurrence thereof and (2) a date that is after the Latest Maturity Date in effect on the date of such issuance or incurrence, and (E) that has covenant, default and remedy provisions no more restrictive (taken as a whole) than those set forth in this Agreement (taken as a whole) (except in a manner customary for holding company debt securities, including senior discount notes), as reasonably determined by the Borrower.

“Permitted Investments” means:

(1) any Investment in the Borrower or any of its Restricted Subsidiaries; *provided* that, other than with respect to Investments in the form of cash or Cash Equivalents, the aggregate fair market value of Investments resulting from Dispositions by a Loan Party to a Non-Loan Party (including by way of merger or consolidation or otherwise) pursuant to clause (a), (c) or (e) of Section 7.04 or Section 7.05(d) shall not exceed an aggregate amount outstanding from time to time equal to the greater of (x) \$30,000,000 and (y) 2.65% of Total Assets (with the amount of each Investment and Total Assets being measured at the time of each such Disposition and without giving effect to subsequent changes in value of the resulting Investment, but subject to adjustment as set forth in the definition of Investment);

(2) any Investment in Cash Equivalents;

(3) any Investment by the Borrower or any of its Restricted Subsidiaries in a Person (including, to the extent constituting an Investment, in assets of a Person that represent substantially all of its assets or a division, business unit or product line, including research and development and related assets in respect of any product) that is engaged in a business permitted pursuant to Section 7.07 if as a result of such Investment:

(i) such Person becomes a Restricted Subsidiary; or

(ii) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets (or such division, business unit or product line) to, or is liquidated into, the Borrower or a Restricted Subsidiary;

and, in each case, any Investment held by such Person; *provided*, that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation consolidation or transfer; *provided further that the total consideration (in cash or otherwise) paid by Persons that are Loan Parties (x) for the Equity Interests of any Person that does not become a Loan Party (other than Holdings) or is not a Loan Party (other than Holdings) and (y) in the case of an asset acquisition, for assets that are not acquired by Borrower or a Subsidiary Guarantor, when taken together with the total consideration for all such Persons and assets so acquired after the Amendment No. 2 Effective Date in reliance on this clause (3) shall not exceed \$25,000,000 in the aggregate for all such consideration; provided further the limitation described in the immediately preceding proviso shall not apply to any acquisition to the extent (X) any such consideration is financed with the proceeds of sales of the Qualified Equity Interests of Holdings, or common equity capital contributions (from Persons other than the Borrower or a Restricted Subsidiary) to the Borrower or any Restricted Subsidiary, other than, in any circumstance under this clause (X), any Cure Amount or any amount has been used (or later will be used) incur Indebtedness pursuant to Section 7.03(x) and it is understood and agreed that any consideration used to increase capacity under this clause (X) shall in no event be part of the Cumulative Credit, (Y) the Person so acquired (or the Person owning the assets so acquired) becomes a Subsidiary Guarantor even though such Person is not otherwise required to become a Subsidiary Guarantor (provided that if such Person is a Foreign Subsidiary, such Person may only become a Subsidiary Guarantor if the jurisdiction of incorporation of such Person is reasonably satisfactory to the Administrative Agent in light of legal permissibility of guarantees and collateral in such jurisdiction and the policies and procedures of the Administrative Agent and the Lenders for similarly situated companies (as reasonably determined by the Administrative Agent) and, notwithstanding anything to the contrary contained in any Loan Document, collateral and security provisions relating to such Person (including without limitation the delivery of customary opinions of local counsel (at the expense of Borrower)) that are reasonably acceptable to the Administrative Agent are instituted with respect to such Person pursuant to such amendments to the Loan Documents as are reasonably acceptable to the Borrower and the Administrative Agent) and/or (Z) at least 75.0% of the Consolidated EBITDA of the Person(s) acquired in such acquisition (or the Persons owning the assets so acquired) (for this purpose and for the component definitions used in the definition of "Consolidated EBITDA", determined on a consolidated basis for such Person(s) and their respective Restricted Subsidiaries) is generated by Person(s) that will become Subsidiary Guarantors;*

(4) any Investment in securities or other assets not constituting Cash Equivalents and received in connection with a Disposition made pursuant to Section 7.05 hereof or any other disposition of assets not constituting a Disposition;

(5) any Investment existing on the Closing Date or made pursuant to binding commitments in effect on the Closing Date, in each case as listed on Schedule II, or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any such Investment or binding commitment existing on the Closing Date; *provided*, that the amount of any such Investment or binding commitment may be increased (a) as required by the terms of such Investment or binding commitment as in existence on the Closing Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted under this Agreement;

(6) any Investment acquired by the Borrower or any of its Restricted Subsidiaries:

(i) consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business; or

(ii) in exchange for any other Investment, accounts receivable or endorsements for collection or deposit held by the Borrower or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts of the issuer of such other Investment or accounts receivable (including any trade creditor or customer); or

(iii) in satisfaction of judgments against other Persons; or

(iv) as a result of a foreclosure by the Borrower or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(7) Swap Contracts permitted under Section 7.03(f) hereof;

(8) distributions or payments of Securitization Fees;

(9) Investments the payment for which consists of Equity Interests (other than Disqualified Equity Interests) of the Borrower or any of its direct or indirect parent companies; *provided*, that such Equity Interests will not increase the Cumulative Credit;

(10) guarantees of Indebtedness permitted under Section 7.03, performance guarantees and Contingent Obligations incurred in the ordinary course of business (as long as the primary obligor with respect to such Contingent Obligation is the Borrower or any Restricted Subsidiary) and the creation of Liens on the assets of the Borrower or any Restricted Subsidiary in compliance with Section 7.01;

(11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 7.08 (except transactions described in clauses (f), (g), (l), (n), (q) and (r) of such Section);

(12) Investments consisting of purchases or other acquisitions of inventory, supplies, services, material or equipment or the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(13) Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding, not to exceed the greater of (i) \$48,000,000 and (ii) 5.5% of Total Assets (with the amount of each Investment and Total Assets being measured at the time such Investment is made and without giving effect to subsequent changes in value but subject to adjustment as set forth in the definition of Investment);

(14) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Borrower are necessary or advisable to effect any Qualified Securitization Financing or any repurchase obligation in connection therewith;

(15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants and members of management not in excess of \$6,000,000 outstanding at any one time, in the aggregate (excluding, for the avoidance of doubt, loans and advances described in clause (16) of this definition);

(16) loans and advances to employees, directors, officers, managers and consultants (i) for business-related travel expenses, entertainment expenses, moving expenses and other similar expenses or payroll advances, in each case incurred in the ordinary course of business or consistent with past practices or (ii) to fund such Person's purchase of Equity Interests of the Borrower or any direct or indirect parent company thereof;

(17) advances, loans or extensions of trade credit in the ordinary course of business by the Borrower or any of its Restricted Subsidiaries;

(18) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business;

(19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business;

(20) [Reserved];

(21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business;

(22) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

(23) Investments consisting of promissory notes issued by the Borrower or any Guarantor to future, present or former officers, directors and employees, members of management, or consultants of the Borrower or any of its Subsidiaries or their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower or any direct or indirect parent thereof, to the extent the applicable Restricted Payment is permitted by Section 7.06 hereof;

(24) any Investment by any Captive Insurance Subsidiary in connection with its provision of insurance to the Borrower or any of its Subsidiaries, which Investment is made in the ordinary course of business of such Captive Insurance Subsidiary, or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable; and

(25) loans and advances to any direct or indirect parent of the Borrower not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made to such parent in accordance with Sections 7.06(f), (g) or (h), such Investment being treated for purposes of the applicable clause of Section 7.06, including any limitations, as a Restricted Payment made pursuant to such clause.

For purposes of determining whether an Investment is a Permitted Investment or is otherwise a Restricted Investment permitted to be made pursuant to Section 7.06, in the event that an Investment (or any portion thereof) at any time, whether at the time of making of such Investment or upon or subsequently, meets the criteria of more than one of the categories of Permitted Investments described in clauses (1) through (25) above or any other provision of Section 7.06, the Borrower, in its sole discretion, will classify and may subsequently reclassify such Investment (or any portion thereof) in any one or more of the types of Investments described in clauses (1) through (25) above or any other applicable clause in Section 7.06 and will only be required to include the amount and type of such Investment in such of the above clauses or clauses in Section 7.06 as determined by the Borrower at such time.

“**Permitted Junior Secured Refinancing Debt**” has the meaning set forth in Section 2.15(h)(i).

“**Permitted Pari Passu Secured Refinancing Debt**” has the meaning set forth in Section 2.15(h)(i).

“**Permitted Ratio Debt**” means Indebtedness (including Acquired Indebtedness) incurred or assumed by the Borrower and any Restricted Subsidiary if and to the extent the ~~Consolidated Cash Interest Coverage~~ Total Net Leverage Ratio of the Borrower for the Borrower’s most recently ended Test Period preceding the date on which such Indebtedness is incurred or assumed

would have been equal to or ~~greater~~less than ~~2.04~~2.0 to 1.0, determined on a Pro Forma Basis giving effect to such assumption or incurrence and the use of proceeds thereof; *provided*, that (i) immediately after the incurrence or assumption of such Indebtedness and the use of proceeds thereof, no Event of Default shall be continuing or result therefrom, (ii) such Indebtedness that is incurred (but not assumed) to finance any Permitted Acquisition and any Permitted Refinancing thereof does not mature or have scheduled amortization or payments of principal (other than customary "AHYDO catch-up payments", customary offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) prior to the Maturity Date of the ~~Initial~~Term B-3 Loans at the time such Indebtedness is incurred or issued and (iii) Non-Loan Parties may not incur Indebtedness pursuant to this definition if, after giving Pro Forma Effect to such incurrence, the aggregate amount of Indebtedness of Non-Loan Parties incurred pursuant to this paragraph then outstanding would exceed the greater of (x) \$24,000,000 and (y) 2.2% of Total Assets, in each case determined at the such time of incurrence; *provided* that a certificate of the Borrower as to the satisfaction of the ~~Consolidated Cash Interest Coverage~~Total Net Leverage Ratio condition described above delivered prior to, on or after the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy such ~~Consolidated Cash Interest Coverage~~Total Net Leverage Ratio condition, shall be conclusive unless the Administrative Agent notifies the Borrower within five (5) Business Days of receipt of such certificate that it disagrees with such determination (including a description of the basis upon which it disagrees).

"Permitted Refinancing" means, with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Indebtedness of such Person; *provided* that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced or extended except by an amount equal to unpaid accrued interest and premium thereon plus other amounts owing or paid related to such Indebtedness, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, replacement or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e), such modification, refinancing, refunding, renewal, replacement or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.03(e) or (f), at the time thereof, no Event of Default shall have occurred and be continuing, (d) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is Junior Financing, to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, as reasonably determined by the Borrower, (e) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is secured by the Collateral and/or subject to

intercreditor arrangements for the benefit of the Lenders, such modification, refinancing, refunding, renewal, replacement or extension is either (1) unsecured or (2) secured and, if secured, subject to intercreditor arrangements on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, as reasonably determined by the Borrower, and such modification, refinancing, refunding, renewal, replacement or extension is incurred by one or more Persons who is an obligor of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (f) any such modification, refinancing, renewal, replacement or extension has the same primary obligor and the same (or fewer) guarantors as the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended and (g) if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is unsecured, such modification, refinancing, refunding, renewal, replacement or extension is either unsecured or subject to Liens only to the extent permitted by Section 7.01(bb) or (cc). Any reference to a Permitted Refinancing in this Agreement or any other Loan Document shall be interpreted to mean (a) a Permitted Refinancing of the subject Indebtedness and (b) any further refinancings constituting a Permitted Refinancing of the Indebtedness resulting from a prior Permitted Refinancing.

“**Permitted Unsecured Refinancing Debt**” has the meaning set forth in Section 2.15(h)(i).

“**Person**” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“**Plan**” means any material “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established or maintained by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

“**Platform**” has the meaning set forth in Section 6.01.

“**Pledged Debt**” has the meaning set forth in the Security Agreement.

“**Pledged Equity**” has the meaning set forth in the Security Agreement.

“**Portillo Restaurant Group**” means, collectively, Portillo’s Hot Dogs, Inc., Golden Dogs, Inc., Portillo’s Food Service, Inc. and C&O Chicago, L.L.C.

“**Preferred Equity Interest**” of any Person means any Equity Interest of such Person that have preference as to dividends, distributions or upon liquidation or otherwise over any other Equity Interest of such Person.

“**Proceeding**” has the meaning set forth in Section 10.05.

“**Proceeds**” has the meaning set forth in the Security Agreement.

“Pro Forma Basis” and **“Pro Forma Effect”** means, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.09.

“Pro Rata Share” means, with respect to each Lender, at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments and, if applicable and without duplication, Loans of such Lender under the applicable Facility or Facilities at such time and the denominator of which is the amount of the Aggregate Commitments under the applicable Facility or Facilities and, if applicable and without duplication, Loans under the applicable Facility or Facilities at such time.

“Projections” has the meaning set forth in Section 6.01(c).

“Public Company Costs” means costs relating to compliance with the provisions of the Securities Act and the Exchange Act, in each case as applicable to companies with equity or debt securities held by the public, the rules of national securities exchange companies with listed equity or debt securities, directors’ compensation, fees and expense reimbursement, costs relating to investor relations, shareholder meetings and reports to shareholders or debtholders, directors’ and officers’ insurance, listing fees and all executive, legal and professional fees related to the foregoing.

“Public Lender” has the meaning set forth in Section 6.01.

“Qualified ECP Guarantor” means in respect of any Swap Obligation, each Loan Party that, at the time the relevant guarantee (or grant of the relevant security interest, as applicable) becomes or would become effective with respect to such Swap Obligation, has total assets exceeding \$10,000,000 or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and which may cause another person to qualify as an “eligible contract participant” with respect to such Swap Obligation at such time by entering into a keepwell pursuant to section 1a(18)(A)(v)(II) of the Commodity Exchange Act (or any successor provision thereto).

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

“Qualified IPO” means the issuance by Borrower or any direct or indirect parent of Borrower of its common Equity Interests in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the U.S. Securities and Exchange Commission in accordance with the Securities Act (whether alone or in connection with a secondary public offering).

“Qualified Securitization Financing” means any Securitization Financing of a Securitization Subsidiary that meets the following conditions: (a) all sales and/or contributions of Securitization Assets and related assets to the Securitization Subsidiary are made at fair market value and (b) the financing terms, covenants, termination events and other provisions thereof, including any Standard Securitization Undertakings, shall be on market terms, as reasonably determined by the Borrower. The grant of a security interest in any Securitization Assets of the Borrower or any of the Restricted Subsidiaries (other than a Securitization Subsidiary) to secure Indebtedness under this Agreement prior to engaging in any Securitization Financing shall not be deemed a Qualified Securitization Financing.

“**Qualifying Lender**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Real Property**” means, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned or leased by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“**Refinanced Debt**” has the meaning set forth in Section 2.15(a).

“**Refinanced Loans**” has the meaning set forth in Section 2.15(h)(i).

“**Refinancing**” means the prepayment in full of all indebtedness under the Credit Agreement, dated as of December 16, 2010, among the Borrower, Barney’s Bar-B-Q, Inc., the several lenders from time to time party thereto and North Shore Community Bank & Trust, as administrative agent, as amended, restated, modified or supplemented from time to time, and the termination and release of all commitments, security interests and guaranties in connection therewith.

“**Refinancing Amendment**” has the meaning set forth in Section 2.15(f).

“**Refinancing Commitments**” has the meaning set forth in Section 2.15(a).

“**Refinancing Equivalent Debt**” has the meaning specified in Section 2.15(h)(i).

“**Refinancing Facility Closing Date**” has the meaning set forth in Section 2.15(d).

“**Refinancing Lender**” has the meaning set forth in Section 2.15(c).

“**Refinancing Loan**” has the meaning set forth in Section 2.15(b).

“**Refinancing Loan Request**” has the meaning set forth in Section 2.15(a).

“**Register**” has the meaning set forth in Section 10.07(d).

“**Registered Equivalent Notes**” means, with respect to any notes originally issued in an offering pursuant to Rule 144A under the Securities Act or other private placement transaction under the Securities Act of 1933, substantially identical notes (having the same guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“**Rejection Notice**” has the meaning specified in Section 2.05(b)(vii).

“**Related Indemnified Person**” of an Agent, Lender, Arranger or Bookrunner means (1) any controlling Person or controlled Affiliate of such Person, (2) the respective directors, officers, or employees of such Person or any of its controlling Persons or controlled Affiliates and (3) the respective agents or representatives of such Person or any of its controlling Persons or controlled Affiliates, in the case of this clause (3), acting on behalf of or at the instructions of such Person, controlling person or such controlled Affiliate; *provided* that each reference to a controlled Affiliate, director, officer or employee in this definition pertains to a controlled Affiliate, director, officer or employee involved in the negotiation or syndication of this Agreement and the Facilities.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

“**Release**” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing or migrating in, into, onto or through the Environment.

“**Relevant Governmental Body**” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York for the purpose of recommending a benchmark rate to replace LIBOR in loan agreements similar to this Agreement.

“**Replaced Loans**” has the meaning specified in Section 10.01.

“**Replacement Loans**” has the meaning specified in Section 10.01.

“**Reportable Event**” means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the otherwise applicable notice period has been waived by regulation or otherwise by the PBGC.

“**Required Class Lenders**” means, as of any date of determination, with respect to one or more Facilities, Lenders (A) having more than 50% of the sum of (a) the Total Outstandings under such Facility or Facilities and (b) the aggregate unused Commitments under such Facility or Facilities and (B) if at such date there are two or more Lenders under such Facility or Facilities (so long as neither of such Lenders under such Facility or Facilities is an Affiliate of such other Lender), that comprise two or more Lenders under such Facility or Facilities that are not Affiliates of the other; *provided* that the unused Commitments of, and the portion of the Total Outstandings under such Facility or Facilities held, or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of the Required Class Lenders; *provided, further,* that, the Loans of any Affiliated Lender shall be excluded for purposes of making a determination of Required Class Lenders as set forth in Section 10.07(m).

“**Required Lenders**” means, as of any date of determination, Lenders (A) having more than 50% of the sum of the (a) Total Outstandings and (b) aggregate unused Commitments and (B) if at such date there are two or more Lenders (so long as neither of such Lenders is an Affiliate of such other Lender), that comprise two or more Lenders that are not Affiliates of the

other; provided that the unused Commitment of, and the portion of the Total Outstandings held, or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; *provided, further*, that, the Loans of any Affiliated Lender shall be excluded for purposes of making a determination of Required Lenders as set forth in Section 10.07(m).

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, chief operating officer, chief administrative officer, secretary or assistant secretary, treasurer or assistant treasurer or other similar officer or Person performing similar functions of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Cash” means cash and Cash Equivalents which are listed as “Restricted” on the consolidated balance sheet of the Borrower and its Restricted Subsidiaries.

“Restricted Investment” means an Investment other than a Permitted Investment.

“Restricted Payment” means (i) any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the Borrower’s or a Restricted Subsidiary’s stockholders, partners or members (or the equivalent Persons thereof) and (ii) any Restricted Investment.

“Restricted Subsidiary” means any Subsidiary of the Borrower other than an Unrestricted Subsidiary.

“Retained Percentage” means, with respect to any Excess Cash Flow Period ending after the Amendment No. 2 Effective Date, (a) 100% minus (b) the Applicable ECF Percentage with respect to such Excess Cash Flow Period.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“Sale Leaseback” means any transaction or series of related transactions pursuant to which the Borrower or any of the Restricted Subsidiaries (a) sells, transfers or otherwise Disposes of any property, real or personal, whether now owned or hereafter acquired, and (b) as part of such transaction, thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or otherwise Disposed.

“Sale Leaseback Properties” means any fee owned Real Property set forth on Schedule 1.01G.

“Sale Leaseback Transaction” has the meaning provided in Section 7.05(t).

“**Same Day Funds**” means immediately available funds.

“**Sanctions**” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“**OFAC**”) or the U.S. Department of State, or (b) the European Union or Her Majesty’s Treasury of the United Kingdom.

“**Sanctioned Country**” means, at any time, a country or territory which is the subject or target of any Sanctions.

“**Sanctioned Person**” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the European Union or Her Majesty’s Treasury of the United Kingdom and (b) any other Person organized in a Sanctioned Country or controlled (as determined by applicable law) by any Person that is a Sanctioned Person.

“**SEC**” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“**Second Lien Intercreditor Agreement**” means an intercreditor agreement substantially in the form of Exhibit I hereto, dated as of the Closing Date, among the Administrative Agent, the First Lien Administrative Agent, as “Senior Representative” (as defined therein) for the “First Lien Credit Agreement Secured Parties” (as defined therein) and each additional representative party thereto from time to time, as amended from time to time.

“**Secured Hedge Agreement**” means any Swap Contract permitted under Article VII that is entered into by and between the Borrower or any Subsidiary and any Hedge Bank. Notwithstanding the foregoing, any such Swap Contract shall not constitute a “Secured Hedge Agreement” if the obligations thereunder are First Lien Obligations.

“**Secured Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Secured Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“**Secured Parties**” means, collectively, the Administrative Agent, the Lenders, the Hedge Banks and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Securitization Assets**” means (a) the accounts receivable, royalty or other revenue streams and other rights to payment subject to a Qualified Securitization Financing and the proceeds thereof and (b) contract rights, lockbox accounts and records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in a securitization financing.

“Securitization Fees” means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with any Qualified Securitization Financing.

“Securitization Financing” means any transaction or series of transactions that may be entered into by the Borrower or any of its Subsidiaries pursuant to which the Borrower or any of its Subsidiaries may sell, convey or otherwise transfer to (a) a Securitization Subsidiary (in the case of a transfer by the Borrower or any of its Subsidiaries) or (b) any other Person (in the case of a transfer by a Securitization Subsidiary), or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries, and any assets related thereto, including all collateral securing such Securitization Assets, all contracts and all guarantees or other obligations in respect of such Securitization Assets, proceeds of such Securitization Assets and other assets that are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving Securitization Assets.

“Securitization Subsidiary” means a wholly owned Subsidiary of the Borrower (or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Borrower or any Subsidiary of the Borrower makes an Investment and to which the Borrower or any Subsidiary of the Borrower transfers Securitization Assets and related assets) that engages in no activities other than in connection with the financing of Securitization Assets of the Borrower or its Subsidiaries, all proceeds thereof and all rights (contingent and other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Borrower or such other Person (as provided below) as a Securitization Subsidiary and (a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings or Limited Originator Recourse), (ii) is recourse to or obligates Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, in any way other than pursuant to Standard Securitization Undertakings or Limited Originator Recourse or (iii) subjects any property or asset of Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings or Limited Originator Recourse, (b) with which none of Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, has any material contract, agreement, arrangement or understanding other than on terms which the Borrower reasonably believes to be no less favorable to Holdings, the Borrower or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower and (c) to which none of Holdings, the Borrower or any other Subsidiary of Holdings, other than another Securitization Subsidiary, has any obligation to maintain or preserve such entity’s financial condition or cause such entity to achieve certain levels of operating results. Any such designation by the Board of Directors of the Borrower or such other Person shall be evidenced to the Administrative Agent by delivery to the Administrative Agent of a certified copy of the resolution of the Board of Directors of the Borrower or such other Person giving effect to such designation and a certificate executed by a Responsible Officer certifying that such designation complied with the foregoing conditions.

“**Security Agreement**” means a Security Agreement substantially in the form of Exhibit E.

“**Security Agreement Supplement**” has the meaning specified in the Security Agreement.

“**Senior Representative**” means, with respect to any series of Permitted Pari Passu Secured Refinancing Debt, Permitted Junior Secured Refinancing Debt, Incremental Equivalent Debt or subordinated Permitted Unsecured Refinancing Debt, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“SOFR” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s website (or any successor source) and, in each case, that has been selected or recommended by the Relevant Governmental Body.

“SOFR-Based Rate” means SOFR or Term SOFR.

“**Solicited Discount Proration**” has the meaning set forth in Section 2.05(a)(v)(D)(3).

“**Solicited Discounted Prepayment Amount**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Solicited Discounted Prepayment Notice**” means a written notice of the Borrower of Solicited Discounted Prepayment Offers made pursuant to Section 2.05(a)(v)(D) substantially in the form of Exhibit E-6.

“**Solicited Discounted Prepayment Offer**” means the irrevocable written offer by each Lender, substantially in the form of Exhibit E-7, submitted following the Administrative Agent’s receipt of a Solicited Discounted Prepayment Notice.

“**Solicited Discounted Prepayment Response Date**” has the meaning set forth in Section 2.05(a)(v)(D)(1).

“**Solvent**” and “**Solvency**” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the assets of such Person exceeds, on a consolidated basis, its debts and liabilities, subordinated, contingent or otherwise, (b) the present fair saleable value of the property of such Person is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) such Person is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and (d) such Person is not engaged in, and is not about to engage in, business for which it has unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

“SPC” has the meaning specified in Section 10.07(h).

“Special Distribution” shall mean the “Special Distribution” under and as defined in Amendment No. 1.

“Specified Discount” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“Specified Discount Prepayment Amount” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“Specified Discount Prepayment Notice” means a written notice of the Borrower Offer of Specified Discount Prepayment made pursuant to Section 2.05(a)(v)(B) substantially in the form of Exhibit E-8.

“Specified Discount Prepayment Response” means the irrevocable written response by each Lender, substantially in the form of Exhibit E-9, to a Specified Discount Prepayment Notice.

“Specified Discount Prepayment Response Date” has the meaning set forth in Section 2.05(a)(v)(B)(1).

“Specified Discount Proration” has the meaning set forth in Section 2.05(a)(v)(B)(3).

“Specified Junior Financing Obligations” means any obligations in respect of any Junior Financing in respect of which any Loan Party is an obligor in a principal amount in excess of the Threshold Amount.

“Specified Merger Agreement Representations” means such of the representations and warranties made by or on behalf of the Borrower and its Subsidiaries in the Merger Agreement as are material to the interests of the Lenders, but only to the extent that Merger Sub (or its applicable Affiliate) has the right to terminate its obligation to consummate the Merger under the Merger Agreement (or the right not to consummate the Merger pursuant to the Merger Agreement) as a result of a breach of such representations and warranties.

“Specified Representations” means those representations and warranties made by the Borrower in Sections 5.01(a) (only with respect to organizational existence of the Loan Parties), 5.01(b)(ii), 5.02(a), 5.02(b)(i), 5.02(b)(iii), 5.04, 5.12, 5.16, 5.18(a)(ii) (only with respect to the use of proceeds of the Loans made on the Closing Date) and 5.19 (subject to the proviso at the end of Section 4.01(a)).

“Specified Transaction” means (t) the Transactions, (u) any Investment that results in a Person becoming a Restricted Subsidiary, (v) any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary, (w) a Sale Leaseback, (x) any Permitted Acquisition, (y) any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower and any Disposition of a business unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise or (z) any incurrence or repayment of Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit), Restricted Payment or Incremental Loan, in each case, that by the terms of this Agreement requires a financial ratio or test to be calculated on a “Pro Forma Basis” or after giving “Pro Forma Effect.”

“**Sponsor**” means Berkshire Partners LLC and any of its Affiliates and funds or partnerships managed or advised by it or any of its Affiliates but not including, however, any portfolio company of any of the foregoing.

“**Sponsor Management Agreement**” means one or more management, consulting, expense reimbursement or similar agreements among the Sponsor or other holders of Equity Interests and their Affiliates and Holdings, the Borrower (and/or any of its indirect parent companies) (including the Management Agreement, dated as of August 1, 2014, by and among PHD Group Holdings LLC, a Delaware limited liability company, Holdings, the Company and the Sponsor, as the same may be amended, amended and restated, modified, supplemented, replaced or otherwise modified from time to time in accordance with their terms, but only to the extent that such agreements and any such amendment, amendment and restatement, modification, supplement, replacement or other modification thereto does not, directly or indirectly, result in or increase the obligations of Holdings, the Borrower or any of its Restricted Subsidiaries to make any payments thereunder in excess of (x) with respect to any management, monitoring, oversight consulting or advisory fees, \$3,600,000 per fiscal year, (y) with respect to any transaction fees, 1.20% of the gross transaction value and (z) customary termination fees, indemnities and expenses of the Sponsor (plus, in each case, any unpaid and accrued fees, indemnities and expenses permitted pursuant to clauses (x), (y) and (z) plus interest thereon).

“**Standard Securitization Undertakings**” means representations, warranties, covenants and indemnities entered into by the Borrower or any Subsidiary of the Borrower that are customary in a Securitization Financing.

“**Store**” means a restaurant operated by Borrower or a Restricted Subsidiary, to the extent the results of operations of such restaurant is included in Borrower’s consolidated results of operations in accordance with GAAP.

“**Submitted Amount**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Submitted Discount**” has the meaning set forth in Section 2.05(a)(v)(C)(1).

“**Subordination Agreement**” means a subordination agreement among the Administrative Agent and one or more Senior Representatives for the holders of Indebtedness subordinated to the Obligations, in form and substance reasonably acceptable to the Administrative Agent and the Borrower. Wherever in this Agreement a Senior Representative is required to become party to the Subordination Agreement, if the related Indebtedness is the initial Indebtedness incurred by the Borrower or any Restricted Subsidiary to be subordinated to the Obligations, then the Borrower, Holdings, the Subsidiary Guarantors, the Administrative Agent, the Senior Representative for such Indebtedness and, if the First Lien Administrative Agent elects to become a party thereto, the First Lien Administrative Agent shall execute and deliver the Subordination Agreement and the Administrative Agent, shall be authorized to execute and deliver the Subordination Agreement.

“**Subsequent Transaction**” has the meaning set forth in Section 1.09(e).

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (excluding, for the avoidance of doubt, any charitable organizations and any other Person that meets the requirements of Section 501(c)(3) of the Code) (i) of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned by such Person or (ii) the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, by such Person, to the extent such entity’s financial results are required to be included in such Person’s consolidated financial statements under GAAP. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantor**” means any Guarantor other than Holdings.

“**Successor Company**” has the meaning specified in Section 7.04(d).

“**Superholdco Preferred Stock**” means the \$100,000,000 in initial liquidation preference of preferred units issued by PHD Group Holdings, LLC, a Delaware limited liability company and a direct or indirect parent of Holdings.

“**Swap**” means any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“**Swap Contract**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

“**Swap Obligation**” means, with respect to any person, any obligation to pay or perform under any Swap.

“**Swap Termination Value**” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“**Syndication Agent**” means Jefferies Finance LLC, in its capacity as a syndication agent under this Agreement.

“**Tax Distribution**” has the meaning specified in Section 7.06(h)(iii).

“**Taxes**” means all present or future taxes, duties, levies, imposts, assessments or withholdings imposed by any Governmental Authority including interest, penalties and additions to tax.

“**Term B-2 Loan Commitment**” means, as to any Lender, its obligation to make a Term B-2 Loan to the Borrower pursuant to Amendment No. 1 in an aggregate amount not to exceed the amount set forth opposite such Lender’s name on Schedule I to Amendment No. 1 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including Section 2.14). The aggregate amount of the Lenders’ Term B-2 Loan Commitments on the Amendment No. 1 Effective Date (immediately prior to the incurrence of the Term B-2 Loans on such date) is \$25,000,000.

“**Term B-2 Loan**” means the term loans made by the Term B-2 Lenders to the Borrower pursuant to Section 2.14 on the Amendment No. 1 Effective Date.

“**Term B-2 Converting Lender**” means each Term B-2 Lender that, in accordance with Amendment No. 2, provided the Administrative Agent with a Consent to Amendment No. 2 executed by such Lender with the box “Term B/Term B-2 Lender Conversion Option” checked.

“**Term B-2 Lenders**” means any ~~Lender with~~ Person that holds a Term B-2 Loan ~~Commitment or an outstanding Term B-2 Loan~~ immediately prior to giving effect to Amendment No. 2.

“**Term B-3 Lender**” means a Lender holding a Term B-3 Loan, in such Lender’s capacity as such, and, for the avoidance of doubt, shall include the Additional Term B-3 Lender.

“**Term B-3 Loan**” has the meaning specified in Section 2.01(a).

“**Term SOFR**” means the forward-looking term rate for any period that is approximately (as determined by the Administrative Agent) as long as any of the Interest Period options set forth in the definition of “Interest Period” and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion.

“**Test Period**” means, for any date of determination under this Agreement, the four consecutive fiscal quarters of the Borrower most recently ended as of such date of determination.

“**Third Lien Intercreditor Agreement**” means an intercreditor agreement among the Administrative Agent and one or more Senior Representatives for the holders of Indebtedness secured on a junior basis to the Obligations under the Initial Loans, in form and substance reasonably acceptable to the Administrative Agent and the Borrower. Wherever in this Agreement a Senior Representative is required to become party to the Third Lien Intercreditor Agreement, if the related Indebtedness is the initial Indebtedness incurred by the Borrower or any Restricted Subsidiary to be secured by a Lien junior to the Liens securing the Obligations, then the Borrower, Holdings, the Subsidiary Guarantors, the Administrative Agent, the Senior Representative for such Indebtedness and, if the First Lien Administrative Agent elects to become a party thereto, the First Lien Administrative Agent, shall execute and deliver the Third Lien Intercreditor Agreement and the Administrative Agent shall be authorized to execute and deliver the Third Lien Intercreditor Agreement.

“**Three Month Eurodollar Rate**” has the meaning assigned to such term in the definition of “**Make Whole Premium**”.

“**Threshold Amount**” means \$24,000,000.

“**Total Assets**” means the total assets of the Borrower and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP, as shown on the most recent balance sheet of the Borrower delivered pursuant to Section 6.01(a) or (b) (and, in the case of any determination relating to any incurrence of Indebtedness or any Investment or other acquisition, on a Pro Forma Basis including any property or assets being acquired in connection therewith) or for the period prior to the time any such statements are so delivered pursuant to Section 6.01(a) or (b), the Quality of Earnings Analysis dated June 25, 2014.

“**Total Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Total Net Debt as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans.

“**Transaction Expenses**” means any fees or expenses incurred or paid by the Sponsor, any direct or indirect parent of the Borrower, the Borrower or any of its (or their) Subsidiaries in connection with the Transactions (including expenses in connection with close-out fees in connection with the termination of hedging transactions, if any, and payments to officers, employees and directors as change of control payments, severance payments, special or retention bonuses and charges for repurchase or rollover of, or modifications to, stock options and/or restricted stock), this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

“**Transactions**” means, collectively, (a) the Acquisition and other related transactions contemplated by the Merger Agreement, (b) the Equity Contribution, (c) the funding of the Initial Loans and the execution and delivery of the Loan Documents to be entered into on the Closing Date, (d) the funding of the First Lien Initial Term Loans and the First Lien Initial Revolving Borrowing on the Closing Date and the execution and delivery of First Lien Loan Documents to be entered into on the Closing Date, (e) the issuance of the Superholdco Preferred Stock, (f) the Refinancing and (g) the payment of Transaction Expenses.

“**Transferred Guarantor**” has the meaning specified in Section 11.09.

“**Treasury Rate**” shall mean the rate per annum equal to the yield to maturity at the time of computation of the United States Treasury securities with a constant maturity as compiled and published in the most recent Federal Reserve Statistical Release H 15 (519) that has become publicly available at least two Business Days prior to such time (or, if such Statistical Release is no longer published, any publicly available source of similar market data) most nearly equal to the period from such date of prepayment to the first anniversary of the Amendment No. 2 Effective Date.

“**Treasury Services Agreement**” means any agreement between the Borrower or any Subsidiary and any Hedge Bank relating to treasury, depository, credit card, debit card and cash management services or automated clearinghouse transfer of funds or any similar services. Notwithstanding the foregoing, no such agreement shall be a “Treasury Services Agreement” if the obligations thereunder are First Lien Obligations.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

“**UBS**” means UBS AG, Stamford Branch, acting in its individual capacity, and its successors and assigns.

“**Unaudited Financial Statements**” has the meaning assigned to such term in the Merger Agreement (as in effect on the ~~date hereof~~Closing Date).

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“**United States**” and “**U.S.**” mean the United States of America.

“**United States Tax Compliance Certificate**” has the meaning set forth in Section 3.01(d)(ii)(C) and is in substantially the form of Exhibit H hereto.

“**Unrestricted Subsidiary**” means any Subsidiary of the Borrower designated by the Board of Directors of the Borrower as an Unrestricted Subsidiary pursuant to Section 6.14 subsequent to the Closing Date and each Securitization Subsidiary.

“**Upfront Fee**” has the meaning assigned to such tem in Section 2.09(b).

“**USA Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining scheduled installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final scheduled maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness; *provided* that the effects of any prepayments made on such Indebtedness shall be disregarded in making such calculation.

“**wholly owned**” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

“**Write-Down and Conversion Powers**” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (b) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.
- (c) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.
- (d) The term “including” (and its correlatives) means by way of example and not as a limitation.
- (e) The word “or” is not exclusive.
- (f) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(g) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”

(h) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(i) For purposes of determining compliance with any Section of Article VII at any time, in the event that any Lien, Investment, Indebtedness (whether at the time of incurrence or upon application of all or a portion of the proceeds thereof), Disposition, Restricted Payment, Affiliate transaction, Contractual Obligation or prepayment of Indebtedness meets the criteria of one or more than one of the categories of transactions permitted pursuant to any clause of such Sections, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by the Borrower in its sole discretion at such time.

Section 1.03 Accounting Terms.

All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein.

Notwithstanding any changes in GAAP after the Closing Date, any lease of the Loan Parties and their Subsidiaries that would be characterized as an operating lease under GAAP in effect on the Closing Date (whether such lease is entered into before or after the Closing Date) shall not constitute Indebtedness, Attributable Indebtedness or a Capitalized Lease Obligation under this Agreement or any other Loan Document as a result of such changes in GAAP.

Section 1.04 Rounding.

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding up if there is no nearest number).

Section 1.05 References to Agreements, Laws, Etc.

Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by the Loan Documents; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day.

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.07 Timing of Payment of Performance.

When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

Section 1.08 Cumulative Credit Transactions.

If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount of the Cumulative Credit immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously.

Section 1.09 Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Total Net Leverage Ratio, the Secured Net Leverage Ratio, the Consolidated First Lien Net Leverage Ratio, the Consolidated Cash Interest Coverage Ratio and compliance with covenants determined by reference to Consolidated EBITDA or Total Assets, shall be calculated in the manner prescribed by this Section 1.09; *provided* that notwithstanding anything to the contrary in clauses (b), (c), (d) or (e) of this Section 1.09, (A) when calculating any such ratio or test for purposes of the definition of "Applicable ECF Percentage", the events described in this Section 1.09 that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect and (B) when calculating any such ratio or test for purposes of the incurrence of any Indebtedness, cash and Cash Equivalents resulting from the incurrence of any such Indebtedness shall be excluded from the *pro forma* calculation of any applicable ratio or test. In addition, whenever a financial ratio or test is to be calculated on a *pro forma* basis, the reference to the "Test Period" for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower). For the avoidance of doubt, the provisions of the foregoing sentence shall not apply for purposes of calculating any financial ratio or test for purposes of the definition of "Applicable ECF Percentage" which shall be based on the financial statements delivered pursuant to Section 6.01(a) or (b), as applicable, for the relevant Test Period.

(b) For purposes of calculating any financial ratio or test or compliance with any covenant determined by reference to Consolidated EBITDA or Total Assets, Specified Transactions (with any incurrence or repayment of any Indebtedness in connection therewith to be subject to clause (d) of this Section 1.09) that have been made (i) during the applicable Test Period or (ii) if applicable as described in clause (a) above, subsequent to such Test Period and

prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA, Total Assets and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period (or, in the case of Total Assets, on the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.09, then such financial ratio or test (or Total Assets) shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.09.

(c) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Borrower and may include, for the avoidance of doubt, the amount of “run-rate” cost savings, operating expense reductions and synergies resulting from or relating to any Specified Transaction (including the Transactions) which is being given *pro forma* effect that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period and “run-rate” means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a public target’s Public Company Costs) net of the amount of actual benefits realized during such period from such actions, and any such adjustments shall be included in the initial *pro forma* calculations of any financial ratios or tests (and in respect of any subsequent *pro forma* calculations in which such Specified Transaction is given *pro forma* effect) and during any applicable subsequent Test Period in which the effects thereof are expected to be realized) relating to such Specified Transaction; *provided that* (A) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Borrower, (B) such actions are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than twenty four (24) months after the date of such Specified Transaction, and (C) no amounts shall be added pursuant to this clause (c) to the extent duplicative of any amounts that are otherwise added back in computing Consolidated EBITDA (or any other components thereof), whether through a *pro forma* adjustment or otherwise, with respect to such period.

(d) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility unless such Indebtedness has been permanently repaid and not replaced), (i) during the applicable Test Period or (ii) subject to paragraph (a), subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving *pro forma* effect

to such incurrence or repayment of Indebtedness, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period (except in the case of the Consolidated Cash Interest Coverage Ratio (or similar ratio), in which case such incurrence, assumption, guarantee, redemption, repayment, retirement or extinguishment of Indebtedness will be given effect as if the same had occurred on the first day of the applicable Test Period).

(e) In connection with any action being taken solely in connection with a Limited Condition Transaction, for purposes of:

(i) determining compliance with any provision of this Agreement which requires the calculation of any financial ratio or test, including the Consolidated First Lien Net Leverage Ratio, Secured Net Leverage Ratio, Total Net Leverage Ratio and Consolidated Cash Interest Coverage Ratio (and, for the avoidance of doubt, any financial ratio set forth in Section 2.14(d)(iii)); or

(ii) testing availability under baskets set forth in this Agreement (including baskets measured as a percentage of Total Assets);

in each case, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "**LCT Election**"), the date of determination of whether any such action is permitted hereunder shall be deemed to be the date the definitive agreements for such Limited Condition Transaction are entered into (the "**LCT Test Date**"), and if, after giving Pro Forma Effect to the Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) as if they had occurred at the beginning of the most recent Test Period ending prior to the LCT Test Date, the Borrower would have been permitted to take such action on the relevant LCT Test Date in compliance with such ratio, test or basket, such ratio, test or basket shall be deemed to have been complied with. For the avoidance of doubt, if the Borrower has made an LCT Election and any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date are exceeded as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in Consolidated EBITDA or Total Assets of the Borrower or the Person subject to such Limited Condition Transaction, at or prior to the consummation of the relevant transaction or action, such baskets, tests or ratios will not be deemed to have been exceeded as a result of such fluctuations. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any calculation of any ratio, test or basket availability with respect to the incurrence of Indebtedness or Liens, the making of Restricted Payments, the making of any Permitted Investment, mergers, the conveyance, lease or other transfer of all or substantially all of the assets of the Borrower, the prepayment, redemption, purchase, defeasance or other satisfaction of Indebtedness, or the designation of an Unrestricted Subsidiary (a "**Subsequent Transaction**") following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement or irrevocable notice for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, for purposes of determining whether such Subsequent Transaction is permitted under this Agreement, any such ratio, test or basket shall be required to be satisfied on a Pro Forma Basis (i) assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated and (ii) assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have not been consummated.

(f) If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Consolidated Cash Interest Coverage Ratio is made had been the applicable rate for the entire period (taking into account any interest hedging arrangements applicable to such Indebtedness); *provided*, in the case of repayment of any Indebtedness, to the extent actual interest related thereto was included during all or any portion of the applicable Test Period, the actual interest may be used for the applicable portion of such Test Period. Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or Restricted Subsidiary may designate.

Section 1.10 Currency Generally.

For purposes of determining compliance with Sections 7.01, 7.03 and 7.06 and the definition of Permitted Investments with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred, made or acquired, was permitted hereunder).

For purposes of determining the Secured Net Leverage Ratio, the Consolidated First Lien Net Leverage Ratio, the Total Net Leverage Ratio or any other leverage-based ratio or test under this Agreement, the amount of Indebtedness shall reflect the currency translation effects, determined in accordance with GAAP, of Swap Contracts permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

Section 1.10 Divisions.

For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable even under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized or formed on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.11 Interest Rates.

The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Eurocurrency Rate" or with respect to any rate that is an alternative or replacement for or successor to any of such rate (including, without limitation, any LIBOR Successor Rate) or the effect of any of the foregoing, or of any LIBOR Successor Rate Conforming Changes.

**ARTICLE II.
THE COMMITMENTS AND BORROWINGS**

Section 2.01 The Loans.

(a) ~~Subject to the terms and conditions set forth herein, each~~ The Additional Term B-3 Lender ~~severally~~ agrees to make a term loan (in an aggregate principal amount equal to the Additional Term B-3 Commitment) to the Borrower on the ~~Closing Date~~ loans denominated in Dollars in an aggregate amount not to exceed the amount of such Lender's Initial Commitment Amendment No. 2 Effective Date in a single advance in Dollars (together with each Converted Initial Loan converted into a Term B-3 Loan and each Converted Term B-2 Loan converted into a Term B-3 Loan as contemplated by clauses (B) and (C) of this Section 2.01(a)(i), the "Term B-3 Loans"). (B) each Converted Initial Loan of each Initial Converting Lender shall be converted into a Term B-3 Loan of such Lender effective as of the Amendment No. 2 Effective Date in a principal amount equal to the principal amount of such Initial Lender's Converted Initial Loan immediately prior to such conversion and (C) each Converted Term B-2 Loan of each Term B-2 Converting Lender shall be converted into a Term B-3 Loan of such Lender effective as of the Amendment No. 2 Effective Date in a principal amount equal to the principal amount of such Term B-2 Lender's Converted Term B-2 Loan immediately prior to such conversion; and (b) subject to the terms and conditions set forth in any Incremental Amendment or Refinancing Amendment providing for, as applicable, the making, exchange, renewal, replacement or refinancing of Loans, each Lender party thereto severally agrees to, as applicable, make, exchange, renew, replace or refinance Loans on the date specified therein in an aggregate amount not to exceed the amount of such Lender's Commitment as set forth therein. Amounts borrowed, exchanged, renewed, replaced or refinanced under this Section 2.01 and repaid or prepaid may not be reborrowed. Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

Section 2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower's irrevocable notice, to the Administrative Agent (*provided* that the notices in respect of the initial Borrowings may be conditioned on the closing of the Merger), which may be given by telephone. Each such notice must be received by the Administrative Agent not later than (1) 1:00 p.m. (New York, New York time) three (3) Business Days prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans or any conversion of Base Rate Loans to Eurocurrency Rate Loans, and (2) 12:00 noon on the requested date of any Borrowing of Base Rate Loans; *provided* that the

notice referred to in subclause (1) above may be delivered no later than one (1) Business Day prior to the Closing Date in the case of initial Borrowings. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Except as provided in Section ~~2.14~~2.14 or with respect to a Borrowing of Term B-3 Loans on the Amendment No. 2 Effective Date, each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a minimum principal amount of \$1,000,000, or a whole multiple of \$100,000 in excess thereof. Except as provided in Section 2.14, each Borrowing of or conversion to Base Rate Loans shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other or a continuation of Eurocurrency Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto and (vi) wire instructions of the account(s) to which funds are to be disbursed (it being understood, for the avoidance of doubt, that the amount to be disbursed to any particular account may be less than the minimum or multiple limitations set forth above so long as the aggregate amount to be disbursed to all such accounts pursuant to such Borrowing meets such minimums and multiples). If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation described in Section 2.02(a). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than the later of (i) in the case of Eurocurrency Rate Loans, 12:00 noon (New York, New York) on the Business Day specified in the applicable Committed Loan Notice and (ii) in the case of Base Rate Loans, one hour (or in the case of Borrowing of Base Rate Loans after the Closing Date where the Committed Loan Notice has been delivered on the date of the requested Borrowing, two hours) after written notice of such Borrowing is delivered by the Administrative Agent to such Lender; *provided, that*, on the Closing Date (or with respect to any Incremental Facilities, on the relevant Incremental Amendment Date), such funds may be made available at such earlier time as may be agreed among the relevant Lenders, the Borrower and the Administrative Agent for the purpose of consummating the Transactions (or, in the case of any Incremental Facilities, the relevant transactions). The Administrative Agent shall make all funds so received available to the

Borrower in like funds as received by the Administrative Agent either by (i) crediting the account(s) of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided by the Borrower to (and reasonably acceptable to) the Administrative Agent.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. During the occurrence and continuation of an Event of Default, the Administrative Agent or the Required Lenders may require by notice to the Borrower that no Loans may be converted to or continued as Eurocurrency Rate Loans.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. The determination of the Eurocurrency Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Administrative Agent's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than fifteen (15) Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent; *provided* that after the establishment of any new Class of Loans pursuant to an Incremental Amendment, Refinancing Amendment or Extension Amendment, the number of Interest Periods otherwise permitted by this Section 2.02(e) shall increase by three (3) Interest Periods for each applicable Class so established.

(f) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(g) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share or other applicable share provided for under this Agreement available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (b) above, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such

Lender, the Overnight Rate plus any administrative, processing, or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(g) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.03 [Reserved].

Section 2.04 [Reserved].

Section 2.05 Prepayments.

(a) *Optional*. (i) The Borrower may, upon notice to the Administrative Agent by the Borrower, (provided, no such notice shall be required in connection with the prepayment of the Initial Loans or Term B-2 Loans on the Amendment No. 2 Effective Date) at any time or from time to time voluntarily prepay any Class or Classes of Loans in whole or in part without premium or penalty, except as set forth in Section 2.05(a)(vi); *provided* that (1) such notice must be received by the Administrative Agent not later than 11:30 a.m. (New York City time) (A) two (2) Business Days prior to any date of prepayment of Eurocurrency Rate Loans (unless otherwise agreed by the Administrative Agent) and (B) on the date of prepayment of Base Rate Loans; (2) any prepayment of Eurocurrency Rate Loans shall be in a minimum principal amount of \$1,000,000, or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding; and (3) any prepayment of Base Rate Loans shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be, as set forth in Section 2.05(c), accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05. In the case of each prepayment of the Loans pursuant to this Section 2.05(a), the Borrower may in its sole discretion select the Borrowing or Borrowings (and the order of maturity of principal payments) to be repaid, and such payment shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares or other applicable share provided for under this Agreement.

(ii) [Reserved].

(iii) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.05(a)(i) if such prepayment would have resulted from a refinancing of all or a portion of the applicable Facility, which refinancing shall not be consummated or shall otherwise be delayed.

(iv) [Reserved].

(v) Notwithstanding anything in any Loan Document to the contrary, so long as no Default or Event of Default has occurred and is continuing, any Company Party may prepay the outstanding Loans (which shall, for the avoidance of doubt, be automatically and permanently canceled immediately upon such prepayment) on the following basis:

(A) Any Company Party shall have the right to make a voluntary prepayment of Loans at a discount to par pursuant to a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of Discounted Prepayment Offers (any such prepayment, the “**Discounted Loan Prepayment**”), in each case made in accordance with this Section 2.05(a)(v).

(B) (1) Any Company Party may from time to time offer to make a Discounted Loan Prepayment by providing the Auction Agent with five (5) Business Days’ notice in the form of a Specified Discount Prepayment Notice; *provided* that (I) any such offer shall be made available, at the sole discretion of the Company Party, to (x) each Lender and/or (y) each Lender with respect to any Class of Loans on an individual Class basis, (II) any such offer shall specify the aggregate principal amount offered to be prepaid (the “**Specified Discount Prepayment Amount**”) with respect to each applicable Class, the Class or Classes of Loans subject to such offer and the specific percentage discount to par (the “**Specified Discount**”) of such Loans to be prepaid (it being understood that different Specified Discounts and/or Specified Discount Prepayment Amounts may be offered with respect to different Classes of Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(B)), (III) the Specified Discount Prepayment Amount shall be in an aggregate amount not less than \$10,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such offer shall remain outstanding through the Specified Discount Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Specified Discount Prepayment Notice and a form of the Specified Discount Prepayment Response to be completed and returned by each such Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., on the third Business Day after the date of delivery of such notice to such Lenders (which date may be extended for a period not exceeding three (3) Business Days upon notice by the Company Party to, and with the consent of, the Auction Agent) (the “**Specified Discount Prepayment Response Date**”).

(2) Each Lender receiving such offer shall notify the Auction Agent (or its delegate) by the Specified Discount Prepayment Response Date whether or not it agrees to accept a prepayment of any of its applicable then outstanding Loans at the Specified Discount and, if so (such accepting Lender, a “**Discount Prepayment Accepting Lender**”), the amount and the Classes of such Lender’s Loans to be prepaid at such offered discount. Each acceptance of a Discounted Loan Prepayment by a Discount Prepayment Accepting Lender shall be irrevocable. Any Lender whose Specified Discount Prepayment Response is not received by the Auction Agent by the Specified Discount Prepayment Response Date shall be deemed to have declined to accept the applicable Borrower Offer of Specified Discount Prepayment.

(3) If there is at least one (1) Discount Prepayment Accepting Lender, the relevant Company Party will make a prepayment of outstanding Loans pursuant to this paragraph (B) to each Discount Prepayment Accepting Lender on the Discounted Prepayment Effective Date in accordance with the respective outstanding amount and Classes of Loans specified in such Lender’s Specified Discount Prepayment Response given pursuant to subsection (2) above; *provided* that, if the aggregate principal amount of Loans accepted for prepayment by all Discount Prepayment Accepting Lenders exceeds the Specified Discount Prepayment Amount, such prepayment shall be made pro rata among the Discount Prepayment Accepting Lenders in accordance with the respective principal amounts accepted to be prepaid by each such Discount Prepayment Accepting Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its reasonable discretion) will calculate such proration (the “**Specified Discount Proration**”). The Auction Agent shall promptly, and in any case within three (3) Business Days following the Specified Discount Prepayment Response Date, notify (I) the relevant Company Party of the respective Lenders’ responses to such offer, the Discounted Prepayment Effective Date and the aggregate principal amount of the Discounted Loan Prepayment and the Classes to be prepaid, (II) each Lender of the Discounted Prepayment Effective Date, and the aggregate principal amount and the Classes of Loans to be prepaid at the Specified Discount on such date and (III) each Discount Prepayment Accepting Lender of the Specified Discount Proration, if any, and confirmation of the principal amount, Class and Type of Loans of such Lender to be prepaid at the Specified Discount on such date. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the Company Party and such Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(C) (1) Any Company Party may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice in the form of a Discount Range Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Company Party, to (x) each Lender and/or (y) each Lender with respect to any Class of Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate principal amount of the relevant Loans (the "**Discount Range Prepayment Amount**"), the Class or Classes of Loans subject to such offer and the maximum and minimum percentage discounts to par (the "**Discount Range**") of the principal amount of such Loans with respect to each relevant Class of Loans willing to be prepaid by such Company Party (it being understood that different Discount Ranges and/or Discount Range Prepayment Amounts may be offered with respect to different Classes of Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(C)), (III) the Discount Range Prepayment Amount shall be in an aggregate amount not less than \$5,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such solicitation by a Company Party shall remain outstanding through the Discount Range Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Discount Range Prepayment Notice and a form of the Discount Range Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., on the third Business Day after the date of delivery of such notice to such Lenders (which date may be extended for a period not exceeding three (3) Business Days upon notice by the Company Party to, and with the consent of, the Auction Agent) (the "**Discount Range Prepayment Response Date**"). Each Lender's Discount Range Prepayment Offer shall be irrevocable and shall specify a discount to par within the Discount Range (the "**Submitted Discount**") at which such Lender is willing to allow prepayment of any or all of its then outstanding Loans of the applicable Class or Classes and the maximum aggregate principal amount and Classes of such Lender's Loans (the "**Submitted Amount**") such Lender is willing to have prepaid at the Submitted Discount. Any Lender whose Discount Range Prepayment Offer is not received by the Auction Agent by the Discount Range Prepayment Response Date shall be deemed to have declined to accept a Discounted Loan Prepayment of any of its Loans at any discount to their par value within the Discount Range.

(2) The Auction Agent shall review all Discount Range Prepayment Offers received on or before the applicable Discount Range Prepayment Response Date and shall determine (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the Applicable Discount and Loans to be prepaid at such Applicable Discount in accordance with this subsection (C). The relevant Company Party agrees to accept on the Discount Range Prepayment Response Date all Discount Range Prepayment Offers received by the Auction Agent within the Discount Range by the Discount Range Prepayment Response Date, in the order

from the Submitted Discount that is the largest discount to par to the Submitted Discount that is the smallest discount to par, up to and including the Submitted Discount that is the smallest discount to par within the Discount Range (such Submitted Discount that is the smallest discount to par within the Discount Range being referred to as the “**Applicable Discount**”) which yields a Discounted Loan Prepayment in an aggregate principal amount equal to the lower of (I) the Discount Range Prepayment Amount and (II) the sum of all Submitted Amounts. Each Lender that has submitted a Discount Range Prepayment Offer to accept prepayment at a discount to par that is larger than or equal to the Applicable Discount shall be deemed to have irrevocably consented to prepayment of Loans equal to its Submitted Amount (subject to any required proration pursuant to the following subsection (3)) at the Applicable Discount (each such Lender, a “**Participating Lender**”).

(3) If there is at least one (1) Participating Lender, the relevant Company Party will prepay the respective outstanding Loans of each Participating Lender on the Discounted Prepayment Effective Date in the aggregate principal amount and of the Classes specified in such Lender’s Discount Range Prepayment Offer at the Applicable Discount; *provided* that if the Submitted Amount by all Participating Lenders offered at a discount to par greater than the Applicable Discount exceeds the Discount Range Prepayment Amount, prepayment of the principal amount of the relevant Loans for those Participating Lenders whose Submitted Discount is a discount to par greater than or equal to the Applicable Discount (the “**Identified Participating Lenders**”) shall be made pro rata among the Identified Participating Lenders in accordance with the Submitted Amount of each such Identified Participating Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “**Discount Range Proration**”). The Auction Agent shall promptly, and in any case within five (5) Business Days following the Discount Range Prepayment Response Date, notify (I) the relevant Company Party of the respective Lenders’ responses to such solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount of the Discounted Loan Prepayment and the Classes to be prepaid, (II) each Lender of the Discounted Prepayment Effective Date, the Applicable Discount, and the aggregate principal amount and Classes of Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and Classes of such Lender to be prepaid at the Applicable Discount on such date, and (IV) if applicable, each Identified Participating Lender of the Discount Range Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the relevant Company Party and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(D) (1) Any Company Party may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice in the form of a Solicited Discounted Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Company Party, to (x) each Lender and/or (y) each Lender with respect to any Class of Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate amount of the Loans (the "**Solicited Discounted Prepayment Amount**") and the Class or Classes of Loans the applicable Company Party is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different Classes of Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(a)(v)(D)), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate amount not less than \$5,000,000 and whole increments of \$1,000,000 in excess thereof and (IV) each such solicitation by a Company Party shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Solicited Discounted Prepayment Notice and a form of the Solicited Discounted Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., on the third Business Day after the date of delivery of such notice to such Lenders (which date may be extended for a period not exceeding three (3) Business Days upon notice by the Company Party to the Auction Agent) (the "**Solicited Discounted Prepayment Response Date**"). Each Lender's Solicited Discounted Prepayment Offer shall (x) be irrevocable, (y) remain outstanding until the Acceptance Date, and (z) specify both a discount to par (the "**Offered Discount**") at which such Lender is willing to allow prepayment of its then outstanding Loan and the maximum aggregate principal amount and Classes of such Loans (the "**Offered Amount**") such Lender is willing to have prepaid at the Offered Discount. Any Lender whose Solicited Discounted Prepayment Offer is not received by the Auction Agent by the Solicited Discounted Prepayment Response Date shall be deemed to have declined prepayment of any of its Loans at any discount.

(2) The Auction Agent shall promptly provide the relevant Company Party with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. Such Company Party shall review all such Solicited Discounted Prepayment Offers and select the smallest of the Offered Discounts specified by the relevant responding Lenders in the Solicited Discounted Prepayment Offers that is acceptable to the Company Party in its sole discretion (the "**Acceptable Discount**"), if any. If the Company Party elects, in its sole discretion, to accept any Offered Discount as the Acceptable Discount, then as soon as practicable after the determination of

the Acceptable Discount, but in no event later than by the third Business Day after the date of receipt by such Company Party from the Auction Agent of a copy of all Solicited Discounted Prepayment Offers pursuant to the first sentence of this subsection (2) (the “**Acceptance Date**”), the Company Party shall submit an Acceptance and Prepayment Notice to the Auction Agent setting forth the Acceptable Discount. If the Auction Agent shall fail to receive an Acceptance and Prepayment Notice from the Company Party by the Acceptance Date, such Company Party shall be deemed to have rejected all Solicited Discounted Prepayment Offers.

(3) Based upon the Acceptable Discount and the Solicited Discounted Prepayment Offers received by Auction Agent by the Solicited Discounted Prepayment Response Date, within three (3) Business Days after receipt of an Acceptance and Prepayment Notice (the “**Discounted Prepayment Determination Date**”), the Auction Agent will determine (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate principal amount and the Classes of Loans (the “**Acceptable Prepayment Amount**”) to be prepaid by the relevant Company Party at the Acceptable Discount in accordance with this Section 2.05(a)(v)(D). If the Company Party elects to accept any Acceptable Discount, then the Company Party agrees to accept all Solicited Discounted Prepayment Offers received by Auction Agent by the Solicited Discounted Prepayment Response Date, in the order from largest Offered Discount to smallest Offered Discount, up to and including the Acceptable Discount. Each Lender that has submitted a Solicited Discounted Prepayment Offer with an Offered Discount that is greater than or equal to the Acceptable Discount shall be deemed to have irrevocably consented to prepayment of Loans equal to its Offered Amount (subject to any required pro-rata reduction pursuant to the following sentence) at the Acceptable Discount (each such Lender, a “**Qualifying Lender**”). The Company Party will prepay outstanding Loans pursuant to this subsection (D) to each Qualifying Lender in the aggregate principal amount and of the Classes specified in such Lender’s Solicited Discounted Prepayment Offer at the Acceptable Discount; *provided* that if the aggregate Offered Amount by all Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount exceeds the Solicited Discounted Prepayment Amount, prepayment of the principal amount of the Loans for those Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount (the “**Identified Qualifying Lenders**”) shall be made pro rata among the Identified Qualifying Lenders in accordance with the Offered Amount of each such Identified Qualifying Lender and the Auction Agent (in consultation with such Company Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “**Solicited Discount Proration**”). On or prior to the Discounted Prepayment Determination

Date, the Auction Agent shall promptly notify (I) the relevant Company Party of the Discounted Prepayment Effective Date and Acceptable Prepayment Amount comprising the Discounted Loan Prepayment and the Classes to be prepaid, (II) each Lender of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Loans and the Classes to be prepaid at the Applicable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the Classes of such Lender to be prepaid at the Acceptable Discount on such date, and (IV) if applicable, each Identified Qualifying Lender of the Solicited Discount Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to such Company Party and Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to such Company Party shall be due and payable by such Company Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(E) In connection with any Discounted Loan Prepayment, the Company Parties and the Lenders acknowledge and agree that the Auction Agent may require as a condition to any Discounted Loan Prepayment, the payment of customary and documented fees and out-of-pocket expenses from a Company Party in connection therewith.

(F) If any Loan is prepaid in accordance with paragraphs (B) through (D) above, a Company Party shall prepay such Loans on the Discounted Prepayment Effective Date without premium or penalty, except as set forth in Section 2.05(a)(vi). The relevant Company Party shall make such prepayment to the Administrative Agent, for the account of the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, at the Administrative Agent's Office in immediately available funds not later than 1:00 p.m. on the Discounted Prepayment Effective Date and all such prepayments shall be applied to the principal amount due at maturity of the relevant Class of Loans pursuant to Section 2.07. The Loans so prepaid shall be, as set forth in Section 2.05(c), accompanied by all accrued and unpaid interest on the par principal amount so prepaid up to, but not including, the Discounted Prepayment Effective Date. Each prepayment of the outstanding Loans pursuant to this Section 2.05(a)(v) shall be paid to the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, and shall be applied to the relevant Loans of such Lenders in accordance with their respective Pro Rata Share or other applicable share hereunder. The aggregate principal amount of the Classes and installments of the relevant Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the Classes of Loans prepaid on the Discounted Prepayment Effective Date in any Discounted Loan Prepayment. In connection with each prepayment pursuant to this Section 2.05(a)(v), the relevant Company Party shall waive any right to bring any action against the Administrative Agent, in its capacity as such, in connection with any such Discounted Loan Prepayment. In connection with each prepayment pursuant

to this Section 2.05(a)(v), the relevant Company Party shall (a) make a representation to the Lenders and the Administrative Agent that it does not possess material non-public information with respect to Holdings and its Subsidiaries or the securities of any of them that has not been disclosed to the Lenders generally (other than Lenders who elect not to receive such information) or shall make a statement that such representation cannot be made and (b) waive any right to bring any action against the Administrative Agent, in its capacity as such, in connection with any such Discounted Loan Prepayment.

(G) To the extent not expressly provided for herein, each Discounted Loan Prepayment shall be consummated pursuant to procedures consistent with the provisions in this Section 2.05(a)(v), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by the applicable Company Party.

(H) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.05(a)(v), each notice or other communication required to be delivered or otherwise provided to the Auction Agent (or its delegate) shall be deemed to have been given upon the Auction Agent's (or its delegate's) actual receipt during normal business hours of such notice or communication; *provided* that any notice or communication actually received outside of normal business hours shall be deemed to have been given as of the opening of business on the next Business Day.

(I) Each of the Company Parties and the Lenders acknowledge and agree that the Auction Agent may perform any and all of its duties under this Section 2.05(a)(v) by itself or through any Affiliate of the Auction Agent and expressly consents to any such delegation of duties by the Auction Agent to such Affiliate and the performance of such delegated duties by such Affiliate. The exculpatory provisions pursuant to this Agreement shall apply to each Affiliate of the Auction Agent and its respective activities in connection with any Discounted Loan Prepayment provided for in this Section 2.05(a)(v) as well as activities of the Auction Agent.

(J) Each Company Party shall have the right, by written notice to the Auction Agent, to revoke or modify its offer to make a Discounted Loan Prepayment and rescind the applicable Specified Discount Prepayment Notice, Discount Range Prepayment Notice or Solicited Discounted Prepayment Notice therefor at its discretion at any time on or prior to the applicable Specified Discount Prepayment Response Date (and if such offer is revoked pursuant to the preceding clauses, any failure by such Company Party to make any prepayment to a Lender, as applicable, pursuant to this Section 2.05(a)(v) shall not constitute a Default or Event of Default under Section 8.01 or otherwise).

(vi) If any ~~Initial Loans or~~ Term B-~~23~~ Loans are voluntarily prepaid pursuant to Section 2.05(a)(i) or mandatorily prepaid pursuant to Section 2.05(b)(iii) or (iv), such prepayments shall be made at (x) ~~101%~~ 100% of the principal amount thereof plus the Make Whole Premium if such prepayment occurs before the first anniversary of the Amendment No. 2 Effective Date, (y) 102% of the aggregate principal amount of ~~Initial Loans and~~ Term B-~~23~~ Loans prepaid if such prepayment occurs on or after the first anniversary of the Amendment No. 2 Effective Date but before the ~~first~~second anniversary of the Amendment No. ~~1~~ 2 Effective Date and (z) 101% of the aggregate principal amount of Term B-3 Loans prepaid if such prepayment occurs on or after the second anniversary of the Amendment No. 2 Effective Date but prior to the third anniversary of the Amendment No. 2 Effective Date. If, prior to the ~~first~~third anniversary of the Amendment No. ~~1~~ 2 Effective Date, any Lender that is a Non-Consenting Lender is replaced pursuant to Section 3.07 in connection with any amendment, amendment and restatement or other modification of this Agreement, ~~the primary purpose of which is to reduce the All-In Yield applicable to the Loans (other than any amendment, amendment and restatement or other modification effecting a reduction of the All-In Yield applicable to the Loans in connection with any Qualified IPO, Permitted Acquisition or transaction that would result in a Change of Control) that in any such case would lower or postpone the payment of the premium referred to in the immediately preceding sentence,~~ such Lender (and not any Person who replaces such Lender pursuant to Section 3.07) shall receive its portion (as determined immediately prior to it being so replaced) of the prepayment premium or fee described in the preceding sentence as if the Loans held by such Lender were voluntarily prepaid. Any amounts due to any Lender pursuant to this clause (vi) shall be due and payable on the date of such voluntary prepayment or effectiveness of such amendment for which such Lender was a Non-Consenting Lender, as applicable.

(b) *Mandatory.* (i) Subject to clause (ix) of this Section 2.05(b), within five (5) Business Days after financial statements have been delivered pursuant to Section 6.01(a) (commencing with the fiscal year ended December 31, 2015) and the related Compliance Certificate has been delivered pursuant to Section 6.02(a), the Borrower shall, subject to clause (b)(vii) of this Section 2.05, cause to be prepaid an aggregate principal amount of Loans in an amount equal to (A) the Applicable ECF Percentage of Excess Cash Flow, if any, for the Excess Cash Flow Period then ended minus (B) the sum of (1) all voluntary prepayments of (x) First Lien Term Loans, First Lien Incremental Equivalent Debt and First Lien Refinancing Equivalent Debt secured on a *pari passu* or senior basis with the ~~Initial~~Term B-3 Loans, (y) ~~Initial~~Term B-3 Loans and (z) Loans, Incremental Equivalent Debt and Refinancing Equivalent Debt, in each case in this clause (z), required to be secured by the Collateral on a *pari passu* basis with the ~~Initial~~Term B-3 Loans, during such Excess Cash Flow Period or after the end of such Excess Cash Flow Period and prior to when such Excess Cash Flow prepayment is due (limited in the case of any voluntary prepayments made pursuant to Section 2.05(a)(v) and Section 2.05(a)(v) of the First Lien Credit Agreement to the discounted amount actually paid in respect of the principal amount of such Loans and First Lien Term Loans (as opposed to the face amount so prepaid)) and (2) all voluntary prepayments of First Lien Revolving Credit Loans or First Lien Incremental Revolving Loans during such Excess Cash Flow Period or after the end of such Excess Cash Flow Period and prior to when such Excess Cash Flow prepayment is due, to the extent the First Lien Revolving Credit Commitments or First Lien Incremental Revolving Commitments, as applicable, are permanently reduced by the amount of such payments and in the case of each of the immediately preceding clauses (1) and (2) to the extent such prepayments are funded with Internally Generated Cash.

(ii) Subject to clause (ix) of this Section 2.05(b), if (1) the Borrower or any Restricted Subsidiary of the Borrower Disposes of any property or assets (other than any Disposition of any property or assets permitted by Section 7.05(a), (b), (c), (d), (e), (g), (h), (i), (k), (l), (m), (n), (o), (p), (q), (s) or (t); *provided*, that, in the case of Section 7.05(t), immediately after giving effect to such Sale Leaseback and the application of the proceeds (if any) therefrom, (A) no Event of Default shall have occurred and be continuing and (B) the Total Net Leverage Ratio on a Pro Forma Basis is not greater than 6.50:1.00) or (2) any Casualty Event occurs, which results in the realization or receipt by the Borrower or Restricted Subsidiary of Net Proceeds, the Borrower shall cause to be prepaid on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or any Restricted Subsidiary of such Net Proceeds, subject to clause (b)(vii) of this Section 2.05, an aggregate principal amount of Loans in an amount equal to 100% of all such Net Proceeds received; *provided* that if at the time that any such prepayment would be required, the Borrower (or any Restricted Subsidiary) is required to offer to repurchase Permitted Pari Passu Secured Refinancing Debt (or any Permitted Refinancing thereof that is secured on a *pari passu* basis with the Obligations under Initial Loans and other Loans required to be secured on a *pari passu* basis with the Initial Loans) pursuant to the terms of the documentation governing such Indebtedness with the net proceeds of such Disposition or Casualty Event (such Permitted Pari Passu Secured Refinancing Debt (or Permitted Refinancing thereof) required to be offered to be so repurchased, “**Other Applicable Indebtedness**”), then the Borrower may apply such Net Proceeds on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Loans and Other Applicable Indebtedness at such time; *provided* that the portion of such net proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such net proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such net proceeds shall be allocated to the Loans in accordance with the terms hereof) to the prepayment of the Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Loans that would have otherwise been required pursuant to this Section 2.05(b)(ii) shall be reduced accordingly; *provided, further*, that to the extent the holders of Other Applicable Indebtedness decline to have such indebtedness repurchased or prepaid, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Loans in accordance with the terms hereof.

(iii) Subject to clause (ix) of this Section 2.05(b), if the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness after the Closing Date not permitted to be incurred or issued pursuant to Section 7.03, the Borrower shall cause to be prepaid an aggregate principal amount of Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds.

(iv) If the Borrower incurs or issues any Refinancing Loans (or Refinancing Equivalent Debt) resulting in Net Proceeds (as opposed to such Refinancing Loans or Refinancing Equivalent Debt arising out of an exchange of existing Loans for such Refinancing Loans or Refinancing Equivalent Debt), the Borrower shall cause to be prepaid an aggregate principal amount of Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower of such Net Proceeds.

(v) [Reserved].

(vi) Each prepayment of Loans pursuant to Section 2.05(b) (A) shall be applied either (x) ratably to each Class of Loans then outstanding or (y) as requested by the Borrower in the notice delivered pursuant to clause (vii) below, to any Class or Classes of Loans with a Maturity Date preceding the Maturity Date of the remaining Classes of Loans then outstanding, (B) [reserved] and (C) shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Share (or other applicable share provided by this Agreement) of each such Class of Loans, subject to clause (vii) of this Section 2.05(b). Notwithstanding clause (A) above, (1) in the case of prepayments pursuant to Section 2.05(b)(iv), such prepayment shall be applied in accordance with this clause (vi) solely to those applicable Classes of Loans selected by the Borrower and specified in the applicable Refinancing Amendment or notice (i.e., the applicable Refinanced Debt or Refinanced Loans) and (2) any Incremental Amendment, Refinancing Amendment or Extension Amendment may provide (including on an optional basis as elected by the Borrower) for a less than ratable application of prepayments to any Class of Loans established thereunder.

(vii) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Loans required to be made by the Borrower pursuant to clauses (i) through (iv) of this Section 2.05(b) at least two (2) Business Days prior to the date of such prepayment (unless otherwise agreed by the Administrative Agent). Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower's prepayment notice and of such Appropriate Lender's Pro Rata Share of the prepayment. Each Lender may reject all or a portion of its Pro Rata Share of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of Loans required to be made pursuant to clauses (i), (ii) and (iii) of this Section 2.05(b) by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 5:00 p.m. one (1) Business Day after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Loans to be rejected by such Lender. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Loans. Any Declined Proceeds shall be offered to the Lenders not so declining such prepayment on a pro rata basis in accordance with the amounts of the Loans of such Lender (with such non-declining Lenders having the right to decline any prepayment with Declined Proceeds at the time and in the manner specified by the Administrative Agent). To the extent such non-declining Lenders elect to decline their Pro Rata Share of such Declined Proceeds, any Declined Proceeds remaining thereafter shall be retained by the Borrower (such remaining Declined Proceeds, the "**Borrower Retained Prepayment Amounts**").

(viii) Notwithstanding any other provisions of this Section 2.05, (i) to the extent that any of or all the Net Proceeds of any Disposition by a Foreign Subsidiary (“**Foreign Disposition**”), the Net Proceeds of any Casualty Event from a Foreign Subsidiary (a “**Foreign Casualty Event**”) or Excess Cash Flow attributable to Foreign Subsidiaries are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Loans at the times provided in this Section 2.05(b) but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to use commercially reasonable efforts to cause the applicable Foreign Subsidiary to promptly take all actions reasonably required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Proceeds or Excess Cash Flow is permitted under the applicable local law, such repatriation will be promptly effected and an amount equal to such repatriated Net Proceeds or Excess Cash Flow will be promptly (and in any event not later than five (5) Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Loans pursuant to this Section 2.05(b) to the extent provided herein and (ii) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Foreign Disposition or any Foreign Casualty Event or Excess Cash Flow attributable to Foreign Subsidiaries would have material adverse tax consequences (as determined in good faith by the Borrower) with respect to such Net Proceeds or Excess Cash Flow, such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Loans at the times provided in this Section 2.05(b) but may be retained by the applicable Foreign Subsidiary.

(ix) Notwithstanding anything in this Section 2.05 to the contrary, the Borrower shall not be required to make any mandatory prepayment pursuant to this Section 2.05(b) (other than pursuant to Section 2.05 (b)(iv)) (i) if such prepayment is prohibited by the Second Lien Intercreditor Agreement or (ii) prior to the First Lien Termination Date, except to the extent of, and not to exceed, the amount of Net Proceeds or Excess Cash Flow, as the case may be, consisting of amounts declined by (A) the First Lien Lenders pursuant to Section 2.05(b)(vii) of the First Lien Credit Agreement, (B) the holders of any First Lien Incremental Equivalent Debt or First Lien Refinancing Equivalent Debt, in each case, constituting First Lien Obligations, or pursuant to equivalent provisions of the credit documentation governing such First Lien Incremental Equivalent Debt or First Lien Refinancing Equivalent Debt or (C) the holders of any Permitted Refinancing of Indebtedness described under the foregoing clause (A) or (B), in each case, constituting First Lien Obligations pursuant to equivalent provisions of the credit documentation governing such Permitted Refinancing, which shall in each case be required to be applied as a mandatory prepayment hereunder (to the extent otherwise required herein) in an amount equal to the amounts so declined.

(c) *Interest Funding Losses, Etc.* (i) Except to the extent otherwise agreed by each Lender so being prepaid, all prepayments of Loans shall be accompanied by all accrued and unpaid interest thereon through but not including the date of such prepayment (which, in the case of prepayments pursuant to Section 2.05(a)(v)(F) shall be the accrued and unpaid interest on the principal amount so prepaid up to, but not including, the applicable Discounted Prepayment Effective Date), together with, in the case of any such prepayment of a Eurocurrency Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurocurrency Rate Loan pursuant to Section 3.05.

(ii) So long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurocurrency Rate Loans is required to be made under this Section 2.05 (but excluding prepayments required under Section 2.05(b)(iv)), prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 2.05 in respect of any such Eurocurrency Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in its sole discretion, deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the relevant provisions of this Section 2.05. Such deposit shall be deemed to be a prepayment of such Loans by the Borrower for all purposes under this Agreement.

Section 2.06 Termination of Commitments.

The ~~Initial Commitment of each~~commitment of the Additional Term B-3 Lender to make Term B-3 Loans shall be ~~automatically and permanently reduced to \$0~~terminated upon the funding making of ~~Initial Loans to be made by it on the Closing Date.~~ Term B-3 Loans pursuant to Section 2.01. The Commitment of each Lender under an Incremental Facility, Refinancing Facility or Extension Series shall be automatically and permanently reduced to \$0 upon the funding of Loans to be made by it on the date set forth in the corresponding Incremental Amendment, Refinancing Amendment or Extension Amendment.

Section 2.07 Repayment of Loans.

The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the Maturity Date for any Class of Loans the aggregate principal amount of all Loans of such Class outstanding on such date.

Section 2.08 Interest.

(a) Subject to the provisions of Section 2.08(b), (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) During the continuance of a Default under Section 8.01(a), the Borrower shall pay interest on past due amounts owing by it hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; *provided* that no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on such amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.09 Fees.

(a) *Other Fees.* The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing (including without limitation pursuant to the Fee Letter) in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

(b) Upfront and Closing Fees. The Borrower agrees to pay on the Closing Amendment No. 2 Effective Date to each Term B-3 Lender party to this Agreement on the Closing Amendment No. 2 Effective Date, as fee compensation for the funding of such Lender's Term B-3 Loan or conversion of such Lender's Initial Loan, a closing or Term B-2 Loan into a Term B-3 Loan an upfront fee (the "Closing Upfront Fee") in an amount equal to ~~0.50~~3.00 % of the stated principal amount of such Lender's Initial Term B-3 Loan made on the Closing Date. Such Closing Upfront Fee will be in all respects fully earned, due and payable on the Closing Amendment No. 2 Effective Date and be non-refundable and non-creditable thereafter and ~~such Closing, in the case of the Term B-3 Loans of the Additional Term B-3 Lender, such Upfront~~ Fee shall be netted against Term Loans made by such Additional Term B-3 Lender on the Closing Date Amendment No. 2 Effective Date. The Closing Fee (as defined herein immediately prior to the Amendment No. 2 Effective Date) shall continue to be non-refundable and non-creditable.

Section 2.10 Computation of Interest and Fees.

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurocurrency Rate or the prime rate) shall be made on the basis of a year of three hundred and sixty-five (365) days, or three hundred and sixty-six (366) days, as applicable, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a three hundred and sixty (360) day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one

(1) day. In computing interest on any Loan, the day such Loan is made or converted to a Loan of a different Type shall be included and the date such Loan is repaid or converted to a Loan of a different type, as the case may be, shall be excluded. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11 Evidence of Indebtedness.

(a) The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) Entries made in good faith by the Administrative Agent in the Register pursuant to Section 2.11(a), and by each Lender in its account or accounts pursuant to Section 2.11(a), shall be *prima facie* evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.12 Payments Generally.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share provided for under this Agreement) of such payment in like funds as received by wire transfer to such Lender's applicable Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be; *provided* that, if such extension would cause payment of interest on or principal of Eurocurrency Rate Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(c) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(i) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the Overnight Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at a rate per annum equal to the Overnight Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(c) shall be conclusive, absent manifest error.

(d) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Borrowing set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan or to fund any such participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may (to the fullest extent permitted by mandatory provisions of applicable Law), but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the Outstanding Amount of all Loans outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

Section 2.13 Sharing of Payments.

If, other than as expressly provided elsewhere herein or required by court order, any Lender shall obtain payment in respect of any principal or interest on account of the Loans made by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them as shall be necessary to cause such purchasing Lender to share the excess payment in respect of any principal or interest on such Loans or such participations, as the case may be, pro rata with each of them; provided that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount

so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. For the avoidance of doubt, the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time (including the application of funds arising from the existence of a Defaulting Lender) or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased. For purposes of subclause (v)(a) of the definition of Indemnified Taxes, a Lender that acquires a participation pursuant to this Section 2.13 shall be treated as having acquired such participation on the earlier date(s) on which such Lender acquired the applicable interest(s) in the Commitment(s) and/or Loan(s) to which such participation relates.

Section 2.14 Incremental Loans.

(a) *Incremental Commitments.* The Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent (an “**Incremental Loan Request**”), request one or more new commitments which may be of the same Class as any outstanding Loans (a “**Loan Increase**”) or a new Class of term loans (collectively with any Loan Increase, the “**Incremental Commitments**”), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders.

(b) *Incremental Loans.* On the applicable date (each, an “**Incremental Facility Closing Date**”) specified in any Incremental Amendment (including through any Loan Increase), subject to the satisfaction of the terms and conditions in this Section 2.14, (i) each Incremental Lender of such Class shall make a Loan to the Borrower (an “**Incremental Loan**”) in an amount equal to its Incremental Commitment of such Class and (ii) each Incremental Lender of such Class shall become a Lender hereunder with respect to the Incremental Commitment of such Class and the Incremental Loans of such Class made pursuant thereto.

(c) *Incremental Loan Request.* Each Incremental Loan Request from the Borrower pursuant to this Section 2.14 shall set forth the requested amount and proposed terms of the relevant Incremental Loans. Incremental Loans may be made by any existing Lender (but no existing Lender will have an obligation to make any Incremental Commitment, nor will the Borrower have any obligation to approach any existing Lender to provide any Incremental Commitment) or by any Additional Lender (each such existing Lender or Additional Lender providing such Commitment or Loan, an “**Incremental Lender**” and, collectively, the

“Incremental Lenders”); provided that (i) the Administrative Agent shall have consented (not to be unreasonably withheld or delayed) to such Additional Lender’s making such Incremental Loans to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Loans to such Lender or Additional Lender and (ii) any Affiliated Lender providing an Incremental Commitment shall be subject to the same restrictions set forth in Section 10.07(k) as they would otherwise be subject to with respect to any purchase by or assignment to such Affiliated Lender of Loans.

(d) *Effectiveness of Incremental Amendment.* The effectiveness of any Incremental Amendment, and the Incremental Commitments thereunder, shall be subject to the satisfaction on the applicable date (which shall be no earlier than the date of such Incremental Amendment) specified therein (the “Incremental Amendment Date”) of each of the following conditions, together with any other conditions set forth in the Incremental Amendment:

(i) after giving effect to such Incremental Commitments, the conditions of Section 4.02 shall be satisfied (it being understood that all references to “the date of such Borrowing” or similar language in such Section 4.02 shall be deemed to refer to the Incremental Amendment Date); provided, that such Incremental Amendment may include a waiver by the Incremental Lenders party thereto of the condition set forth in Section 4.02(iii) and, in connection with any Incremental Commitment, the primary purpose of which is to finance a Permitted Acquisition, a waiver in full or in part of the conditions set forth in clauses (i) and (ii) (other than with respect to any Event of Default under Section 8.01(a) or (f)) of Section 4.02;

(ii) each Incremental Commitment shall be in an aggregate principal amount that is not less than \$10,000,000 and shall be in an increment of \$1,000,000 (provided that such amount may be less than \$10,000,000 if such amount represents all remaining availability under the limit set forth in Section 2.14(d)(iii));

(iii) (A) after giving Pro Forma Effect to both (x) the making of Incremental Loans (assuming a borrowing of the maximum amount of Loans available thereunder) under such Incremental Amendment and (y) any Specified Transactions consummated in connection therewith, (1) if such Incremental Loans are secured, the Secured Net Leverage Ratio does not exceed ~~6.25~~4.20:1.00 or (2) if such Incremental Loans are unsecured, the Total Net Leverage Ratio does not exceed ~~6.25~~4.20:1.00 or (B) together with the Incremental Loans made under such Incremental Amendment, the aggregate principal amount of Incremental Loans made under this clause (B) (plus the First Lien Incremental Usage Amount and Incremental Equivalent Debt incurred in reliance on clause (i)(B) of Section 2.14(h)) does not exceed ~~(i) \$85,000,000 (provided, that such amount shall not be reduced by the Term B-2 Loans, Additional Commitments (as defined in First Lien Credit Agreement Amendment No. 1) or the 2016 First Lien Incremental Loan (as defined in Amendment No. 1)),~~ following the Amendment No. 2 Effective Date, (i) \$42,600,000 plus (ii) the principal amount of any voluntary prepayments of Loans following the Amendment No. 2 Effective Date (to the extent not made with the proceeds of Indebtedness (other than the incurrence of First Lien Revolving Credit Loans or extensions of credit under any other revolving credit or similar facility) plus (iii) in the case of any Incremental Commitment established after the

Amendment No. 2 Effective Date that effectively extends the Maturity Date or any other maturity date with respect to any Class of Loans or Commitments hereunder, an amount equal to the portion of the relevant Class of Loans or Commitments that will be replaced by such Incremental Commitments *provided, that*, it is understood that Incremental Loans may be incurred under either clause (A) or clause (B) as selected by the Borrower in its sole discretion, including by designating any portion of Incremental Commitments in excess of an amount permitted to be incurred under clause (A) at the time of such incurrence as incurred under clause (B)); and

(iv) to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (A) customary legal opinions, board resolutions and officers' certificates consistent with those delivered on the Closing Date (conformed as appropriate) other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent and (B) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Incremental Lenders are provided with the benefit of the applicable Loan Documents.

(e) *Required Terms*. The terms, provisions and documentation of the Incremental Loans of any Class shall be as agreed between the Borrower and the applicable Incremental Lenders providing such Incremental Commitments, and except as otherwise set forth herein, to the extent not identical to any Class of Loans, each existing on the Incremental Facility Closing Date, shall be consistent with clauses (i) through (iii) below, as applicable, and otherwise reasonably satisfactory to the Administrative Agent; *provided* that in the case of a Loan Increase, the terms, provisions and documentation of such Loan Increase shall be identical (other than with respect to upfront fees, OID or similar fees) to the applicable Class of Loans being increased, in each case, as existing on the Incremental Facility Closing Date. In any event:

(i) the Incremental Loans:

(A) (I) shall rank *pari passu* or junior in right of payment with the Obligations under Loans that are senior in right of payment and (II) shall be secured by the Collateral and shall rank *pari passu* or junior in right of security with the Obligations under Initial Loans and other Loans required to be secured on a *pari passu* basis with the Initial Loans (and, if applicable, subject to a Subordination Agreement (if subject to payment subordination) and/or a Third Lien Intercreditor Agreement (if subject to lien subordination) (or, alternatively, terms in the Incremental Amendment substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent) or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent) or unsecured,

(B) as of the Incremental Amendment Date, shall not have a final scheduled maturity date earlier than the Maturity Date of the ~~Initial~~ Term B-3 Loans or any Extended Term Loans as to which the ~~Initial~~ Term B-3 Loans were the Existing Term Loan Tranche,

(C) as of the Incremental Amendment Date, shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the ~~Initial~~Term B-3 Loans,

(D) shall have an Applicable Rate, and subject to clauses (e)(i)(B) and (e)(i)(C) above, amortization determined by the Borrower and the applicable Incremental Lenders; *provided* the Applicable Rate and amortization for a Loan Increase shall be the Applicable Rate and amortization for the Class being increased,

(E) shall have fees determined by the Borrower and the applicable Incremental Loan arranger(s), and

(F) may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis (except for prepayments pursuant to Section 2.05(b)(iv) and Section 2.05(b)(vi)(A)(y) or any voluntary prepayments of any Class of Loans with an earlier Maturity Date than any other Classes of Loans)) in any voluntary or mandatory prepayments of Loans hereunder;

(ii) [Reserved]; and

(iii) the All-In Yield applicable to the Incremental Loans of each Class shall be determined by the Borrower and the applicable Incremental Lenders and shall be set forth in each applicable Incremental Amendment; *provided, however*, that with respect to any Loans made under Incremental Commitments (to the extent *pari passu* in right of payment and security with the ~~Initial~~Term B-3 Loans), the All-In Yield applicable to such Incremental Loans shall not be greater than the applicable All-In Yield payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to ~~Initial~~Term B-3 Loans plus 50 basis points per annum unless the interest rate (together with, as provided in the proviso below, the Eurocurrency Rate or Base Rate floor) with respect to the ~~Initial~~Term B-3 Loans is increased so as to cause the then applicable All-In Yield under this Agreement on the ~~Initial~~Term B-3 Loans to equal the All-In Yield then applicable to the Incremental Loans minus 50 basis points; *provided, further*, that any increase in All-In Yield to any ~~Initial~~Term B-3 Loan due to the application or imposition of a Eurocurrency Rate or Base Rate floor on any Incremental Loan shall be effected solely through an increase in (or implementation of, as applicable) any Eurocurrency or Base Rate floor applicable to such ~~Initial~~Term B-3 Loan.

(f) *Incremental Amendment.* Commitments in respect of Incremental Loans shall become additional Commitments pursuant to an amendment (an “**Incremental Amendment**”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Incremental Lender providing such Commitments and the Administrative Agent. The Incremental Amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.14, including amendments as deemed necessary by the Administrative Agent in its reasonable judgment to effect any lien or payment subordination and associated rights of the applicable Lenders to the extent any Incremental Loans are to rank junior in right of security or payment or to address technical issues relating to funding and payments. The Borrower will use the proceeds of the Incremental Loans for any purpose not prohibited by this Agreement.

(g) [Reserved].

(h) *Incremental Equivalent Debt*. The Borrower may, upon notice to the Administrative Agent, at any time or from time to time after the Closing Date, issue, incur or otherwise obtain Indebtedness of the Borrower (and any Permitted Refinancing thereof) in respect of one or more series of senior or subordinated notes or loans (which may be unsecured or secured on a junior lien basis or, in the case of notes only, a *pari passu* basis with the ~~Initial~~Term B-3 Loans and other Loans required to be secured on a *pari passu* basis with the ~~Initial~~Term B-3 Loans), in each case issued in a public offering, Rule 144A or other private placement or bridge in lieu of the foregoing, or senior or subordinated mezzanine Indebtedness (which may be in the form of loans or notes and limited to being unsecured or secured solely on a junior lien basis), in each case, that are issued or made in lieu of Incremental Commitments (the “**Incremental Equivalent Debt**”); *provided* that (i) (A) after giving Pro Forma Effect to both (x) the issuance or incurrence of such Incremental Equivalent Debt (assuming a borrowing of the maximum credit thereunder) and (y) any Specified Transactions consummated in connection therewith, (1) if such Incremental Equivalent Debt is secured, the Secured Net Leverage Ratio does not exceed ~~6.25~~4.20 :1.00 and (2) if such Incremental Equivalent Debt is unsecured, the Total Net Leverage Ratio does not exceed ~~6.25~~4.20 :1.00 or (B) together with such Incremental Equivalent Debt, the aggregate principal amount of Incremental Equivalent Debt incurred or issued under this clause (B) and Incremental Loans made under Section 2.14(d)(iii)(B) (*plus* the First Lien Incremental Usage Amount) does not exceed ~~\$85,000,000 (provided, that such amount shall not be reduced by the Term B-2 Loans, Additional Commitments (as defined in the First Lien Credit Agreement Amendment No. 1) or the 2016 First Lien Incremental Loan (as defined in Amendment No. 1)), following the Amendment No. 2 Effective Date, \$42,600,000~~ plus the principal amount of any voluntary prepayments of Loans made after the Amendment No. 2 Effective Date (to the extent not made with the proceeds of Indebtedness (other than the incurrence of First Lien Revolving Credit Loans or extensions of credit under any other revolving credit or similar facility)) plus in the case of any Incremental Equivalent Debt incurred or established after the Amendment No. 2 Effective Date that effectively extends the Maturity Date or any other maturity date with respect to any Class of Loans or Commitments hereunder, an amount equal to the portion of the relevant Class of Loans or Commitments that will be replaced by such Incremental Commitments (ii) such Incremental Equivalent Debt shall not be subject to any Guarantee by any Person other than a Loan Party, (iii) if such Incremental Equivalent Debt is secured, the obligations in respect thereof shall not be secured by any Lien on any asset of Holdings, the Borrower or any Restricted Subsidiary other than any asset constituting Collateral, (iv) no Default or Event of Default shall have occurred and be continuing or would exist immediately after giving effect to such incurrence, (v) if such Incremental Equivalent Debt is secured, the security agreements and other collateral documents relating to such Incremental Equivalent Debt shall be substantially similar to the Collateral Documents (with such differences as are reasonably satisfactory to the Administrative Agent), (vi) if such Incremental Equivalent Debt is (a) secured on a *pari passu* basis with the Obligations under ~~Initial~~Term B-3 Loans and other Loans required to be secured on a *pari passu* basis with the ~~Initial~~Term B-3 Loans then

such Incremental Equivalent Debt shall be subject to the Second Lien Intercreditor Agreement, if applicable, or a Junior Lien Intercreditor Agreement, (b) secured on a junior basis with the Obligations under ~~Initial~~Term B-3 Loans and other Loans required to be secured on a *pari passu* basis with the ~~Initial~~Term B-3 Loans then such Incremental Equivalent Debt shall be subject to a Third Lien Intercreditor Agreement or other lien subordination and intercreditor arrangement satisfactory to the Borrower and Administrative Agent or (c) unsecured and subordinated to the Obligations, then such Incremental Equivalent Debt shall be subject to a Subordination Agreement (or, alternatively, terms in the definitive documentation for such Incremental Equivalent Debt substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent), (vii) such Incremental Equivalent Debt shall have a final maturity date which is no earlier than the then Maturity Date and a Weighted Average Life to Maturity which is equal to or greater than the Weighted Average Life to Maturity of the ~~Initial~~Term B-3 Loans, (viii) such Incremental Equivalent Debt shall not be subject to any mandatory redemption or prepayment provisions or rights (except to the extent any such mandatory redemption or prepayment is required to be applied pro rata to the Loans required to be secured on a first lien basis and except with respect to customary "AHYDO catch-up payments", offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) and (ix) except as otherwise set forth in this clause (h), such Incremental Equivalent Debt shall have terms and conditions (other than with respect to pricing, fees, rate floors and optional prepayment or redemption terms) substantially similar to, or (taken as a whole) no more favorable (as reasonably determined by the Borrower) to the lenders or holders providing such Incremental Equivalent Debt, than those applicable to the ~~Initial~~Term B-3 Loans (except for covenants or other provisions (a) conformed (or added) in the Loan Documents, for the benefit of the Lenders holding ~~Initial~~Term B-3 Loans, pursuant to an amendment thereto subject solely to the reasonable satisfaction of the Administrative Agent or (b) applicable only to periods after the Latest Maturity Date at the time of the issuance or incurrence of such Incremental Equivalent Debt) or such terms and conditions shall be current market terms for such type of Incremental Equivalent Debt (as reasonably determined in good faith by the Borrower). It is understood that Incremental Equivalent Debt may be incurred under either clause (i)(A) or clause (i)(B) of the immediately preceding sentence as selected by the Borrower in its sole discretion, including by designating any portion of Incremental Equivalent Debt in excess of an amount permitted to be incurred under such clause (i)(A) at the time of such incurrence as incurred under such clause (i)(B).

(i) This Section 2.14 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.15 Refinancing Amendments.

(a) *Refinancing Commitments*. The Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent (a "**Refinancing Loan Request**"), request a new Class of term loans (any such new Class, "**Refinancing Commitments**"), in each case, established in exchange for, or to extend, renew, replace, repurchase, retire or refinance, in whole or in part, existing Loans or Commitments (with respect to a particular Refinancing Commitment or Refinancing Loan, such existing Loans or Commitments, "**Refinanced Debt**"), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders.

(b) *Refinancing Loans.* On any Refinancing Facility Closing Date on which any Refinancing Commitments of any Class are effected, subject to the satisfaction of the terms and conditions in this Section 2.15, (i) each Refinancing Lender of such Class shall make a Loan to the Borrower (a “**Refinancing Loan**”) in an amount equal to its Refinancing Commitment of such Class and (ii) each Refinancing Lender of such Class shall become a Lender hereunder with respect to the Refinancing Commitment of such Class and the Refinancing Loans of such Class made pursuant thereto.

(c) *Refinancing Loan Request.* Each Refinancing Loan Request from the Borrower pursuant to this Section 2.15 shall set forth the requested amount and proposed terms of the relevant Refinancing Loans. Refinancing Loans may be made, by any existing Lender (but no existing Lender will have an obligation to make any Refinancing Commitment, nor will the Borrower have any obligation to approach any existing Lender to provide any Refinancing Commitment) or by any Additional Lender (each such existing Lender or Additional Lender providing such Commitment or Loan, a “**Refinancing Lender,**” and, collectively, “**Refinancing Lenders**”); *provided* that (i) the Administrative Agent, shall have consented (not to be unreasonably withheld or delayed) to such Additional Lender’s making such Refinancing Loans to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Loans to such Lender or Additional Lender and (ii) with respect to Refinancing Commitments, any Affiliated Lender providing a Refinancing Commitment shall be subject to the same restrictions set forth in Section 10.07(k) as they would otherwise be subject to with respect to any purchase by or assignment to such Affiliated Lender of Loans.

(d) *Effectiveness of Refinancing Amendment.* The effectiveness of any Refinancing Amendment, and the Refinancing Commitments thereunder, shall be subject to the satisfaction on the date thereof (a “**Refinancing Facility Closing Date**”) of each of the following conditions, together with any other conditions set forth in the Refinancing Amendment:

(i) after giving effect to such Refinancing Commitments, the conditions of Sections 4.02(i) and (ii) shall be satisfied (it being understood that all references to “the date of such Borrowing” or similar language in such Section 4.02 shall be deemed to refer to the effective date of such Refinancing Amendment);

(ii) each Refinancing Commitment shall be in an aggregate principal amount that is not less than \$10,000,000 and shall be in an increment of \$1,000,000 (*provided* that such amount may be less than \$10,000,000 and not in an increment of \$1,000,000 if such amount is equal to the entire outstanding principal amount of Refinanced Debt); and

(iii) to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) customary legal opinions, board resolutions and officers’ certificates consistent with those delivered on the Closing Date (conformed as appropriate) other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel’s form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Refinancing Lenders are provided with the benefit of the applicable Loan Documents.

(e) *Required Terms*. The terms, provisions and documentation of the Refinancing Loans of any Class shall be as agreed between the Borrower and the applicable Refinancing Lenders providing such Refinancing Commitments, and except as otherwise set forth herein, to the extent not identical to any Class of Loans each existing on the Refinancing Facility Closing Date, shall be consistent with clauses (i) and (ii) below, as applicable, and otherwise reasonably satisfactory to the Administrative Agent. In any event:

(i) the Refinancing Loans:

(A) as of the Refinancing Facility Closing Date, shall not have a final scheduled maturity date earlier than the Maturity Date of the Refinanced Debt,

(B) as of the Refinancing Facility Closing Date, shall not have a Weighted Average Life to Maturity shorter than the remaining Weighted Average Life to Maturity of the Refinanced Debt,

(C) shall have an Applicable Rate and Eurocurrency Rate or Base Rate floor (if any), and subject to clauses (e)(i)(A) and (e)(i)(B) above, amortization determined by the Borrower and the applicable Refinancing Lenders,

(D) shall have fees determined by the Borrower and the applicable Refinancing Loan arranger(s),

(E) may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis (except for prepayments pursuant to Section 2.05(b)(iv) and Section 2.05(b)(vi)(A)(y) or any voluntary prepayments of any Class of Loans with an earlier Maturity Date than any other Classes of Loans)) in any voluntary or mandatory prepayments of Loans hereunder, or if junior in right of security, shall be on a junior basis with respect thereto,

(F) shall not have a greater principal amount than the principal amount of the Refinanced Debt plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees, expenses, OID and upfront fees associated with the refinancing, and

(G) (I) shall rank *pari passu* or junior in right of payment with the Obligations under Loans that are senior in right of payment and (II) shall be secured by the Collateral and shall rank *pari passu* or junior in right of security with the Obligations under the Initial Loans and other Loans that are required to be secured on a *pari passu* basis with the Initial Loans (and, if applicable, subject to a Subordination Agreement and/or a Third Lien Intercreditor Agreement (or, alternatively, terms in the Refinancing Amendment substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent) or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent); and

(ii) [Reserved].

(f) *Refinancing Amendment.* Commitments in respect of Refinancing Loans shall become additional Commitments pursuant to an amendment (a “**Refinancing Amendment**”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Refinancing Lender providing such Commitments, and the Administrative Agent. The Refinancing Amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15, including amendments as deemed necessary by the Administrative Agent in its reasonable judgment to effect any lien or payment subordination and associated rights of the applicable Lenders to the extent any Refinancing Loans are to rank junior in right of security or payment or to address technical issues relating to funding and payments. The Borrower will use the proceeds of the Refinancing Loans to extend, renew, replace, repurchase, retire or refinance, substantially concurrently, the applicable Refinanced Debt.

(g) *[Reserved.]*

(h) *Refinancing Equivalent Debt.*

(i) In lieu of incurring any Refinancing Loans, the Borrower may, upon notice to the Administrative Agent, at any time or from time to time after the Closing Date issue, incur or otherwise obtain (A) secured Indebtedness (including any Registered Equivalent Notes) in the form of one or more series of senior secured notes secured on a *pari passu* basis with the ~~Initial~~Term B-3 Loans (such notes, “**Permitted Pari Passu Secured Refinancing Debt**”), (B) secured Indebtedness (including any Registered Equivalent Notes) in the form of one or more series of junior lien secured notes or junior lien secured term loans (such notes or term loans, “**Permitted Junior Secured Refinancing Debt**”) and (C) unsecured or subordinated Indebtedness (including any Registered Equivalent Notes) in the form of one or more series of unsecured or subordinated notes or term loans (such notes or term loans, “**Permitted Unsecured Refinancing Debt**” and together with Permitted Pari Passu Secured Refinancing Debt and Permitted Junior Secured Refinancing Debt, and, in each case, any Permitted Refinancing thereof, “**Refinancing Equivalent Debt**”), in each case, in exchange for, or to extend, renew, replace, repurchase, retire or refinance, in whole or in part, any existing Class of Loans (such Loans, “**Refinanced Loans**”).

(ii) Any Refinancing Equivalent Debt:

(A) (1) shall not have a Maturity Date prior to the date that is on or after the Maturity Date of the Refinanced Loans, (2) if in the form of term loans, shall not have a Weighted Average Life to Maturity shorter than the remaining Weighted Average Life to Maturity of the Refinanced Loans, (3) if in the form of notes, shall not have scheduled amortization or payments of principal and not be subject to mandatory redemption, repurchase, prepayment or sinking fund obligations (other than customary “AHYDO catch-up payments”, offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default), in each case prior to the Maturity Date of the Refinanced Loans, (4) shall not be guaranteed by

Persons other than Guarantors, (5) if in the form of subordinated Permitted Unsecured Refinancing Debt, shall be subject to a Subordination Agreement to which a Senior Representative acting on behalf of the holders of such Permitted Unsecured Refinancing Debt shall have become a party or otherwise subject (or, alternatively, terms in the definitive documentation for such Refinancing Equivalent Debt substantially similar to those in such applicable agreement, as agreed by the Borrower and Administrative Agent); *provided* that if such Permitted Unsecured Refinancing Debt is the initial subordinated Permitted Unsecured Refinancing Debt incurred by the Borrower, then Holdings, the Borrower, the Subsidiary Guarantors, the Administrative Agent and the Senior Representative for such Permitted Unsecured Refinancing Debt shall have executed and delivered a Subordination Agreement, (6) shall not have a greater principal amount than the principal amount of the Refinanced Loans plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees, expenses, OID and upfront fees associated with the refinancing and (7) except as otherwise set forth in this clause (h)(ii), shall have terms and conditions (other than with respect to pricing, fees, rate floors and optional prepayment or redemption terms) substantially similar to, or (taken as a whole) no more favorable (as reasonably determined by the Borrower) to the lenders or holders providing such Refinancing Equivalent Debt, than those applicable to the Refinanced Loans (except for covenants or other provisions (a) conformed (or added) in the Loan Documents, for the benefit of the Lenders holding ~~Initial~~Term B-3 Loans, pursuant to an amendment thereto subject solely to the reasonable satisfaction of the Administrative Agent or (b) applicable only to periods after the Latest Maturity Date at the time of the issuance or incurrence of such Refinancing Equivalent Debt) or such terms and conditions shall be current market terms for such type of Refinancing Equivalent Debt (as reasonably determined in good faith by the Borrower),

(B) (1) if either Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt, shall be subject to security agreements relating to such Refinancing Equivalent Debt that are substantially the same as or more favorable to the Loan Parties than the Collateral Documents (with such differences as are reasonably satisfactory to the Administrative Agent), (2) if Permitted Pari Passu Secured Refinancing Debt, (x) shall be secured by the Collateral on a *pari passu* basis with the Obligations under Initial Loans and other Loans required to be secured on a *pari passu* basis with the Initial Loans and shall not be secured by any property or assets of Holdings, the Borrower or any Restricted Subsidiary other than the Collateral, and (y) shall be subject to the Second Lien Intercreditor Agreement, if applicable, or a Junior Lien Intercreditor Agreement to which a Senior Representative acting on behalf of the holders of such Permitted Pari Passu Secured Refinancing Debt shall have become a party or otherwise subject and (3) if Permitted Junior Secured Refinancing Debt, (x) shall be secured by the Collateral on a junior priority basis to the Liens securing the Initial Loans and other Loans required to be secured on a *pari passu* basis with the Initial Loans and shall not be secured by any property or assets of Holdings, the Borrower or any Restricted Subsidiary other than the Collateral, and (y) shall be

subject to a Third Lien Intercreditor Agreement to which a Senior Representative acting on behalf of the holders of such Permitted Junior Secured Refinancing Debt shall have become a party or otherwise subject or other lien subordination or intercreditor arrangement satisfactory to the Borrower and the Administrative Agent, and

(C) shall be incurred solely to repay, repurchase, retire or refinance substantially concurrently the Refinanced Loans.

(iii) This Section 2.15 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.16 Extension of Loans.

(a) *Extension of Loans.* The Borrower may at any time and from time to time request that all or a portion of the Loans of a given Class (an “Existing Tranche”) be amended to extend the scheduled Maturity Date(s) with respect to the Loans of such Existing Tranche (any such Loans which have been so amended, “Extended Loans”) and to provide for other terms consistent with this Section 2.16. In order to establish any Extended Loans, the Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Loan Tranche) (each, an “Extension Request”) setting forth the proposed terms of the Extended Loans to be established, which shall (x) be identical as offered to each Lender under such Existing Tranche (including as to the proposed interest rates and fees payable, but excluding any arrangement, structuring or other similar fees payable in connection therewith that are not generally shared with all relevant Lenders) and offered pro rata to each Lender under such Existing Tranche and (y) be identical to the Loans under the Existing Tranche from which such Extended Loans are intended to be amended, except that: (i) all or any of the scheduled amortization payments of principal of the Extended Loans may be delayed to later dates than the scheduled amortization payments of principal of the Loans of such Existing Tranche, to the extent provided in the applicable Extension Amendment; *provided, however*, that at no time shall there be Classes of Extended Loans and Refinancing Loans hereunder which have more than five (5) different Maturity Dates; (ii) the All-In Yield with respect to the Extended Loans (whether in the form of interest rate margin, upfront fees, original issue discount or otherwise) may be different than the All-In Yield for the Loans of such Existing Tranche, in each case, to the extent provided in the applicable Extension Amendment; (iii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Loans); and (iv) Extended Loans may have call protection as may be agreed by the Borrower and the Lenders thereof; *provided*, that no Extended Loans may be optionally prepaid prior to the Maturity Date of the ~~Initial~~ Term B-3 Loans, unless such optional prepayment is accompanied by a pro rata optional prepayment of the ~~Initial~~ Term B-3 Loans; *provided, however*, that (A) no Event of Default shall have occurred and be continuing at the time an Extension Request is delivered to Lenders, (B) in no event shall the Maturity Date of any Extended Loans of a given Extension Series at the time of establishment thereof be earlier than the Maturity Date of the Existing Tranche, (C) the Weighted Average Life to Maturity of any Extended Loans of a given Loan Extension Series at the time of establishment thereof shall be no shorter than the remaining Weighted Average Life to Maturity of the Existing

Tranche, (D) all documentation in respect of such Extension Amendment shall be consistent with the foregoing and (E) any Extended Loans may participate on a pro rata basis or less than or greater than a pro rata basis in any voluntary repayments or prepayments of principal of Loans hereunder and on a pro rata basis or less than a pro rata basis (but not greater than a pro rata basis except in the case of a prepayment under Section 2.05(b)(iv) and Section 2.05(b)(vi)(A)(y)), in any mandatory repayments or prepayments of Loans hereunder, in each case as specified in the respective Extension Request. Any Extended Loans amended pursuant to any Extension Request shall be designated a series (each, an “**Extension Series**”) of Extended Loans for all purposes of this Agreement; *provided* that any Extended Loans amended from an Existing Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Extension Series with respect to such Existing Tranche (in which case scheduled amortization with respect thereto shall be proportionately increased). Each request for an Extension Series of Extended Loans proposed to be incurred under this Section 2.16 shall be in an aggregate principal amount that is not less than \$10,000,000 (it being understood that the actual principal amount thereof provided by the applicable Lenders may be lower than such minimum amount) and the Borrower may impose an Extension Minimum Condition with respect to any Extension Request, which may be waived by the Borrower in its sole discretion.

(b) [Reserved].

(c) *Extension Request.* The Borrower shall provide the applicable Extension Request at least five (5) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior to the date on which Lenders under the Existing Tranche are requested to respond, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.16. No Lender shall have any obligation to agree to have any of its Loans of any Existing Tranche amended into Extended Loans pursuant to any Extension Request. Any Lender holding a Loan under an Existing Tranche (each, an “**Extending Lender**”) wishing to have all or a portion of its Loans under the Existing Tranche subject to such Extension Request amended into Extended Loans shall notify the Administrative Agent (each, an “**Extension Election**”) on or prior to the date specified in such Extension Request of the amount of its Loans under the Existing Tranche which it has elected to request be amended into Extended Loans (subject to any minimum denomination requirements imposed by the Administrative Agent). In the event that the aggregate principal amount of Loans under the Existing Tranche in respect of which applicable Lenders shall have accepted the relevant Extension Request exceeds the amount of Extended Loans requested to be extended pursuant to the Extension Request, Loans subject to Extension Elections shall be amended to Extended Loans on a pro rata basis (subject to rounding by the Administrative Agent, which shall be conclusive) based on the aggregate principal amount of Loans included in each such Extension Election.

(d) *Extension Amendment.* Extended Loans shall be established pursuant to an amendment (each, a “**Extension Amendment**”) to this Agreement among the Borrower, the Administrative Agent and each Extending Lender providing an Extended Loan thereunder, which shall be consistent with the provisions set forth in Section 2.16(a) above (but which shall not require the consent of any other Lender). The effectiveness of any Extension Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in Section 4.02 and, to the extent reasonably requested by the Administrative Agent, receipt by the

Administrative Agent of (i) legal opinions, board resolutions and officers' certificates consistent with those delivered on the Closing Date (conformed as appropriate) other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that the Extended Loans are provided with the benefit of the applicable Loan Documents. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment. Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Extended Loans incurred pursuant thereto, (ii) modify the scheduled repayments set forth in Section 2.07 with respect to any Existing Tranche subject to an Extension Election to reflect a reduction in the principal amount of the Loans required to be paid thereunder in an amount equal to the aggregate principal amount of the Extended Loans amended pursuant to the applicable Extension (with such amount to be applied to reduce scheduled repayment of such Loans on the Maturity Date as required pursuant to Section 2.07), (iii) modify the prepayments set forth in Section 2.05 to reflect the existence of the Extended Loans and the application of prepayments with respect thereto, (iv) address technical issues relating to funding and payments and (v) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.16, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment.

(e) No conversion of Loans pursuant to any Extension in accordance with this Section 2.16 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

Section 2.17 Defaulting Lenders.

(a) *Adjustments*. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower may request (so long as no Default or Event of Default has occurred and is continuing), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative

Agent; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders, as a result of any judgment of a court of competent jurisdiction obtained by any Lender, against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.17(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(b) *Defaulting Lender Cure*. If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

ARTICLE III. **TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY**

Section 3.01 Taxes.

(a) Except as provided in this Section 3.01, any and all payments made by or on account of the Borrower or any Guarantor under any Loan Document shall be made free and clear of and without deduction for any Taxes, except as required by any Law. If the Borrower, any Guarantor or other applicable withholding agent shall be required by any Laws to deduct any Taxes from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (i) if the Tax in question is an Indemnified Tax or Other Tax, the sum payable by the Borrower or any Guarantor shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.01), each Lender (or, in the case of a payment made to an Agent for its own account, such Agent) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions, (iii) the applicable withholding

agent shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), if the Borrower or any Guarantor is the applicable withholding agent, it shall furnish to such Agent or Lender (as the case may be) the original or a copy of a receipt evidencing payment thereof or other evidence acceptable to such Agent or Lender.

(b) In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary Taxes and any other excise, property, intangible or mortgage recording Taxes, imposed by any Governmental Authority, which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document excluding, in each case, any such Tax imposed as a result of a Lender's Assignment and Assumption, grant of a participation, transfer or assignment to or designation of a new applicable Lending Office or other office for receiving payments under any Loan Document (collectively, "**Assignment Taxes**"), except for Assignment Taxes resulting from assignment or participation that is requested or required in writing by the Borrower (all such non-excluded Taxes described in this Section 3.01(b) being hereinafter referred to as "**Other Taxes**").

(c) Borrower and each Guarantor agrees to indemnify each Agent and each Lender for (i) the full amount of Indemnified Taxes and Other Taxes payable by such Agent or such Lender (including Indemnified Taxes and Other Taxes imposed on or attributable to amounts payable under this Section 3.01) and (ii) any expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the Governmental Authority. A certificate as to the amount of such payment or liability prepared in good faith and delivered by such Agent or Lender (or by an Agent on behalf of such Lender), accompanied by a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts shall be conclusive absent manifest error. Notwithstanding anything to the contrary contained in this Section 3.01(c), neither Borrower nor any Guarantor shall be required to indemnify any Agent or Lender pursuant to this Section 3.01(c) for any amount to the extent such Agent or Lender fails to notify the Borrower of such possible indemnification claim within 180 days after such Agent or Lender receives written notice from the applicable taxing authority of the specific tax assessment giving rise to such indemnification claim.

(d) Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Law or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, any applicable withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation obsolete or inaccurate in any material respect, deliver promptly and on or before the date such documentation expires, becomes obsolete or inaccurate to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not

subject to withholding Tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the applicable withholding agent shall withhold amounts required to be withheld by applicable Law from such payments at the applicable statutory rate. Notwithstanding any other provision of this clause (d), a Lender shall not be required to deliver any form pursuant to this clause (d) that such Lender is not legally eligible to deliver. Without limiting the foregoing:

(i) Each Lender that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed original copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding.

(ii) Each Lender that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(A) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party,

(B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Sections 871(h) or 881(c) of the Code,

(A) a certificate substantially in the form of Exhibit H hereto (any such certificate a “**United States Tax Compliance Certificate**”) and

(B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms),

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a Participant holding a participation granted by a participating Lender), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, W-8BEN-E United States Tax Compliance Certificate, Form W-9, Form W-8IMY or any other required information from each beneficial owner, as applicable (*provided* that, if the Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such partner(s)), or

(E) two properly completed and duly signed original copies of any other form prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, U.S. federal withholding tax on any payments to such Lender under the Loan Documents.

(iii) Each Agent that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent two properly completed and duly signed original copies of Internal Revenue Service Form W-9 with respect to fees received for its own account, certifying that such Agent is exempt from U.S. federal backup withholding. Each Agent that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent two properly completed and duly signed original copies of (A) Internal Revenue Service Form W-8ECI with respect to fees received for its own account and (B) Internal Revenue Service Form W-8IMY (together with all required accompanying documentation) with respect to payments received by it on behalf of the Lenders. Notwithstanding anything to the contrary in this Section 3.01(d)(iii), no Agent shall be required to deliver any documentation that such Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

(iv) Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 3.01(d).

(e) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Laws and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Laws and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has or has not complied with such Lender's obligations under FATCA and, if necessary, to determine the amount to deduct and withhold from such payment. For purposes of this clause (e), the term "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Any Lender or Agent claiming any additional amounts payable pursuant to this Section 3.01 shall use its reasonable efforts to mitigate or reduce the additional amounts payable, which reasonable efforts may include a change in the jurisdiction of its Lending Office (or any other measures reasonably requested by the Borrower) if such a change or other measures would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, result in any unreimbursed cost or expense or be otherwise disadvantageous to such Lender.

(g) If any Lender or Agent determines, in its sole discretion, that it has received a refund in respect of any Indemnified Taxes or Other Taxes as to which indemnification or additional amounts have been paid to it by a Loan Party pursuant to this Section 3.01, it shall promptly remit such refund to such Loan Party (but only to the extent of indemnification or

additional amounts paid by the Loan Party under this Section 3.01(g) with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) of the Lender or Agent, as the case may be, and without interest (other than any interest paid by the relevant taxing authority with respect to such refund net of any Taxes payable by any Agent or Lender on such interest); *provided* that the Loan Parties, upon the request of the Lender or Agent, as the case may be, agree promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant taxing authority) to such party in the event such party is required to repay such refund to the relevant taxing authority. This Section 3.01(g) shall not be construed to require any Agent or any Lender to make available its tax returns (or any other information relating to Taxes that it deems confidential) to the Borrower or any other Person.

Section 3.02 Illegality.

If any Lender reasonably determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans, or to determine or charge interest rates based upon the Eurocurrency Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Loans to Eurocurrency Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all applicable Eurocurrency Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment and conversion.

(a) If the Required Lenders (i) Administrative Agent reasonably determine/determines that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that (A) deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount, currency and Interest Period of such Eurocurrency Rate Loan, (B) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan or in connection with an existing or proposed Base Rate Loan, or (C) and (y) the circumstances described in Section 3.03(c)(i) do not apply (in each case with respect to this clause (i), "Impacted Loans"), or (ii) the Administrative Agent or the Required Lenders determine for any reason the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended (to the extent of the affected Eurocurrency Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of Section 3.03(a), until the Administrative Agent upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans (to the extent of the affected Eurocurrency Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Notwithstanding the foregoing but subject to the last sentence of this Section 3.03, if the Administrative Agent has made the determination described in clause (i) of Section 3.03(a), the Administrative Agent with the consent of the Borrower (such consent not to be unreasonably withheld or delayed), may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (i) of the first sentence of Section 3.03(a), (ii) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

(c) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents but subject to the last sentence of this Section 3.03, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining LIBOR for any requested Interest Period, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide LIBOR after such specific date (such specific date, the “Scheduled Unavailability Date”); or

(iii) syndicated loans currently being executed, or that include language similar to that contained in this Section 3.03, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR,

then, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing LIBOR in accordance with this Section 3.03 with (x) one or more SOFR-Based Rates or (y) another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion with the consent of the Borrower and may be periodically updated (the “Adjustment;” and any such proposed rate, a “LIBOR Successor Rate”), and any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders (A) in the case of an amendment to replace LIBOR with a rate described in clause (x), object to the Adjustment; or (B) in the case of an amendment to replace LIBOR with a rate described in clause (y), object to such amendment; provided that for the avoidance of doubt, in the case of clause (A), the Required Lenders shall not be entitled to object to any SOFR-Based Rate contained in any such amendment. Such LIBOR Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent with the consent of the Borrower (such consent not to be unreasonably withheld or delayed).

If no LIBOR Successor Rate has been determined and the circumstances under clause (i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended, (to the extent of the affected Eurocurrency Rate Loans or Interest Periods), and (y) the Eurocurrency Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans (to the extent of the affected Eurocurrency Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans (subject to the foregoing clause (y)) in the amount specified therein.

Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than zero for purposes of this Agreement (provided further that in no event shall such LIBOR Successor Rate be less than 1.25% per annum as applicable to the Term B-3 Loans).

In connection with the implementation of a LIBOR Successor Rate, the Administrative Agent will have the right with the consent of the Borrower (such consent not to be unreasonably withheld or delayed) to make LIBOR Successor Rate Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such LIBOR Successor Rate Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such LIBOR Successor Conforming Changes to the Lenders reasonably promptly after such amendment becomes effective.

For the avoidance of doubt, in the event that no alternative index rate or LIBOR Successor Rate is agreed in accordance with Section 3.03(b) or 3.03(c), as the case may be, then the last two sentences of Section 3.03(a) shall apply.

Section 3.04 Increased Cost and Reduced Return; Capital Adequacy; Eurocurrency Rate Loan Reserves.

(a) If any Lender reasonably determines that as a result of a Change in Law, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining Eurocurrency Rate Loans or (as the case may be) issuing or participating in Letters of Credit, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (including any Taxes (other than (i) Indemnified Taxes or Other Taxes or (ii) Taxes excluded from the definition of Indemnified Taxes (other than Taxes excluded solely under clause (ii) thereof)), including by imposing, modifying or holding applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, and excluding for purposes of this Section 3.04(a) any such increased costs or reduction in amount resulting from reserve requirements contemplated by Section 3.04(b) or the definition of Eurocurrency Rate), then from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by it, or participations in or issuance of Letters of Credit by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity and such Lender's desired return on capital), then from time to time upon demand of such Lender (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender, as the case may be, within fifteen (15) days after demand by such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, additional interest on the unpaid principal amount of each applicable Eurocurrency Rate Loan of the Borrower equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financing regulatory authority imposed in respect of the maintenance of the Commitments or the funding of any Eurocurrency Rate Loans of the Borrower, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrower shall have received at least fifteen (15) days' prior notice (with a copy to the Administrative Agent) of such additional interest or cost from such Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such notice.

Section 3.05 Funding Losses.

Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense actually incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Eurocurrency Rate Loan of the Borrower on a day other than the last day of the Interest Period for such Loan; or

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurocurrency Rate Loan of the Borrower on the date or in the amount notified by the Borrower;

including any loss or expense (excluding loss of anticipated profits or margin) arising from the liquidation or reemployment of funds obtained by it to maintain such Eurocurrency Rate Loan or from fees payable to terminate the deposits from which such funds were obtained.

Section 3.06 Matters Applicable to All Requests for Compensation.

(a) If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect; *provided* nothing in this Section 3.06(a) shall affect or postpone any Obligations of the Borrower or the rights of the Lenders under this Article III.

(b) If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue Eurocurrency Rate Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into Eurocurrency Rate Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(d) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of Section ~~3.01~~, 3.02, 3.03 or 3.04 shall not constitute a waiver of such Lender's right to demand such compensation, *provided* that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of Section ~~3.01~~, 3.02, 3.03 or 3.04 for any increased costs incurred or reductions suffered more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event giving rise to such claim and of such Lender's intention to claim compensation therefor (except that, if the circumstance giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

(d) If the obligation of any Lender to make or continue any Eurocurrency Rate Loan or to convert Base Rate Loans into Eurocurrency Rate Loans shall be suspended pursuant to Section 3.06(b) hereof, such Lender's applicable Eurocurrency Rate Loans shall be automatically converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for such Eurocurrency Rate Loans (or, in the case of any immediate conversion required by Section 3.02,

on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurocurrency Rate Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's applicable Eurocurrency Rate Loans shall be applied instead to its Base Rate Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurocurrency Rate Loans shall be made or continued instead as Base Rate Loans (if possible), and all Base Rate Loans of such Lender that would otherwise be converted into Eurocurrency Rate Loans shall remain as Base Rate Loans.

(e) If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of any of such Lender's Eurocurrency Rate Loans pursuant to this Section 3.06 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurocurrency Rate Loans made by other Lenders under the applicable Facility are outstanding, if applicable, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurocurrency Rate Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurocurrency Rate Loans under such Facility and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments for the applicable Facility.

(f) Any Agent or Lender claiming compensation under this Article III shall deliver a certificate to the Borrower setting forth in reasonable detail the additional amount or amounts to be paid to it hereunder, which shall be conclusive on the absence of manifest error. In determining such amounts, such Agent or Lender may use any reasonable averaging and attribution methods. Any Agent or Lender claiming compensation under Section 3.04 shall do so only to the extent such Agent or Lender requires similarly situated borrowers under comparable credit facilities to pay such amounts.

Section 3.07 Replacement of Lenders under Certain Circumstances.

If (i) any Lender ceases to make Eurocurrency Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, (iii) any Lender is a Non-Consenting Lender, (iv) any Lender becomes a Defaulting Lender, or (v) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement (or, with respect to clause (iii) above, all of its interests, rights and obligations with

respect to the Class of Loans or Commitments that is the subject of the related consent, waiver and amendment) and the related Loan Documents to one or more Eligible Assignees (provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person) that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided that*:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.07(b)(ii)(B);

(b) such Lender shall have received payment of an amount equal to the applicable outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower;

(c) such Lender being replaced pursuant to this Section 3.07 shall (1) execute and deliver an Assignment and Assumption with respect to all, or a portion as applicable, of such Lender's Commitment and outstanding Loans, and (2) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); *provided that* the failure of any such Lender to execute an Assignment and Assumption or deliver such Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment may be recorded in the Register and the Notes shall be deemed to be canceled upon such failure;

(d) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender;

(e) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(f) such assignment shall not conflict with applicable Laws; and

(g) the Lender that acts as the Administrative Agent cannot be replaced in its capacity as Administrative Agent other than in accordance with Section 9.06,

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each affected Lender or all the Lenders with respect to a certain Class or Classes of the Loans and/or Commitments and (iii) the Required Lenders (or, in the case of a consent, waiver or amendment involving all affected Lenders of a certain Class, the Required Class Lenders) have agreed (but solely to the extent required by Section 10.01) to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "**Non-Consenting Lender.**"

In connection with any such replacement, (i) if the Lender to be replaced is a Non-Consenting Lender, the Borrower shall pay to each Non-Consenting Lender, concurrently with the effectiveness of the respective assignment, the fee set forth in Section 2.05(a)(vi) to the extent applicable and (ii) if any such Non-Consenting Lender or Defaulting Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Assumption reflecting such replacement within five (5) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Assumption Agreement to such Non-Consenting Lender or Defaulting Lender, then such Non-Consenting Lender or Defaulting Lender shall be deemed to have executed and delivered such Assignment and Assumption without any action on the part of the Non-Consenting Lender or Defaulting Lender.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 3.08 Survival.

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, resignation of the Administrative Agent and any assignment of rights by, or replacement of, any Lender.

ARTICLE IV. **CONDITIONS PRECEDENT TO BORROWINGS**

Section 4.01 Conditions to Borrowing on the Closing Date.

The obligation of each Lender to make a Borrowing hereunder on the Closing Date is subject to satisfaction of the following conditions precedent, except as otherwise agreed between the Borrower and the Administrative Agent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or pdf copies or other facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party:

(i) a Committed Loan Notice in accordance with the requirements hereof;

(ii) executed counterparts of this Agreement;

(iii) a Note executed by the Borrower in favor of each Lender that has requested a Note at least two (2) Business Days in advance of the Closing Date;

(iv) the Security Agreement, Perfection Certificate, Intellectual Property Security Agreement and each other Collateral Document required to be executed on the Closing Date, duly executed by each Loan Party thereto, together with:

(A) to the extent not delivered to the First Lien Collateral Agent as bailee for the Collateral Agent pursuant to the Second Lien Intercreditor Agreement, certificates, if any, representing the Pledged Equity referred to therein accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank; and

(B) evidence that all other actions, recordings and filings required by the Collateral Documents (other than the filing or recording of any Mortgages) that the Administrative Agent may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been taken, completed or otherwise provided for;

(v) such certificates of good standing (to the extent such concept exists) from the applicable secretary of state of the state of organization of each Loan Party, certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Closing Date;

(vi) an opinion from Weil, Gotshal & Manges LLP, counsel to the Loan Parties, in customary form;

(vii) a solvency certificate from the chief financial officer, chief accounting officer or other officer with duties of the Borrower (after giving effect to the Transactions) substantially in the form attached hereto as Exhibit D-2;

(viii) evidence that the Administrative Agent has been named as loss payee and/or additional insured, as applicable, under each insurance policy with respect to all insurance as to which the Administrative Agent shall have reasonably requested to be so named; and

(ix) a copy of the Second Lien Intercreditor Agreement, duly executed and delivered by each party thereto;

provided, however, that, each of the requirements set forth in clauses (iv) and (ix) above, including the delivery of documents and instruments necessary to satisfy the Collateral and Guarantee Requirement (except for the execution and delivery of the Security Agreement and to the extent that a Lien on the Collateral may be perfected (x) by the filing of a financing statement under the Uniform Commercial Code or (y) by the delivery of stock certificates of the Borrower and the Subsidiary Guarantors with respect to which a Lien may be perfected upon closing by the delivery of a stock certificate), shall not constitute conditions precedent to any Borrowing on the Closing Date after the Borrower's use of commercially reasonable efforts to satisfy such requirement on or prior to the Closing Date without undue burden or expense (1) if the Borrower agrees to deliver, or cause to be delivered, such evidence of insurance, documents and instruments, or take or cause to be taken such other actions as may be required to confirm such insurance or perfect such security interests within ninety (90) days after the Closing Date (subject to extensions approved by the Administrative Agent in its reasonable discretion) or (2) other than with respect to the Borrower and Holdings, if the delivery of such documents and instruments

cannot be provided as a condition precedent solely because the Board of Directors of the applicable entities (each such entity, a “**Deferred Loan Party**”) have not authorized such documents or instruments (such documents and instruments, the “**Duly Authorized Documents**”) and the elections of new directors or managers, as the case may be, of the applicable Deferred Loan Party’s Board of Directors, to authorize such documents or instruments has not taken place.

(b) Payment of all fees and expenses due to the Administrative Agent and the Arrangers, to the extent invoiced at least three (3) Business Days prior to the Closing Date (except as otherwise reasonably agreed by the Borrower), required to be paid on the Closing Date.

(c) Prior to or substantially concurrently with the initial Borrowing on the Closing Date, (i) the Equity Contribution shall have been consummated; (ii) the initial borrowings under the First Lien Credit Agreement shall have been consummated; (iii) the Merger shall have been consummated in accordance with the terms of the Merger Agreement, and the Merger Agreement shall not have been amended or waived, and no consents shall have been given with respect thereto, in any material respect by the Borrower or any of its Subsidiaries in a manner materially adverse to the Lenders or the Arrangers (in each case in their capacity as such) without the consent of the Arrangers (such consent not to be unreasonably withheld, conditioned or delayed); *provided* that (a) any amendment, waiver or consent that results in a change in the amount of consideration required to consummate the Merger shall be deemed not to be materially adverse to the Lenders or the Arrangers so long as (i) any reduction shall be applied as follows: (1) 70% to reduce the commitments in respect of Initial Loans and the First Lien Initial Term Loans on a pro rata basis and (2) 30% to reduce the Equity Contribution, and (ii) any increase is funded by amounts permitted to be drawn under the First Lien Revolving Credit Commitments or the Equity Contribution (as the Equity Contribution may be increased), (b) the granting of any consent under the Merger Agreement that is not materially adverse to the interests of the Lenders or the Arrangers shall not otherwise constitute an amendment or waiver and (c) any change to the definition of “Material Adverse Change” in the Merger Agreement shall be deemed materially adverse to the Lenders and the Arrangers; and (iv) the Refinancing shall have been consummated.

(d) There shall not have occurred a Material Adverse Change (as defined in, and interpreted pursuant to, the Merger Agreement) since the date of the Merger Agreement.

(e) The Specified Representations shall be true and correct in all material respects and a Responsible Officer of the Borrower shall have certified as to the same.

(f) The Arrangers shall have received the Audited Financial Statements.

(g) The Administrative Agent shall have received, at least two (2) days prior to the Closing Date, all documentation and other information about the Borrower and the Guarantors required under applicable “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act, that has been requested by the Administrative Agent in writing at least ten (10) days prior to the Closing Date.

(h) The Specified Merger Agreement Representations shall be true and correct in all material respects, but only to the extent the failure of the Specified Merger Agreement Representations to be true and correct in all material respects gives the Merger Sub (or its applicable Affiliate) the right to terminate its obligation to consummate (or gives the Merger Sub (or its applicable Affiliate) the right not to consummate) the Acquisition under the Merger Agreement.

Without limiting the generality of the provisions of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.02 Conditions to All Borrowings After the Closing Date.

The obligation of each Lender to honor any Committed Loan Notice (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) after the Closing Date is subject to the following conditions precedent:

(i) The representations and warranties of each Loan Party set forth in Article V and in each other Loan Document shall be true and correct in all material respects on and as of the date of such Borrowings with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(ii) No Default shall exist or would result from such proposed Borrowing or from the application of the proceeds therefrom.

(iii) The Administrative Agent shall have received a Committed Loan Notice in accordance with the requirements hereof.

Each Committed Loan Notice (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by the Borrower after the Closing Date shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(i) and (ii) have been satisfied on and as of the date of the applicable Borrowing.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES

The Borrower and each of the Subsidiary Guarantors party hereto represent and warrant to the Agents and the Lenders at the time of each Borrowing (to the extent required to be true and correct for such Borrowing pursuant to Article IV) that:

Section 5.01 Existence, Qualification and Power; Compliance with Laws.

Each Loan Party and each Restricted Subsidiary that is a Material Subsidiary (a) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concept exists in such jurisdiction), (b) has all requisite power and authority to (i) own or lease its assets and carry on its business as currently conducted and (ii) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and in good standing (to the extent such concept exists in such jurisdiction) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all applicable Laws, orders, writs and injunctions and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case referred to in clause (a) (other than with respect to Holdings and the Borrower), (b)(i) (other than with respect to Holdings and the Borrower), (c), (d) or (e), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.02 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transactions, (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01), or require any payment to be made under (x) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject or (iii) violate any Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) (A) referred to in clauses (ii) and (iii), to the extent that such violation, conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect and (B) solely for purposes of Section 4.01, (x) clause (iii) shall be limited to any violation of applicable Law that would result in a Company Material Adverse Effect and (y) clause (i) shall be limited to a contravention arising out of the execution, delivery and performance of the Loan Documents.

Section 5.03 Governmental Authorization; Other Consents.

No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor

of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement) and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect.

Section 5.04 Binding Effect.

This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is a party thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by (i) Debtor Relief Laws and by general principles of equity principles of good faith and fair dealing, and (ii) the need for filings and registrations necessary to create or perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties and (iii) the effect of foreign Laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

Section 5.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements fairly present in all material respects the financial condition of the Portillo Restaurant Group as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(b) The Unaudited Financial Statements fairly present in all material respects the financial condition of the Persons referred to therein as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except (i) as otherwise expressly noted therein and (ii) to normal year-end audit adjustments, the absence of footnotes and other presentation items.

(c) The forecasts of consolidated balance sheets, income statements and cash flow statements of the Borrower and its Subsidiaries for each of the fiscal years ending July 31, 2015 through July 31, 2021, copies of which have been furnished to the Administrative Agent prior to the Closing Date, and all Projections delivered pursuant to Section 6.01 have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made, it being understood that projections as to future events are not to be viewed as facts and actual results may vary materially from such forecasts.

(d) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

Section 5.06 Litigation.

Except as set forth in Schedule 5.06, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Restricted Subsidiaries or against any of their properties or revenues (other than actions, suits, proceedings and claims in connection with the Transactions) that either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.07 Ownership of Property; Liens.

The Borrower and each of its Restricted Subsidiaries has good record title to, or valid leasehold interests in, or easements or other limited property interests in, all Real Property necessary in the ordinary conduct of its business, free and clear of all Liens except as set forth in Schedule 5.07 and except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted by Section 7.01 and except where the failure to have such title or other interest could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.08 Environmental Matters.

Except as specifically disclosed in Schedule 5.08 or except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

- (a) each Loan Party and its respective properties and operations are in compliance with all Environmental Laws, which includes obtaining and maintaining all applicable Environmental Permits required under such Environmental Laws to carry on the business of the Loan Parties;
- (b) the Loan Parties have not received any written notice that alleges any of them is in violation of or potentially liable under any Environmental Laws and none of the Loan Parties nor any of the Real Property is the subject of any claims, investigations, liens, demands, or judicial, administrative or arbitral proceedings pending or, to the knowledge of the Borrower, threatened in writing, under any Environmental Law the effect of which would be to impose liability on any Loan Party under such Environmental Law or to revoke or modify any Environmental Permit held by any of the Loan Parties; and
- (c) there has been no Release of Hazardous Materials on, at, under or from any Real Property or facilities owned, operated or leased by any of the Loan Parties, or, to the knowledge of the Borrower, Real Property formerly owned, operated or leased by any Loan Party that, in any case, could reasonably be expected to require the Borrower to perform any investigation, remedial activity or corrective action or cleanup under Environmental Laws or could otherwise reasonably be expected to result in the Borrower incurring liability under Environmental Laws.

Section 5.09 Taxes.

Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Borrower and its Restricted Subsidiaries have timely filed all tax returns required to be filed by them, and have paid all Taxes levied or imposed upon them or their properties, income, profits or assets, that are due and payable (including in their capacity as a withholding agent), except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax deficiency or assessment known to any Loan Parties against the Loan Parties that, if made would, individually or in the aggregate, have a Material Adverse Effect.

Section 5.10 ERISA Compliance.

(a) Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other applicable Federal or state Laws.

(b) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); and (iii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan, except, with respect to each of the foregoing clauses of this Section 5.10(b), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.11 Subsidiaries; Equity Interests.

As of the Closing Date (after giving effect to the Transactions), no Loan Party has any Material Subsidiaries other than those specifically disclosed in Schedule 5.11, and all of the outstanding Equity Interests owned by the Loan Parties (or a Subsidiary of any Loan Party) in such Material Subsidiaries have been validly issued and are fully paid and all Equity Interests owned by a Loan Party (or a Subsidiary of any Loan Party) in such Material Subsidiaries are owned free and clear of all Liens except (i) those created under the Collateral Documents and (ii) any Lien that is permitted under Section 7.01. As of the Closing Date, Schedules 1(a) and 5(a) to the Perfection Certificate (a) set forth the name and jurisdiction of each Domestic Subsidiary that is a Loan Party, (b) set forth the ownership interest of the Borrower and any other Subsidiary thereof in each Subsidiary, including the percentage of such ownership and (c) identifies each Subsidiary that is a Subsidiary the Equity Interests of which are required to be pledged on the Closing Date pursuant to the Collateral and Guarantee Requirement.

Section 5.12 Margin Regulations; Investment Company Act.

(a) The Borrower is not engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation U of the Board of Governors of the United States Federal Reserve System.

(b) Neither the Borrower nor any of its Restricted Subsidiaries is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 5.13 Disclosure.

No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, *pro forma* financial information and information of a general economic or industry nature) to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not materially misleading. With respect to projected financial information and *pro forma* financial information, the Borrower represents that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

Section 5.14 Labor Matters.

Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against the Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened and (b) hours worked by and payments made to employees of the Borrower or any of its Restricted Subsidiaries have been in compliance with the Fair Labor Standards Act or any other applicable Laws dealing with such matters.

Section 5.15 Intellectual Property; Licenses, Etc.

The Borrower and its Restricted Subsidiaries own, license or possess the right to use all of the trademarks, service marks, trade names, domain names, copyrights, patents, patent rights, licenses, technology, software, know-how database rights, design rights and other intellectual property rights (collectively, "**IP Rights**") that are reasonably necessary for the operation of their respective businesses as currently conducted, and such IP Rights do not conflict with the rights of any Person, except to the extent the absence of such IP Rights and such conflicts, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower and its Restricted Subsidiaries as currently conducted does not infringe upon any rights held by any Person except for such infringements, individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the IP Rights is pending or, to the knowledge of the Borrower, threatened in writing against any Loan Party or any of the Restricted Subsidiaries, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.16 Solvency.

On the Closing Amendment No. 2 Effective Date, after giving effect to the Transactions, the Borrower and its Restricted Subsidiaries, on a consolidated basis, are Solvent.

Section 5.17 Subordination of Junior Financing.

The Obligations under any Facility are “Senior Debt,” “Senior Indebtedness,” “Guarantor Senior Debt” or “Senior Secured Financing” (or any comparable term) under, and as defined in, any Junior Financing Documentation in respect of any Junior Financing that is subordinated in right of payment to the Obligations under such Facility.

Section 5.18 USA Patriot Act, Anti-Corruption Laws and Sanctions.

(a) To the extent applicable, each of Holdings and its Subsidiaries is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the USA Patriot Act.

(b) (i) No part of the proceeds of the Loans (or any Letters of Credit) will be used directly or, to the knowledge of Holdings and its Subsidiaries, indirectly, (A) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”) or (B) except as would not reasonably be expected to have a Material Adverse Effect, in violation of any other Anti-Corruption Laws and (ii) Holdings, its Subsidiaries and, to the knowledge of Holdings or such Subsidiary, their respective directors, officers and employees, are currently in compliance with (A) the FCPA in all material respects and (B) except as would not reasonably be expected to have a Material Adverse Effect, any other Anti-Corruption Laws.

(c) (i) None of Holdings or its Subsidiaries will directly or, to the knowledge of Holdings or such Subsidiary, indirectly, use the proceeds of the Loans in violation of applicable Sanctions or otherwise knowingly make available such proceeds to any Person for the purpose of financing the activities of any Sanctioned Person, except to the extent licensed, exempted or otherwise approved by a competent governmental body responsible for enforcing such Sanctions, (ii) none of Holdings, any Subsidiary or to the knowledge of Holdings or such Subsidiary, their respective directors, officers or employees or, to the knowledge of the Borrower, any controlled Affiliate of Holdings, the Borrower or its Subsidiaries that will act in any capacity in connection with or benefit from any Facility, is a Sanctioned Person and (iii) none of Holdings, its Subsidiaries or, to the knowledge of Holdings or such Subsidiary, their respective directors, officers and employees, are in violation of applicable Sanctions in any material respect.

Section 5.19 Security Documents.

Except as otherwise contemplated hereby or under any other Loan Documents, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents (including the delivery to the Administrative Agent (or the First Lien Administrative Agent as bailee for the Administrative Agent pursuant to the Second Lien Intercreditor Agreement) of any Pledged Debt and any Pledged Equity required to be delivered pursuant to the applicable Collateral Documents), are

effective to create in favor of the Administrative Agent for the benefit of the Secured Parties, except as otherwise provided hereunder, including subject to Liens permitted by Section 7.01, a legal, valid, enforceable and perfected second priority Lien on all right, title and interest of the respective Loan Parties in the Collateral described therein.

Notwithstanding anything herein (including this Section 5.19) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty as to (A) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (C) on the Closing Date and until required pursuant to Section 6.11 or 4.01(a)(iv), the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Closing Date pursuant to Section 4.01(a)(iv).

ARTICLE VI.

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements as to which arrangements reasonably satisfactory to the applicable Hedge Bank have been made) hereunder which is accrued and payable shall remain unpaid or unsatisfied, then from and after the Closing Date, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.15) cause each of its Restricted Subsidiaries to:

Section 6.01 Financial Statements.

Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) commencing with the fiscal year ending December 31, 2014, within one hundred fifty (150) days after the end of each of the fiscal years of the Borrower ending December 31, 2014 and December 31, 2015, and one hundred twenty (120) days after the end of each fiscal year of the Borrower thereafter, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of comprehensive income, shareholders' equity and cash flows for such fiscal year, setting forth in each case commencing with the fiscal year ending December 31, 2015, in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an accounting firm, which accounting firm shall, commencing with the fiscal year ending December 31, 2015, be an independent registered public accounting firm of nationally recognized standing, which report and opinion (i) shall be prepared in accordance with generally accepted auditing standards and (ii) shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the

scope of such audit (except as may be required as a result of (x) a prospective or actual event of default with respect to the Financial Covenant (as defined under the First Lien Credit Agreement), or (y) the impending maturity of any Facility, any Incremental Equivalent Debt, any Refinancing Equivalent Debt, the First Lien Term Loans, any First Lien Incremental Equivalent Debt or any First Lien Refinancing Equivalent Debt);

(b) commencing with the fiscal quarter ending September 30, 2014, within seventy-five (75) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter and the related (i) consolidated statements of comprehensive income for such fiscal quarter and for the portion of the fiscal year then ended and (ii) consolidated statements of cash flows for the portion of the fiscal year then ended, setting forth in each case commencing with the fiscal quarter ending September 30, 2015 in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) no later than one hundred fifty (150) days after the end of the fiscal year ending December 31, 2015 and within one-hundred twenty (120) days after the end of each subsequent fiscal year, a reasonably detailed consolidated budget for the then-current fiscal year on a quarterly basis (including a projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal year and the related consolidated statements of projected cash flow and projected income for such fiscal year and a summary of the material underlying assumptions applicable thereto) (collectively, the "**Projections**"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time of preparation of such Projections, it being understood that actual results may vary from such Projections and that such variations may be material; and

(d) simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 6.01(a) and 6.01(b) above, the related unaudited consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from such consolidated financial statements.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 6.01 may be satisfied with respect to financial information of the Borrower and the Restricted Subsidiaries by furnishing (A) the applicable financial statements of Holdings (or any direct or indirect parent of Holdings) or (B) the Borrower's or Holdings' (or any direct or indirect parent thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; *provided* that, with respect to clauses (A) and (B), (i) to the extent such information relates to Holdings (or a parent thereof), such information is accompanied by unaudited consolidating information that explains in reasonable detail the differences between the information relating to Holdings (or such direct or indirect parent thereof), on the one hand, and the information relating to the Borrower and its consolidated Restricted Subsidiaries on a standalone basis, on the other hand and (ii) to the

extent such information is in lieu of information required to be provided under Section 6.01(a), such materials are, to the extent applicable, accompanied by a report and opinion of any accounting firm, which accounting firm shall, commencing with the fiscal year ending December 31, 2015, be an independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit (except as may be required as a result of (x) a prospective Event of Default or actual event of default with respect to the Financial Covenant under the First Lien Credit Agreement or (y) the impending maturity of any Facility, any Incremental Equivalent Debt, any Refinancing Equivalent Debt, the First Lien Term Loans, any First Lien Incremental Equivalent Debt or any First Lien Refinancing Equivalent Debt).

Any financial statement required to be delivered pursuant to Section 6.01(a) or (b) shall not be required to include acquisition accounting adjustments relating to the Transactions or any Permitted Acquisition to the extent it is not practicable to include any such adjustments in such financial statement.

Documents required to be delivered pursuant to Section 6.01 and Section 6.02(b) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower (or any direct or indirect parent of the Borrower) posts such documents, or provides a link thereto on the website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower’s behalf on IntraLinks or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that (i) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents (which may be electronic copies delivered via electronic mail) to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(a) to the Administrative Agent (which may be electronic copies delivered via electronic mail). Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “**Borrower Materials**”) by posting the Borrower Materials on IntraLinks, DebtDomain, SyndTrak or another similar electronic system (the “**Platform**”) and (b) certain of the Lenders (each, a “**Public Lender**”) may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Subsidiaries, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively

contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (*provided, however*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.08); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Administrative Agent and the Arranger shall treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark the Borrower Materials "PUBLIC."

Section 6.02 Certificates; Other Information.

Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) no later than five (5) days after ~~the~~each delivery of the financial statements referred to in Section 6.01(a) and (b) a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower, in each case together with a management's discussion and analysis of the consolidated results of operations of the Borrower for the quarter or year, as the case may be, covered by such financial statements;

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(c) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), (i), in the case of annual Compliance Certificates only, a report setting forth the information required by those sections of the Perfection Certificate describing the legal name and the jurisdiction of formation of each Loan Party and the location of the chief executive office of each Loan Party or confirming that there has been no change in such information since the Closing Date or, if later, the date of the last such report and (ii) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such Compliance Certificate (to the extent that there have been any changes in the identity or status as a Restricted Subsidiary or Unrestricted Subsidiary of any such Subsidiaries since the later of the Closing Date or the most recent list provided); and

(d) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Loan Parties or any of their respective Restricted Subsidiaries, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request.

Section 6.03 Notices.

Promptly after a Responsible Officer of the Borrower has obtained actual knowledge thereof, notify the Administrative Agent:

(a) of the occurrence of any Default;

(b) of the occurrence of an ERISA Event which could reasonably be expected to result in a Material Adverse Effect; and

(c) of the filing or commencement of, or any written threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority against the Borrower or any of its Restricted Subsidiaries, that could in each case reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to Section 6.03(a), (b) or (c) (as applicable) and (y) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04 Payment of Taxes.

Pay, discharge or otherwise satisfy, as the same shall become due and payable in the normal conduct of its business, all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (a) any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP or (b) the failure to pay or discharge the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization, and

(b) take all reasonable action to maintain all rights, privileges (including its good standing where applicable in the relevant jurisdiction), permits, licenses and franchises material to the ordinary conduct of its business,

except, in the case of clause (a) (other than with respect to the Borrower) or (b), to the extent (i) that failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (ii) pursuant to any merger, consolidation, liquidation, dissolution or Disposition permitted by Article VII.

Section 6.06 Maintenance of Properties.

Except if the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and fire, casualty or condemnation excepted.

Section 6.07 Maintenance of Insurance.

Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons. Each such policy of insurance shall as appropriate (i) name the Administrative Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interest may appear or (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement that names the Administrative Agent, on behalf of the Secured Parties, as loss payee thereunder. If the improvements on any Mortgaged Property are at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then, to the extent required by applicable Flood Insurance Laws, the Borrower shall, or shall cause each Loan Party to, (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount reasonably satisfactory to the Administrative Agent and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent.

Section 6.08 Compliance with Laws.

Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.09 Books and Records.

Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP and which reflect all material financial transactions and matters involving the assets and business of the Borrower or a Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

Section 6.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* that only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year and only one (1) such time shall be at the Borrower's expense; *provided, further*, that during the continuance of an Event of Default, the Administrative Agent (or any of its respective representatives or independent contractors), on behalf of the Lenders, may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 6.10, none of the Borrower or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (c) is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 6.11 Additional Collateral; Additional Guarantors.

At the Borrower's expense, subject to the limitations and exceptions of this Agreement, including, without limitation, the provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(a) Upon the formation or acquisition of any new direct or indirect wholly owned Material Domestic Subsidiary (in each case, other than an Excluded Subsidiary) by any Loan Party or the designation in accordance with Section 6.14 of any existing direct or indirect wholly owned Material Domestic Subsidiary as a Restricted Subsidiary (in each case, other than an Excluded Subsidiary) ~~or~~, any Subsidiary becoming a wholly owned Material Domestic Subsidiary (in each case, other than an Excluded Subsidiary) or any wholly owned Material Domestic Subsidiary ceasing to be an Excluded Subsidiary:

(i) within sixty (60) days after such formation, acquisition or designation or such a Subsidiary so becoming a Material Domestic Subsidiary, or such longer period as the Administrative Agent may agree in its discretion:

(A) cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Administrative Agent, other than with respect to any Excluded Assets, joinders to this Agreement as Guarantors, Security Agreement Supplements, Intellectual Property Security Agreements, a counterpart of the Intercompany Note, joinders to the Intercreditor Agreements then in effect and other security agreements and documents as reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent (consistent with the Security Agreement, Intellectual Property Security Agreements and other security agreements in effect on the Closing Date), in each case granting Liens required by the Collateral and Guarantee Requirement;

(B) cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement (and the parent of each such Material Domestic Subsidiary that is a Guarantor) to deliver to the Administrative Agent (or the First Lien Administrative Agent as bailee for the Administrative Agent pursuant to the Second Lien Intercreditor Agreement) any and all certificates representing Equity Interests (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement or the Security Agreement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(C) take and cause such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement and the parent of such Material Domestic Subsidiary to take whatever action (including the recording of Mortgages, the filing of UCC financing statements and delivery of stock and membership interest certificates to the extent certificated) as may be required pursuant to the terms of the Collateral Documents or as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and perfected second priority Liens (subject to Liens permitted by Section 7.01) to the extent required by the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement;

(ii) if reasonably requested by the Administrative Agent, within sixty (60) days after such request (or such longer period as the Administrative Agent may agree in its discretion), deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties to the Administrative Agent as to such matters set forth in this Section 6.11(a) as the Administrative Agent may reasonably request;

(iii) as promptly as practicable after the request therefor by the Administrative Agent, deliver to the Administrative Agent with respect to each Material Real Property, any existing title reports, abstracts or environmental assessment reports, to the extent available and in the possession or control of the Borrower; *provided, however*, that there shall be no obligation to deliver to the Administrative Agent any existing environmental assessment report whose disclosure to the Administrative Agent would require the consent of a Person other than the Borrower or one of its Subsidiaries, where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained; and

(iv) if reasonably requested by the Administrative Agent, within sixty (60) days after such request (or such longer period as the Administrative Agent may agree in its discretion), deliver to the Administrative Agent any other items necessary from time to time to satisfy the Collateral and Guarantee Requirement with respect to perfection and existence of security interests with respect to property of any Guarantor acquired after the Closing Date and subject to the Collateral and Guarantee Requirement, but not specifically covered by the preceding clauses (i), (ii) or (iii) or clause (b) below.

(b) Not later than one hundred twenty (120) days after the acquisition by any Loan Party of Material Real Property as determined by the Borrower (acting reasonably and in good faith) (or such longer period as the Administrative Agent may agree in its discretion) that is required to be provided as Collateral pursuant to the Collateral and Guarantee Requirement, which property would not be automatically subject to another Lien pursuant to pre-existing Collateral Documents, cause such property to be subject to a Lien and Mortgage in favor of the Administrative Agent for the benefit of the Secured Parties and take, or cause the relevant Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect or record such Lien, in each case to the extent required by, and subject to the limitations and exceptions of this Agreement, including, without limitation, the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement.

Section 6.12 Compliance with Environmental Laws.

Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and, in each case to the extent the Loan Parties are required by applicable Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with applicable Environmental Laws.

Section 6.13 Further Assurances.

Promptly upon reasonable request by the Administrative Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents, to the extent required pursuant to the Collateral and Guarantee Requirement. If the Administrative Agent reasonably determines that it is required by applicable Law to have appraisals prepared in respect of the Real Property of any Loan Party subject to a mortgage constituting Collateral, the Borrower shall provide to the Administrative Agent appraisals that satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of FIRREA.

Section 6.14 Designation of Subsidiaries.

The Borrower may at any time after the Closing Date designate any Restricted Subsidiary of the Borrower as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that (i) immediately before and after such designation, no Default shall have occurred and be continuing, (ii) in the case of the designation of an Unrestricted Subsidiary as a Restricted Subsidiary, immediately after giving effect to such designation, the Borrower could incur \$1.00 of Permitted Ratio Debt, or the Consolidated Cash Interest Coverage Ratio would be no less than the Consolidated Cash Interest Coverage Ratio immediately prior to giving effect thereto, (iii) no Subsidiary may be designated as an Unrestricted Subsidiary if, after such designation, it would be a "Restricted Subsidiary" for the purpose of any Junior Financing, any Incremental Equivalent Debt, any Permitted Ratio Debt or any Permitted Refinancing thereof and (iv) no Restricted Subsidiary may be designated an Unrestricted Subsidiary if it was previously designated an Unrestricted Subsidiary. The designation of any Subsidiary as an Unrestricted Subsidiary after the Closing Date shall constitute an Investment by the Borrower therein at the date of designation as set forth in the definition of Investment. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the Borrower in Unrestricted Subsidiaries pursuant to the definition of Investment.

Section 6.15 Maintenance of Ratings.

Use commercially reasonable efforts to maintain (i) a public corporate credit rating (but not any specific rating) from S&P and a public corporate family rating (but not any specific rating) from Moody's, in each case in respect of the Borrower, and (ii) a public rating (but not any specific rating) in respect of the ~~Initial~~Term B-3 Loans from each of S&P and Moody's.

Section 6.16 Use of Proceeds.

Use the proceeds of any Borrowing on the Closing Date, whether directly or indirectly, in a manner consistent with the uses set forth in the preliminary statements to this Agreement, and after the Closing Date, use the proceeds of any Borrowing for any purpose not otherwise prohibited under this Agreement, including for general corporate purposes, working capital needs, the repayment of Indebtedness, the making of Restricted Payments and the making of Investments. Use the proceeds of the Term B-3 Loans made by the Additional Term B-3 Lender on the Amendment No. 2 Effective Date for any purpose other than the repayment of Initial Loans that do not constitute Converted Initial Loans and the repayment of Term B-2 Loans that do not constitute Converted Term B-2 Loans

Section 6.17 ~~Annual~~Quarterly Lender Calls.

Participate in a conference call with the Administrative Agent and the Lenders to discuss the financial condition and results of operations of the Borrower and its Subsidiaries for the most recently-ended period for which financial statements have been delivered pursuant to Section 6.01(a) or Section 6.01(b), as the case may be, which call shall occur within a reasonable period of time after the delivery of such ~~audited~~ financial statements and after the Lenders have first been provided reasonable notice of such call; provided, however, if the Borrower is holding a conference call to discuss the financial condition and results of operations of the Borrower and its Subsidiaries for ~~the~~ such most recently-ended period for which ~~audited~~ financial statements have been delivered which is either open to the public or has been requested by the First Lien Administrative Agent pursuant to Section 6.17 of the First Lien Credit Agreement, the Borrower will not be required to hold a second, separate call for the Lenders as long as Lenders are provided access to such conference call.

Section 6.18 Post-Closing Actions.

Complete each of the actions described on Schedule 6.18 as soon as commercially reasonable and by no later than the date set forth in Schedule 6.18 with respect to such action or such later date as the Administrative Agent may reasonably agree.

ARTICLE VII.
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements as to which arrangements reasonably satisfactory to the applicable Hedge Bank have been made) hereunder which is accrued and payable shall remain unpaid or unsatisfied, then from and after the Closing Date, the Borrower (and, with respect to Section 7.14 only, Holdings) shall not and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

Section 7.01 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) (i) Liens created pursuant to any Loan Document and (ii) subject to the Second Lien Intercreditor Agreement and the limitations in Section 7.03(q), Liens on the Collateral created pursuant to any First Lien Loan Document;

(b) Liens existing on the Closing Date and listed in Schedule 7.01(b) and any modifications, replacements, renewals, refinancings or extensions thereof; *provided* that (i) the Lien does not extend to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 7.03, and (B) proceeds and products thereof, and (ii) the replacement, renewal, extension or refinancing of the obligations secured or benefited by such Liens, to the extent constituting Indebtedness, is permitted by Section 7.03;

(c) Liens for taxes, assessments or governmental charges (i) that are not overdue for a period of more than thirty (30) days or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or the equivalent accounting principles in the relevant local jurisdiction or (ii) that are not required to be paid pursuant to Section 6.04.

(d) statutory or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, so long as, in each case, such Liens secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Liens or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or the equivalent accounting principles in the relevant local jurisdiction;

(e) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, health, disability or employee benefits, unemployment insurance and other social security laws or similar legislation or regulation or other insurance-related obligations (including, but not limited to, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Holdings, the Borrower or any of its Restricted Subsidiaries;

(f) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business or consistent with past practice or industry practice;

(g) easements, rights-of-way, covenants, conditions, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and minor title defects affecting Real Property that do not in the aggregate materially interfere with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries, taken as a whole, or the use of the property for its intended purpose, and any other exceptions to title on the final Mortgage Policies issued to the Administrative Agent in connection with the Mortgaged Properties;

(h) Liens securing judgments or orders for the payment of money not constituting an Event of Default under Section 8.01(h);

(i) leases, licenses, cross-licenses, subleases or sublicenses granted to others in the ordinary course of business which (i) do not interfere in any material respect with the business of the Borrower and its Restricted Subsidiaries, taken as a whole, (ii) do not secure any Indebtedness or (iii) are permitted by Section 7.05;

(j) Liens in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(k) Liens (i) of a collection bank arising under Section 4-208 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking or other financial institution arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry or arising pursuant to such banking institution's general terms and conditions;

(l) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 7.06 to be applied against the purchase price for such Investment or other acquisition, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or other acquisition or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(m) Liens (i) in favor of the Borrower or a Restricted Subsidiary on assets of a Non-Loan Party or (ii) in favor of the Borrower or any Subsidiary Guarantor on assets of a Restricted Subsidiary;

(n) any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases, subleases, licenses, cross-licenses or sublicenses entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(o) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(p) Liens deemed to exist in connection with Investments in repurchase agreements under Section 7.06 or the definition of "Permitted Investments";

(q) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts maintained in the ordinary course of business and not for speculative purposes;

(r) Liens that are contractual rights of set-off or rights of pledge (i) relating to the establishment of depository relations with banks or other deposit-taking financial institutions and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any of its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(s) Liens solely on any cash earnest money deposits made by the Borrower or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(t) ground leases in respect of Real Property on which facilities owned or leased by the Borrower or any of its Restricted Subsidiaries are located;

(u) Liens to secure Indebtedness permitted under Section 7.03(e); *provided* that (i) such Liens are created within two hundred seventy (270) days of the acquisition, construction, repair, lease or improvement of the property subject to such Liens, (ii) such Liens do not at any time encumber property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits and (iii) with respect to Capitalized Leases, such Liens do not at any time extend to or cover any assets (except for replacements, additions and accessions to such assets) other than the assets subject to such Capitalized Leases and the proceeds and products thereof and customary security deposits; *provided* that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(v) Liens on property of any Non-Loan Party, which Liens secure Indebtedness of any Non-Loan Party permitted under Section 7.03 or other obligations of any Non-Loan Party not constituting Indebtedness;

(w) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (other than by designation as a Restricted Subsidiary pursuant to Section 6.14), in each case after the Closing Date; *provided* that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition) and (iii) the Indebtedness secured thereby is permitted under Section 7.03(g), (m), (s) or (x);

(x) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Real Property that does not materially interfere with the ordinary conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(y) Liens arising from precautionary Uniform Commercial Code financing statement or similar filings;

(z) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(aa) the modification, replacement, renewal or extension of any Lien permitted by clauses (b), (u), (w) and (cc) of this Section 7.01; *provided* that (i) the Lien does not extend to any additional property, other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien and (B) proceeds and products thereof, and (ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by Section 7.03 (to the extent constituting Indebtedness);

(bb) Liens with respect to property or assets of the Borrower or any of its Restricted Subsidiaries securing obligations in an aggregate principal amount outstanding at any time not to exceed the greater of \$30,000,000 and 2.65% of Total Assets, in each case determined as of the date of incurrence;

(cc) Liens securing obligations in respect of Indebtedness; *provided*, that (1) after giving Pro Forma Effect to the incurrence of such Indebtedness (and any Specified Transactions consummated in connection therewith), (x) if such Liens are not expressly junior in right of security with the First Lien Obligations that are secured on a first lien basis, the Borrower's Consolidated First Lien Net Leverage Ratio shall be no greater than ~~5.00~~2.50:1.00 or (y) if such Liens rank junior in right of security with the First Lien Obligations that are secured on a first lien basis, the Borrower's Secured Net Leverage Ratio shall be no greater than ~~6.25~~4.20 :1.00;

(dd) Liens on the Collateral securing obligations in respect of: (i) Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt and any Permitted Refinancing of any of the foregoing; *provided* that (x) any such Liens securing any Permitted Refinancing in respect of Permitted Pari Passu Secured Refinancing Debt are subject to the Second Lien Intercreditor Agreement or the Junior Lien Intercreditor Agreement and (y) any such Liens securing any Permitted Refinancing in respect of Permitted Junior Secured Refinancing Debt are subject to the Third Lien Intercreditor Agreement or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent and (ii) First Lien Incremental Equivalent Debt and First Lien Refinancing Equivalent Debt; *provided* such Liens are subject to the Second Lien Intercreditor Agreement or other lien subordination and intercreditor arrangement satisfactory to the Borrower and the Administrative Agent;

(ee) Liens on specific items of inventory or other goods and the proceeds thereof of any Person securing such Person's obligations in respect of letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods in the ordinary course of business;

(ff) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(gg) Liens securing obligations in respect of Indebtedness permitted under Section 7.03(w);

(hh) Liens on the Securitization Assets arising in connection with a Qualified Securitization Financing; and

(ii) Liens in respect of Sale Leasebacks (including any Sale Leaseback Transaction), in each case on the assets or property sold and leased back in such Sale Leaseback.

The expansion of Liens by virtue of accrual of interest, the accretion of accreted value, the payment of interest or dividends in the form of additional Indebtedness, amortization of original issue discount and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 7.01.

Section 7.02 [Reserved].

Section 7.03 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) (i) Indebtedness outstanding on the Closing Date and listed in Schedule 7.03(b) and any Permitted Refinancing thereof and (ii) intercompany Indebtedness among the Borrower and any Restricted Subsidiary outstanding on the Closing Date and any Permitted Refinancing thereof; *provided* that all such Indebtedness of any Loan Party owed to any Non-Loan Party shall be unsecured and subordinated to the Obligations pursuant to an Intercompany Note;

(c) Guarantees by the Borrower and any Restricted Subsidiary in respect of Indebtedness of the Borrower or any Restricted Subsidiary of the Borrower otherwise permitted hereunder; *provided* that (A) no Guarantee by any Restricted Subsidiary of any Indebtedness constituting a Specified Junior Financing Obligation, Incremental Equivalent Debt, Refinancing Equivalent Debt, First Lien Term Loans, First Lien Incremental Equivalent Debt or First Lien Refinancing Equivalent Debt shall be permitted unless such guaranteeing party shall have also provided a Guarantee of the Obligations on the terms set forth herein and (B) if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness;

(d) Indebtedness of the Borrower or any Restricted Subsidiary owing to any Loan Party or any other Restricted Subsidiary (or issued or transferred to any direct or indirect parent of a Loan Party which is substantially contemporaneously transferred to a Loan Party or any Restricted Subsidiary of a Loan Party) to the extent constituting a Restricted Investment permitted by Section 7.06 or a Permitted Investment; *provided* that all such Indebtedness of any Loan Party owed to any Non-Loan Party shall be unsecured and subordinated to the Obligations pursuant to the Intercompany Note;

(e) (i) Attributable Indebtedness and other Indebtedness (including Capitalized Leases) financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred by the Borrower or any Restricted Subsidiary prior to or within two hundred seventy (270) days after the acquisition, construction, repair, replacement, lease or improvement of the applicable asset and any Permitted Refinancing thereof in an aggregate amount not to exceed the greater of \$24,000,000 and 2.4% of Total Assets, in each case determined at the time of incurrence at any time outstanding and (ii) Attributable Indebtedness arising out of Sale Leaseback and any Permitted Refinancing of such Attributable Indebtedness;

(f) Indebtedness in respect of Swap Contracts designed to hedge against Holdings', the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes and Guarantees thereof;

(g) Indebtedness of the Borrower or any Restricted Subsidiary (i) assumed (including Acquired Indebtedness) in connection with any Permitted Acquisition or (ii) incurred to finance a Permitted Acquisition and, in the case of clauses (i) and (ii), any Permitted Refinancing of any such Indebtedness; *provided* that after giving Pro Forma Effect to such Permitted Acquisition and the assumption or incurrence of such Indebtedness incurred or assumed pursuant to this clause (g), ~~either~~:

(A) the Consolidated Cash Interest Coverage Ratio is at least ~~1.75~~2.00:1.00, ~~or~~and

~~(B) the Consolidated Cash Interest Coverage Ratio is equal to or greater than immediately prior to such Permitted Acquisition, or~~

(B) ~~(C)~~ the Total Net Leverage Ratio is no greater than ~~6.50~~5.20 :1.00, ~~or~~

~~(D) the Total Net Leverage Ratio is equal to or less than immediately prior to such Permitted Acquisition;~~

provided that (1) any such Indebtedness incurred (but not assumed) does not mature or have scheduled amortization or payments of principal (other than customary "AHYDO catch-up payments", customary offers to repurchase and prepayment events upon a change of control, asset sale or event of loss and a customary acceleration right after an event of default) prior to the Maturity Date of the Initial Term B-3 Loans at the time such Indebtedness is incurred and (2) any such Indebtedness incurred by a Non-Loan Party does not exceed in the aggregate at any time outstanding the greater of \$24,000,000 and 2.4% of Total Assets, in each case determined at the time of incurrence;

(h) Indebtedness representing deferred compensation to employees of the Borrower (and any direct or indirect parent thereof) or any of its Restricted Subsidiaries incurred in the ordinary course of business;

(i) Indebtedness to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests or other equity-based awards of the Borrower or any direct or indirect parent of the Borrower permitted by Section 7.06;

(j) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in a Permitted Acquisition, any other Investment expressly permitted hereunder or any Disposition, in each case, constituting indemnification obligations or obligations in respect of purchase price (including earnouts) or other similar adjustments;

(k) Indebtedness consisting of obligations of the Borrower or any of its Restricted Subsidiaries under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions, and Permitted Acquisitions or any other Investment expressly permitted under this Agreement;

(l) Cash Management Obligations and other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements in the ordinary course of business and any Guarantees thereof;

(m) Indebtedness which, when aggregated with the principal amount of all other Indebtedness incurred pursuant to this clause (m) and then outstanding, does not exceed the greater of \$54,000,000 and 5.40% of Total Assets (in each case determined at the time of incurrence or assumption, it being understood that any Indebtedness incurred pursuant to this Section 7.03(m) shall cease to be deemed incurred or outstanding for purposes of this Section 7.03(m) but shall be deemed incurred for the purposes of this covenant from and after the first date on which the Borrower or such Restricted Subsidiary could have incurred such Indebtedness under Section 7.03(s) without reliance on this Section 7.03(m));

(n) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, incurred in the ordinary course of business;

(o) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(p) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(q) (x) Indebtedness incurred under the First Lien Credit Agreement, First Lien Incremental Equivalent Debt and First Lien Refinancing Equivalent Debt, in an aggregate principal amount not exceeding an amount at any time outstanding equal to (1) ~~\$438,000,000~~ 382,400,000 plus (2) the First Lien Incremental Usage Amount at such time and (y) Indebtedness incurred under the First Lien Credit Agreement or First Lien Incremental Equivalent Debt to the extent (1) if such Indebtedness is secured by the Collateral on a senior basis to the Obligations (and, for purposes of calculating the Consolidated First Lien Net Leverage Ratio, treating such Indebtedness as secured by the Collateral on a first-lien basis whether or not so secured), the Consolidated First Lien Net Leverage Ratio on a Pro Forma Basis after giving effect to such incurrence and the use of proceeds thereof does not exceed 5.252.50:1.00 (2) if such Indebtedness is secured by the Collateral on a *pari passu* or junior basis to the Obligations under the Initial Loans, the Secured Net Leverage Ratio on a Pro Forma Basis after giving effect to such incurrence and the use of proceeds thereof does not exceed 6.504.20:1.00 and (3) if such Indebtedness is unsecured, the Total Net Leverage Ratio on a Pro Forma Basis after giving effect to such incurrence and the use of proceeds thereof does not exceed 6.504.20:1.00 and (z) Permitted Refinancings or First Lien Refinancing Equivalent Debt in respect of Indebtedness incurred pursuant to clause (x) or (y) hereof;

(r) Indebtedness supported by a letter of credit under the First Lien Credit Agreement, in a principal amount not to exceed the face amount of such letter of credit;

(s) Permitted Ratio Debt and any Permitted Refinancing thereof;

(t) Refinancing Equivalent Debt;

(u) Indebtedness of a Non-Loan Party which, when aggregated with the principal amount of all other Indebtedness incurred pursuant to this clause (u) and then outstanding, does not exceed the greater of \$18,000,000 and 1.5% of Total Assets (in each case determined at the date of incurrence or issuance, it being understood that any Indebtedness incurred pursuant to this Section 7.03(u) shall cease to be deemed incurred or outstanding for purposes of this Section 7.03(u) but shall be deemed incurred or issued for the purposes of this covenant from and after the first date on which the Borrower or such Restricted Subsidiary could have incurred such Indebtedness under Section 7.03(s) without reliance on this Section 7.03(u));

(v) Indebtedness incurred by a Securitization Subsidiary in a Qualified Securitization Financing that is not recourse (except for Standard Securitization Undertakings and Limited Originator Recourse) to the Borrower or any of the Restricted Subsidiaries;

(w) Incremental Equivalent Debt;

(x) Indebtedness of the Borrower or any Restricted Subsidiary (and any Permitted Refinancing thereof) in an aggregate principal amount not to exceed the amount of the net cash proceeds received by the Borrower since the Closing Date from the issuance or sale of Equity Interests of the Borrower or cash contributed to the capital of the Borrower (in each case, other than proceeds of Disqualified Equity Interests, sales of Equity Interests to the Borrower or any of its Subsidiaries or proceeds which have been designated as a Cure Amount under and as defined in the First Lien Credit Agreement) as determined in accordance with clauses (b) and (c) of the definition of "Cumulative Credit" to the extent such net cash proceeds have not been applied pursuant to such clauses to make Restricted Payments pursuant to Section 7.06 or to prepay, redeem, purchase, defease or satisfy Indebtedness pursuant to Section 7.13, so long as (i) such Indebtedness is incurred within one (1) year following the receipt by the Borrower of such net cash proceeds and (ii) such Indebtedness is designated as "Contribution Indebtedness" on the date incurred;

(y) unsecured Indebtedness in respect of obligations of the Borrower or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; *provided* that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money; and

(z) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (y) above.

For purposes of determining compliance with Section 7.03, in the event that an item of Indebtedness (or any portion thereof) at any time, whether at the time of incurrence or upon the application of all or a portion of the proceeds thereof or subsequently, meets the criteria of more than one of the categories of permitted Indebtedness described in Section 7.03(a) through (z) above, the Borrower, in its sole discretion, will classify and may subsequently reclassify such item of Indebtedness (or any portion thereof) in any one or more of the types of Indebtedness described in Section 7.03(a) through (z) and will only be required to include the amount and type of such Indebtedness in such of the above clauses as determined by the Borrower at such time. The Borrower will be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in Section 7.03(a) through (z). Notwithstanding the foregoing, Indebtedness incurred (a) under the Loan Documents, any Incremental Commitments, any Incremental Loans, any Refinancing Commitments and any Refinancing Loans shall only be classified as incurred under Section 7.03(a), (b) as Refinancing Equivalent Debt shall only be classified as incurred under Section 7.03(t), (c) as Incremental Equivalent Debt shall only be classified as incurred under Section 7.03(w) and (d) under the First Lien Credit Agreement or as First Lien Incremental Equivalent Debt or First Lien Refinancing Equivalent Debt shall only be classified as incurred under Section 7.03(q).

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and expenses (including OID) incurred in connection with such refinancing.

The accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.03. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP. Notwithstanding the foregoing, no Non-Loan Party shall guarantee Indebtedness for borrowed money of any Loan Party.

Section 7.04 Fundamental Changes.

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (other than as part of the Transactions), except that:

(a) any Restricted Subsidiary may merge, amalgamate or consolidate with (i) the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that the Borrower shall be the continuing or surviving Person or (ii) one or more other Restricted Subsidiaries; *provided* that when any Person that is a Loan Party (other than the Borrower) is merging with a Restricted Subsidiary, a Loan Party shall be the continuing or surviving Person unless the resulting Investment made in connection with a Loan Party merging with a Non-Loan Party shall otherwise be a Restricted Investment permitted by Section 7.06 or a Permitted Investment;

(b) (i) any Subsidiary that is a Non-Loan Party may merge, amalgamate or consolidate with or into any other Subsidiary that is a Non-Loan Party, (ii) any Subsidiary (other than the Borrower) may liquidate or dissolve and (iii) the Borrower or any Subsidiary may change its legal form if, with respect to clauses (ii) and (iii), the Borrower determines in good faith that such action is in the best interest of the Borrower and its Subsidiaries and if not materially disadvantageous to the Lenders (it being understood that in the case of any change in legal form, the Borrower will remain the Borrower and a Subsidiary that is a Guarantor will remain a Guarantor unless such Guarantor is otherwise permitted to cease being a Guarantor hereunder);

(c) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then (i) the transferee must be a Loan Party or (ii) to the extent constituting an Investment, such Investment must be a Restricted Investment permitted by Section 7.06 or a Permitted Investment;

(d) so long as no Default has occurred and is continuing or would result therefrom, the Borrower may merge or consolidate with any other Person; *provided* that (i) the Borrower shall be the continuing or surviving corporation or (ii) if the Person formed by or surviving any such merger or consolidation is not the Borrower (any such Person, the "**Successor Company**"), (A) the Successor Company shall be an entity organized or existing under the Laws of the United States, any state thereof, or the District of Columbia, (B) the Successor Company shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably

satisfactory to the Administrative Agent, (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have confirmed that its Guarantee shall apply to the Successor Company's obligations under the Loan Documents, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement and other applicable Collateral Documents confirmed that its obligations thereunder shall apply to the Successor Company's obligations under the Loan Documents, (E) if requested by the Administrative Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, shall have by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Administrative Agent) confirmed that its obligations thereunder shall apply to the Successor Company's obligations under the Loan Documents, and (F) the Borrower shall have delivered to the Administrative Agent an officer's certificate and an opinion of counsel, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement; *provided, further*, that if the foregoing are satisfied, the Successor Company will succeed to, and be substituted for, the Borrower under this Agreement;

(e) so long as no Event of Default has occurred and is continuing or would result therefrom (in the case of a merger, amalgamation or consolidation involving a Loan Party), any Restricted Subsidiary may merge, amalgamate or consolidate with any other Person in order to effect an Investment permitted pursuant to Section 7.06 or a Permitted Investment; *provided* that the continuing or surviving Person shall be a Restricted Subsidiary of the Borrower, which together with each of its Restricted Subsidiaries, shall have complied with the requirements of Section 6.11 to the extent required pursuant to the Collateral and Guarantee Requirement;

(f) the Borrower and the Restricted Subsidiaries may consummate the Merger, related transactions contemplated by the Merger Agreement (and documents related thereto) and the Transactions; and

(g) so long as no Event of Default has occurred and is continuing or would result therefrom, a merger, consolidation, amalgamation, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to Section 7.05.

Section 7.05 Dispositions.

Make any Disposition (other than as part of or in connection with the Transactions), except:

- (a) (w) Dispositions of obsolete, worn out, used or surplus property, whether now owned or hereafter acquired, in the ordinary course of business,
 - (x) Dispositions of property no longer used or useful in the conduct of the business of the Borrower or any of its Restricted Subsidiaries and
 - (y) Dispositions to landlords of improvements made to leased real property pursuant to customary terms of leases entered into in the ordinary course of business;
- (b) Dispositions of inventory, goods held for sale in the ordinary course of business and immaterial assets in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(d) Dispositions of property to the Borrower or any Restricted Subsidiary; *provided* that if the transferor of such property is a Loan Party (i) the transferee thereof must be a Loan Party or (ii) if such transaction constitutes an Investment, such Investment must be a Restricted Investment permitted by Section 7.06 or a Permitted Investment;

(e) Dispositions that are permitted by Section 7.04 (other than Section 7.04(g)) or otherwise constitute a Restricted Payment (including a Restricted Investment) permitted by Section 7.06 and Liens permitted by Section 7.01 (other than Section 7.01(l)(ii));

(f) Dispositions of non-core assets acquired in connection with Permitted Acquisitions taking place following the Closing Date;

(g) Dispositions of Cash Equivalents;

(h) (i) leases, subleases, licenses, cross-licenses or sublicenses, in each case in the ordinary course of business and which do not materially interfere with the business of the Borrower or any of its Restricted Subsidiaries and (ii) Dispositions of intellectual property that are not material to the business of the Borrower or any of its Restricted Subsidiaries;

(i) transfers of property subject to Casualty Events;

(j) Dispositions of property; *provided* that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Default has occurred and is continuing), no Event of Default shall have occurred and be continuing or would result from such Disposition and (ii) with respect to any Disposition pursuant to this clause (j) for a purchase price in excess of \$12,000,000 the Borrower or any of its Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Liens permitted by Section 7.01, Liens permitted by Section 7.01(a), clauses (ii) and (iii) of Section 7.01(k), Section 7.01(m), Section 7.01(q), clauses (i) and (ii) of Section 7.01(r), Section 7.01(v), Section 7.01(w), Section 7.01(aa), Section 7.01(bb) (solely to the extent the Obligations under the Initial Loans shall be secured on a *pari passu* or senior basis with such Liens), Section 7.01(cc), Section 7.01(dd) and Section 7.01(gg)); *provided, however*, that for the purposes of this clause (j)(ii), the following shall be deemed to be cash: (A) any liabilities (as shown on the Borrower's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that (i) are assumed by the transferee with respect to the applicable Disposition or (ii) are otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Borrower or its Restricted Subsidiaries) and, in each case, for which the Borrower and all of its Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities, notes or other obligations or assets received by the Borrower or the applicable Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted

Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within one hundred eighty (180) days following the closing of the applicable Disposition, and (C) aggregate non-cash consideration received by the Borrower or the applicable Restricted Subsidiary having an aggregate fair market value (determined as of the closing of the applicable Disposition for which such non-cash consideration is received) not to exceed the greater of \$24,000,000 and 2.20% of Total Assets as determined at the time of such Dispositions (net of any non-cash consideration converted into cash and Cash Equivalents);

(k) to the extent allowable under Section 1031 of the Code (or comparable or successor provision), any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Borrower or any of the Restricted Subsidiaries that is not in contravention of Section 7.07;

(l) Dispositions or discounts without recourse of accounts receivable in connection with the compromise or collection thereof in the ordinary course of business;

(m) Dispositions by any Loan Party to any wholly-owned Restricted Subsidiary of the type described in clauses (d), (h) and (i) of the definition of "Excluded Subsidiary" to the extent consisting of contributions or other Dispositions of Equity Interests in other Restricted Subsidiaries of the type described in clauses (d), (h) and (i) of the definition of "Excluded Subsidiary" to such wholly-owned Restricted Subsidiary;

(n) any swap of assets in exchange for services or other assets in the ordinary course of business of comparable or greater value or usefulness to the business of the Borrower and its Subsidiaries as a whole, as determined in good faith by the management of the Borrower;

(o) any sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(p) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(q) the unwinding of any Swap Contract;

(r) the lapse or abandonment in the ordinary course of business of any registrations or applications for registration of any immaterial IP Rights;

(s) any Disposition of Securitization Assets to a Securitization Subsidiary;

(t) any Disposition of the Sale Leaseback Properties in connection with a Sale Leaseback (each, a "**Sale Leaseback Transaction**"); and

(u) Dispositions in the aggregate pursuant to this clause (u) not to exceed the greater of \$12,000,000 and 1.0% of Total Assets as determined at the time of such Disposition;

provided that any Disposition of any property pursuant to this Section 7.05 (except pursuant to Sections 7.05(a), (d), (e), (h), (i), (l), (m), (p), (q) and (r) and except for Dispositions from a Loan Party to any other Loan Party) shall be for no less than the fair market value of such property at the time of such Disposition. To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than Holdings, the Borrower or a Restricted Subsidiary, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and the Administrative Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

Section 7.06 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower, and other Restricted Subsidiaries of the Borrower (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower and any other Restricted Subsidiary and to each other owner of Equity Interests of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) the Borrower and each Restricted Subsidiary may declare and make dividend payments or other Restricted Payments payable solely in the Equity Interests (other than Disqualified Equity Interests not otherwise permitted by Section 7.03) of such Person;

(c) Restricted Payments made (i) to consummate the Transactions, (ii) in respect of working capital adjustments or purchase price adjustments pursuant to the Merger Agreement, (iii) in order to satisfy indemnity and other similar obligations under the Merger Agreement and (iv) to holders of Equity Interests of Borrower (immediately prior to giving effect to the Transactions) in connection with, or as a result of, their exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, in each case, with respect to the Transactions;

(d) to the extent constituting Restricted Payments, the Borrower (or any direct or indirect parent thereof) and its Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Section 7.04 or 7.08 (other than Section 7.08(f) or 7.08(l));

(e) repurchases of Equity Interests in the Borrower or any Restricted Subsidiary of the Borrower deemed to occur upon exercise of stock options or warrants or the settlement or vesting of other equity-based awards if such Equity Interests represent a portion of the exercise price of, or tax withholdings with respect to, such options, warrants or other equity-based awards;

(f) the Borrower and each Restricted Subsidiary may (i) pay (or make Restricted Payments to allow Holdings or any other direct or indirect parent thereof to pay) for the repurchase, retirement or other acquisition or retirement for value of Equity Interests or settlement of equity-based awards of such Restricted Subsidiary (or of the Borrower or any other such direct or indirect parent thereof) held by any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) or any of its

Subsidiaries or (ii) make Restricted Payments in the form of distributions to allow Holdings or any direct or indirect parent of Holdings to pay principal or interest on promissory notes that were issued to any future, present or former employee, officer, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) in lieu of cash payments for the repurchase, retirement or other acquisition or retirement for value of such Equity Interests or equity-based awards held by such Persons, in each case, upon the death, disability, retirement or termination of employment or services, as applicable, of any such Person or pursuant to any employee, manager or director equity plan, employee, manager or director stock option plan or any other employee, manager or director benefit plan or any agreement (including any stock subscription agreement, shareholder agreement or stockholders' agreement) with any employee, director, officer or consultant of such Restricted Subsidiary (or the Borrower or any other direct or indirect parent thereof) or any of its Restricted Subsidiaries; *provided* that the aggregate amount of Restricted Payments made pursuant to this clause (f) together with the aggregate amount of loans and advances to Holdings or any parent thereof made pursuant to clause (25) of the definition of "Permitted Investments" in lieu of Restricted Payments permitted by this clause (f) shall not exceed \$12,000,000 in any calendar year (which shall increase to \$18,000,000 subsequent to the consummation of a Qualified IPO) (with 100% of the unused amounts in any calendar year being carried over to succeeding calendar years); *provided further* that such amount in any calendar year may further be increased by an amount not to exceed:

(A) amounts used to increase the Cumulative Credit pursuant to clauses (b) and (c) of the definition of "Cumulative Credit";

(B) the Net Proceeds of key man life insurance policies received by the Borrower or its Restricted Subsidiaries less the amount of Restricted Payments previously made with the cash proceeds of such key man life insurance policies;

and *provided further* that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from members of management of the Borrower, any of the Borrower's direct or indirect parent companies or any of the Borrower's Restricted Subsidiaries in connection with a repurchase of Equity Interests of any of the Borrower's direct or indirect parent companies will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of this Agreement;

(g) the Borrower and its Restricted Subsidiaries may make Restricted Payments in an aggregate amount not to exceed (x) the greater of \$24,000,000 and 2.2% of Total Assets as determined at the time of such Restricted Payment ~~(less the amount of any prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings in reliance on the dollar amount set forth in Section 7.13(a)(iv)), plus~~ (y) the Cumulative Credit at such time (*provided*, that with respect to any Restricted Payment (other than a Restricted Investment) made out of amounts under clause (a)(ii) of the definition of "Cumulative Credit" pursuant to this clause (y), ~~no Event of Default has occurred and is continuing or would result therefrom and the~~ Borrower, immediately after giving effect to such Restricted Payment on a Pro Forma Basis, could incur \$1.00 of additional Permitted Ratio Debt); provided that no Restricted Payment may be made pursuant to this clause (g) if an Event of Default has occurred and is continuing or would result therefrom;

(h) the Borrower may make Restricted Payments to any direct or indirect parent of the Borrower:

(i) to pay its operating costs and expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries, Transaction Expenses and any reasonable and indemnification claims made by directors or officers of such parent attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries;

(ii) the proceeds of which shall be used to pay (or make Restricted Payments to allow any direct or indirect parent thereof to pay) franchise and similar taxes and other fees and expenses required to maintain its (or any of its direct or indirect parents') corporate existence;

(iii) for any taxable period for which the Borrower is a disregarded entity or a partnership for U.S. federal income tax purposes or for which the Borrower and/or any of its Subsidiaries is a member of a consolidated, combined or similar income tax group of which a direct or indirect parent of the Borrower is the common parent, in an amount equal to the product of (x) taxable income of the Borrower and, to the extent applicable, its Subsidiaries and (y) the highest combined marginal income tax rate applicable to an individual or corporate resident in New York City that holds equity in the Borrower ("**Tax Distribution**");

(iv) to finance any Permitted Investments and other Investments that would be permitted to be made pursuant to this Section 7.06 and Section 7.08 if made by the Borrower or any of its Restricted Subsidiaries; *provided* that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment and (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or the Restricted Subsidiaries or (2) the merger (to the extent permitted in Section 7.04) of the Person formed or acquired into the Borrower or its Restricted Subsidiaries in order to consummate such Permitted Acquisition or Investment, in each case, in accordance with the requirements of Section 6.11;

(v) the proceeds of which (A) shall be used to pay salary, commissions, bonus and other benefits payable to and indemnities provided on behalf of officers, employees, directors and members of management of Holdings or any direct or indirect parent company of Holdings and any payroll social security or similar taxes thereof to the extent such salaries, commissions, bonuses and other benefits are attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries or (B) shall be used to make payments permitted under Sections 7.08 (e), (i), (k) and (p) (but only to the extent such payments have not been and are not expected to be made by the Borrower or a Restricted Subsidiary); and

(vi) the proceeds of which shall be used by Holdings to pay (or to make Restricted Payments to allow any direct or indirect parent thereof to pay) (A) fees and expenses (other than to Affiliates) related to any unsuccessful equity or debt offering by Holdings (or any direct or indirect parent thereof) that is directly attributable to the operations of the Borrower and its Restricted Subsidiaries and (B) expenses and indemnities of the trustee with respect to any debt offering by Holdings (or any direct or indirect parent thereof);

(i) payments made or expected to be made by Holdings, the Borrower or any of the Restricted Subsidiaries in respect of withholding or other payroll and other similar Taxes payable by or with respect to any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) and any repurchases of Equity Interests in consideration of such payments including deemed repurchases in connection with the exercise of stock options or the vesting or settlement of other equity-based awards;

(j) after a Qualified IPO, (i) any Restricted Payment by the Borrower or any other direct or indirect parent of the Borrower to pay listing fees and other costs and expenses attributable to being a publicly traded company which are reasonable and customary and (ii) additional Restricted Payments in an aggregate amount per annum not to exceed an amount equal to 6% of the net proceeds received by (or contributed to) the Borrower and its Restricted Subsidiaries from such Qualified IPO;

(k) Holdings, the Borrower or any of the Restricted Subsidiaries may pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted Acquisition; and

(l) Restricted Payments in an aggregate amount not to exceed the net cash proceeds received by the Borrower or any Restricted Subsidiary from a Person other than Holdings or a Subsidiary thereof from the sale of the Sale Leaseback Properties pursuant to a Sale Leaseback Transaction; *provided*, that immediately after giving effect to any such Restricted Payment (A) no Event of Default has occurred and is continuing and (B) the Total Net Leverage Ratio on a Pro Forma Basis is not greater than ~~6.50~~3.70:1.00;

(m) so long as no Event of Default shall have occurred and be continuing or would result therefrom, additional Restricted Payments (the proceeds of which may be utilized by Holdings to make additional Restricted Payments) so long as immediately after giving effect to such Restricted Payment, the Total Net Leverage Ratio calculated on a Pro Forma Basis is less than or equal to ~~5.00~~3.70 to 1.00, and satisfaction of such test shall be evidenced by a certificate from a Responsible Officer of the Borrower demonstrating such satisfaction calculated in reasonable detail; and

(n) the Special Distribution in an amount not to exceed \$110 million.

Notwithstanding the foregoing provisions of this Section 7.06, in no event shall Borrower or any Restricted Subsidiary make any Restricted Payment to any Person of which Borrower is a Subsidiary for the purpose of making any payment on Indebtedness or Preferred Equity Interests of such Person or any other Person of which Borrower is a Subsidiary.

Section 7.07 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date or any business or any other activities reasonably related, complementary, synergistic or ancillary thereto (including related, complementary, synergistic or ancillary technologies) or reasonable extensions thereof.

Section 7.08 Transactions with Affiliates.

Enter into any transaction of any kind with any Affiliate of the Borrower involving aggregate payments or consideration in excess of \$1,800,000 for any individual transaction or series of related transactions, whether or not in the ordinary course of business, other than

- (a) transactions among Holdings, the Borrower and its Restricted Subsidiaries,
- (b) on terms substantially as favorable to the Borrower or such Restricted Subsidiary as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate,
- (c) the Transactions and the payment of fees and expenses (including Transaction Expenses) as part of or in connection with the Transactions,
- (d) the issuance of Equity Interests or equity-based awards to any officer, director, employee or consultant of the Borrower or any of its Restricted Subsidiaries or any direct or indirect parent of Holdings in connection with the Transactions,
- (e) the payment of management, monitoring, consulting, advisory and other fees (including transaction and termination fees), indemnities and expenses pursuant to the Sponsor Management Agreement (plus any unpaid management, consulting, monitoring, advisory and other fees, indemnities and expenses accrued in any prior year),
- (f) Restricted Payments permitted under Section 7.06 and Permitted Investments other than Permitted Investments under clauses (3), (10), (11) and (13) of the definition thereof,
- (g) transactions by the Borrower and its Restricted Subsidiaries permitted under an express provision (including any exceptions thereto) of this Article VII,
- (h) employment, consulting, severance and other service or benefit related arrangements between the Borrower and its Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option and other equity award plans and employee benefit plans and arrangements in the ordinary course of business,

(i) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, officers, employees and consultants of Holdings, the Borrower and its Restricted Subsidiaries (or any direct or indirect parent of the Borrower) in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries,

(j) transactions pursuant to agreements, instruments or arrangements in existence on the Closing Date and set forth in Schedule 7.08 or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect,

(k) payments by the Borrower and any of its Restricted Subsidiaries to one or more direct or indirect holders of Equity Interests in Holdings (including any Sponsor) made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions or divestitures), which payments are approved by the majority of the members of the Board of Directors or a majority of the disinterested members of the Board of Directors of the Borrower in good faith,

(l) payments by the Borrower or any of its Subsidiaries pursuant to any tax sharing agreements with any direct or indirect parent of the Borrower to the extent attributable to the ownership or operation of the Borrower and the Subsidiaries, but only to the extent permitted by Section 7.06(h)(iii),

(m) the issuance or transfer of Equity Interests (other than Disqualified Equity Interests) of Holdings to any Permitted Holder or to any former, current or future director, manager, officer, employee or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees or Affiliate of any of the foregoing) of the Borrower, any of its Subsidiaries or any direct or indirect parent thereof,

(n) transactions with customers, clients, joint venture partners, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party,

(o) any payments required to be made pursuant to the Merger Agreement,

(p) the payment of reasonable out-of-pocket costs and expenses and indemnities to equity holders of any direct or indirect parent of Holdings pursuant to the stockholders' agreement entered into, and as in effect on, on the Closing Date,

(q) transactions in which the Borrower or any of the Restricted Subsidiaries, as the case may be, deliver to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (b) of this Section 7.08,

(r) payments to or from, and transactions with, joint ventures (to the extent any such joint venture is only an Affiliate as a result of Investments by Holdings and the Restricted Subsidiaries in such joint venture) to the extent otherwise constituting a Permitted Investment or Restricted Payment permitted under Section 7.06, and

(s) any Disposition of Securitization Assets or related assets, Investment permitted pursuant to clause (14) of the definition of "Permitted Investments" or Standard Securitization Undertakings and Limited Originator Recourse, in each case in connection with any Qualified Securitization Financing.

Section 7.09 Burdensome Agreements.

Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability of:

(a) any Non-Loan Party to make Restricted Payments to any Loan Party or

(b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Lenders with respect to the Facilities and the Obligations or under the Loan Documents; *provided* that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which

(i) (x) exist on the Closing Date and (to the extent not otherwise permitted by this Section 7.09) are listed in Schedule 7.09 and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such Contractual Obligation,

(ii) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary of the Borrower, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary of the Borrower,

(iii) are customary restrictions that arise in connection with (x) any Lien permitted by Sections 7.01(k), (l), (p), (q), (r)(i), (r)(ii), (s) and (ee) and relate to the property subject to such Lien or (y) arise in connection with any Disposition permitted by Section 7.04 or 7.05 and relate solely to the assets or Person subject to such Disposition,

(iv) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures constituting Permitted Investments or otherwise permitted under Section 7.06 and applicable solely to such joint venture,

(v) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 7.03 but solely to the extent any negative pledge relates to the property financed by such Indebtedness and the proceeds and products thereof,

(vi) are customary restrictions on leases, subleases, licenses, cross-licenses, sublicenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the property interest, rights or the assets subject thereto,

(vii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 7.03(e), (g), (n)(i) and (u) to the extent that such restrictions apply only to the property or assets securing such Indebtedness or, in the case of Section 7.03(g), to the Restricted Subsidiaries incurring or guaranteeing such Indebtedness,

(viii) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary,

(ix) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business,

(x) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business,

(xi) arise in connection with cash or other deposits permitted under Sections 7.01 or the definition of Permitted Investments, and limited to such cash or deposits, and

(xii) comprise restrictions imposed by any agreement governing Indebtedness entered into on or after the Closing Date and permitted under Section 7.03 that are, taken as a whole, in the good faith judgment of the Borrower, no more restrictive with respect to the Borrower or any Restricted Subsidiary than customary market terms for Indebtedness of such type (and, in any event, are no more restrictive than the restrictions contained in this Agreement or the First Lien Credit Agreement), so long as the Borrower shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required hereunder.

Section 7.10 [Reserved].

Section 7.11 [Reserved].

Section 7.12 Accounting Changes.

Make any change in its fiscal year; *provided, however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

(a) Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled principal, interest and mandatory prepayments shall be permitted) any Indebtedness for borrowed money of a Loan Party that is subordinated in right of payment or Collateral to the Obligations expressly by its terms (including any Incremental Equivalent Debt or Refinancing Equivalent Debt that is subordinated in right of Collateral to the Liens securing the Obligations under the Loans) and any Permitted Refinancing of any of the foregoing (collectively, "**Junior Financing**"), except

(i) the refinancing thereof with any Indebtedness (to the extent such Indebtedness constitutes a Permitted Refinancing and, if such Indebtedness was originally incurred under Section 7.03(g), is permitted pursuant to Section 7.03(g)), to the extent not required to prepay any Loans pursuant to Section 2.05(b),

(ii) the conversion or exchange of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of Holdings or any of its direct or indirect parents, and

(iii) the prepayment of Indebtedness of the Borrower or any Restricted Subsidiary to the Borrower or any Restricted Subsidiary;

~~(iv) prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings prior to their scheduled maturity in an aggregate amount not to exceed (x) the greater of \$24,000,000 and 2.2% of Total Assets as determined at the time of such transaction (less the amount of any Restricted Payments made in reliance on the dollar amount set forth in Section 7.06(g)(x)) plus (y) the Cumulative Credit at such time (provided, that with respect to any prepayment, redemption, purchase, defeasance or other payment in respect of Junior Financings made out of amounts under clause (a)(ii) of the definition of "Cumulative Credit" pursuant to this clause (y), no Event of Default has occurred and is continuing or would result therefrom and the Borrower, immediately after giving effect to such prepayment, redemption, purchase, defeasance or other payment on a Pro Forma Basis, could incur \$1.00 of additional Permitted Ratio Debt), and (v) additional prepayments, redemptions, purchases, defeasances and other payments in respect of Junior Financings, so long as immediately after giving effect to such prepayment, redemption, purchase, defeasance or other payment, the Total Net Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 5.00 to 1.00, and satisfaction of such test shall be evidenced by a certificate from a Responsible Officer of the Borrower demonstrating such satisfaction calculated in reasonable detail.~~

(b) Amend, modify or change in any manner materially adverse to the interests of the Lenders, as determined in good faith by the Borrower, any term or condition of any Junior Financing Documentation in respect of any Junior Financing having an aggregate outstanding principal amount in excess of the Threshold Amount (other than as a result of any Permitted Refinancing in respect thereof) without the consent of the Administrative Agent (which consent shall not be unreasonably withheld, conditioned or delayed); *provided that*, in respect of any Junior Financing, the following shall not, in and of themselves, be deemed materially adverse to the interests of the Lenders: (1) any term or condition of any Junior Financing Documentation in respect of any Permitted Refinancing thereof, (2) any modification to the All-In Yield or changes to, or additions of, premiums or penalties; (3) any increase in the aggregate principal amount to the extent otherwise permitted by this Agreement; (4) any extension of maturity date or increase

to Weighted Average Life to Maturity; (5) any amendment, modification or change to any terms applicable only to periods after the Latest Maturity Date at the time of such amendment, modification or change, (6) amendments, modifications or changes to maintain consistency with, as applicable, those being made substantially concurrently to the Loan Documents (including, for the avoidance of doubt, the addition of any covenant or other provision added or extended (including the addition of a financial covenant or the extension of an existing financial covenant for the benefit of Lenders) under this Agreement or any Incremental Equivalent Debt or Refinancing Equivalent Debt which is secured by the Collateral on a pari passu or senior basis to the Junior Financing, *provided* such additional covenant (including any financial covenant) includes a cushion on any dollar baskets, thresholds or covenant levels consistent with the existing cushion (if any) between applicable covenants in this Agreement and such Junior Financing) and (7) reductions to any cushion on levels, baskets or thresholds between covenants under this Agreement and substantially similar covenants under any Junior Financing to the extent such cushion is reduced by no more than 10% from the cushion in effect on the date such Junior Financing is incurred.

Section 7.14 Permitted Activities.

With respect to Holdings, engage in any material operating or business activities; *provided* that the following and any activities incidental thereto shall be permitted in any event: (i) its ownership of the Equity Interests of the Borrower and activities incidental thereto, including payment of dividends and other amounts in respect of its Equity Interests, (ii) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (iii) the performance of its obligations with respect to the Loan Documents, the First Lien Loan Documents, Permitted Holdings Debt and any other Indebtedness, (iv) any public offering of its common stock or any other issuance or sale of its Equity Interests, (v) financing activities, including the issuance of securities, incurrence of Indebtedness, payment of dividends, making contributions to the capital of the Borrower and guaranteeing the obligations of the Borrower; *provided* that any such Indebtedness shall (a) be unsecured, (b) not be guaranteed by the Borrower or any Restricted Subsidiary and (c) not have a maturity date prior to the Latest Maturity Date in effect for the Loans on the date of incurrence of such Indebtedness, (vi) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and the Borrower, (vii) holding any cash or property (but not operate any property), (viii) providing indemnification to officers and directors and (ix) any activities incidental to the foregoing. Holdings shall not own any Equity Interests other than those of the Borrower.

ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Events of Default.

Any of the following from and after the Closing Date shall constitute an event of default (an “**Event of Default**”):

(a) *Non-Payment.* Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable (or required to be paid) hereunder or with respect to any other Loan Document; or

(b) *Specific Covenants.* The Borrower or, in the case of Section 7.14, Holdings, fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03(a) or 6.05(a) (solely with respect to the Borrower), Article VII or under the “Market Flex” section of the Fee Letter; or

(c) *Other Defaults.* Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(d) *Representations and Warranties.* Any representation, warranty, certification or statement of fact made or deemed made by any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect in any material respect when made or deemed made; or

(e) *Cross-Default.* Any Loan Party or any Restricted Subsidiary (A) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate outstanding principal amount of not less than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts and not as a result of any other default thereunder by any Loan Party), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; *provided* that (I) this clause (e)(B) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and (II) no such event under any Senior Facility (as defined in the Second Lien Intercreditor Agreement) (other than the failure to pay any outstanding principal amount when due at the final scheduled maturity of such Senior Facility) shall constitute an Event of Default under this clause (e) until the Indebtedness under such Senior Facility shall have been accelerated or commitments thereunder have been terminated as a result of such event; *provided, further*, that such failure is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to Section 8.02; or

(f) *Insolvency Proceedings, Etc.* Any Loan Party or any Restricted Subsidiary that is a Material Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its

property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) *Attachment.* Any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of the Borrower and the Restricted Subsidiaries, taken as a whole, and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) *Judgments.* There is entered against any Loan Party or any Restricted Subsidiary a final judgment and order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(i) *Invalidity of Loan Documents.* Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05) or as a result of acts or omissions by the Administrative Agent or any Lender or the satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document or the validity or priority of a Lien as required by the Collateral Documents on a material portion of the Collateral; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations and termination of the Aggregate Commitments), or purports in writing to revoke or rescind any Loan Document; or

(j) *Change of Control.* There occurs any Change of Control; or

(k) *Collateral Documents.* (i) Any Collateral Document after delivery thereof pursuant to Section 4.01, 6.11 or 6.13 shall for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction not prohibited under this Agreement) cease to create a valid and perfected Lien, with the priority required by the Collateral Documents on and security interest in any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01, (x) except to the extent that any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or results from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file Uniform Commercial Code continuation statements and (y) except as to Collateral consisting of Real Property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage or (ii) any Lien created or purported to be created by the Collateral Documents shall cease to have the lien priority established or purported to be established by the applicable Intercreditor Agreement; or

(l) *Duly Authorized Documents*. Any Deferred Loan Party fails to deliver any Duly Authorized Documents by 5:00 p.m. on the Closing Date; or

(m) *ERISA*. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of a Loan Party or an ERISA Affiliate in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect.

Section 8.02 Remedies Upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Lenders, shall take any or all of the following actions:

(i) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(iii) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code of the United States or any Debtor Relief Laws, the obligation of each Lender to make Loans shall automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

Section 8.03 Application of Funds.

Except as may be otherwise provided in any applicable Incremental Amendment with respect to Obligations under the applicable Incremental Loans or in any applicable Refinancing Amendment with respect to Obligations under the applicable Refinancing Loans (in each case, which shall not be more favorable to the holders of such Loans than the allocation described below), after the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), subject to the Second Lien Intercreditor Agreement, any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order (to the fullest extent permitted by mandatory provisions of applicable Law):

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs payable under Section 10.04 and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause *Second* payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, and any fees, premiums and scheduled periodic payments due under Treasury Services Agreements or Secured Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Third* payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, and any breakage, termination or other payments under Treasury Services Agreements or Secured Hedge Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause *Fourth* held by them;

Fifth, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Notwithstanding the foregoing, no amount received from any Guarantor shall be applied to any Excluded Swap Obligation of such Guarantor.

Section 8.04 [Reserved].

ARTICLE IX.
ADMINISTRATIVE AGENT AND OTHER AGENTS

Section 9.01 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints UBS to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX (other than Sections 9.06 (solely with respect to the removal and consent rights of the Borrower set forth therein) and Section 9.10 (solely with respect to the requirement for execution, filing and other actions with respect to the Collateral Documents and other collateral documentation set forth therein)) are solely for the benefit of the Administrative Agent and the Lenders, and no Loan Party shall have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article X (including the second paragraph of Section 10.05), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

Section 9.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 9.03 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 9.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.05 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Section 9.06 Resignation of Administrative Agent.

The Administrative Agent may resign as the Administrative Agent upon ten (10) days' notice to the Lenders and the Borrower; *provided* that if no successor agent is appointed in accordance with the terms set forth below within such ten (10)-day period, the Administrative Agent shall not be permitted to resign until the earlier to occur of (x) the date of the appointment of the successor agent or (y) the date that is thirty (30) days after the last day of such ten (10)-day period. If the Administrative Agent is subject to an Agent-Related Distress Event, the Borrower may remove the Administrative Agent upon ten (10) days' notice. Upon the resignation or removal of the Administrative Agent under this Agreement, the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which such appointment shall be subject to the consent of the Borrower (which consent of the Borrower shall not be unreasonably withheld or delayed if such successor is a commercial bank with a combined capital and surplus of at least \$5,000,000,000 that is a "U.S. person" and a "financial institution" within the meaning of Treasury Regulation Section 1.1441-1, and otherwise may be withheld at the Borrower's sole discretion) at all times other than during the existence of an Event of Default under Section 8.01(a) or (f); *provided*, that in no event shall a Disqualified Institution be a successor agent. If no successor agent is appointed by the Required Lenders prior to the effective date of the resignation or removal of the Administrative Agent, the retiring or removed Administrative Agent may appoint, after consulting with the Lenders and subject to the Borrower's consent right set forth above, a successor agent from among the Lenders; *provided* that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments and communications provided to be made to or through the Administrative Agent shall instead be made to each Lender directly and all determinations provided to be made by the Administrative Agent shall instead be made by the Required Lenders, in each case until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent. Upon resignation or removal, the retiring or removed Administrative Agent shall be discharged from all of its duties

and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation or the removed Administrative Agent's removal hereunder and under the other Loan Documents, hereunder and under the other Loan Documents, the provisions of this Article and Sections 10.04 and 10.05 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

Section 9.07 Non-Reliance on Administrative Agent and Other Lenders.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 9.08 No Other Duties, Etc.

Anything herein to the contrary notwithstanding, none of the Administrative Agent, Bookrunners, Arrangers or Syndication Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender.

Section 9.09 Administrative Agent May File Proofs of Claim; Credit Bidding.

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.09, 10.04 and 10.05) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09, 10.04 and 10.05.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding.

Section 9.10 Collateral and Guaranty Matters.

Each of the Lenders (including in its capacities as a potential Hedge Bank) irrevocably authorize the Administrative Agent:

(a) to automatically release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations as to which no claim has been asserted and (B) obligations and liabilities under Treasury Services Agreements and Secured Hedge Agreements not due and payable), (ii) at the time the property subject to such Lien is Disposed or to be Disposed as part of or in connection with any Disposition permitted (other than a lease and other than to a Person that is a Loan Party) hereunder or under any other Loan Document, (iii) subject to Section 10.01, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to clause (c) below, (v) if such property becomes an Excluded Asset or (vi) to the extent such release is required pursuant to the terms of the Second Lien Intercreditor Agreement;

(b) to release or subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(u) to the extent required by the holder of, or pursuant to the terms of any agreement governing, the obligations secured by such Liens; and

(c) to release any Subsidiary Guarantor from its obligations under the Guaranty, if in the case of any such Subsidiary, such Person ceases to be a Material Domestic Subsidiary or becomes an Excluded Subsidiary as a result of a transaction or designation permitted hereunder; *provided* that no such release shall occur if such Guarantor continues to be a guarantor or obligor in respect of any Junior Financing, any Refinancing Equivalent Debt or any Incremental Equivalent Debt or any Permitted Refinancing in respect thereof or any First Lien Obligations;

provided further, that notwithstanding the foregoing, if any Subsidiary Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of Excluded Subsidiary, such Guarantor shall not be released from its obligations under the Guaranty or any other Loan Document unless (x) such Subsidiary Guarantor would no longer be a direct or indirect Subsidiary of the Borrower or (y) after giving pro forma effect to such release and the consummation of the relevant transaction, the Borrower would be permitted to make an Investment in such Person to be so released pursuant to clause (1) of the definition of "Permitted Investments" (and, if this clause (y) shall be applicable, Borrower shall be deemed to have made such an Investment in such Person pursuant to such clause (1)).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will (and each Lender irrevocably authorizes the Administrative Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

Section 9.11 Secured Cash Management Agreements and Secured Hedge Agreements.

Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Treasury Services Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Hedge Bank.

The Lenders hereby authorize the Administrative Agent to enter into the Second Lien Intercreditor Agreement, any Third Lien Intercreditor Agreement, any Subordination Agreement or other intercreditor agreement or arrangement permitted under this Agreement and the Lenders acknowledge that any such intercreditor agreement is binding upon the Lenders.

Section 9.12 Withholding Tax Indemnity.

To the extent required by any applicable Laws (as determined in good faith by the Administrative Agent), the Administrative Agent may withhold from any payment to any Lender under any Loan Document an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 3.01, each Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within ten (10) days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.12. The agreements in this Section 9.12 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations.

ARTICLE X.
MISCELLANEOUS

Section 10.01 Amendments, Etc.

Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (other than with respect to any amendment or waiver contemplated in Sections 10.01(a) through (h) below, which shall only require the consent of the Lenders expressly set forth therein and not the Required Lenders) (or by the Administrative Agent with the consent of the Required Lenders) and the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided that*, no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.02 or of any Default, mandatory prepayment or mandatory reduction of any Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.07 or 2.08 (other than pursuant to Section 2.08(b)), without the written consent of each Lender directly and adversely affected thereby, it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest;

(c) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (iii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document (or extend the timing of payments of such fees or other amounts) without the written consent of each Lender directly and adversely affected thereby; *provided* that, for the avoidance of doubt, only the consent of the Required Lenders shall be necessary to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) change any provision of this Section 10.01 or the definition of “Required Lenders,” “Required Class Lenders,” or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents, without the written consent of each Lender directly affected thereby (it being understood that each Lender shall be directly and adversely affected by a change to the “Required Lenders” or “Pro Rata Share” definitions);

(e) other than in connection with a transaction permitted under Section 7.04 or Section 7.05, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender (except as otherwise required pursuant to the Second Lien Intercreditor Agreement);

(f) other than in connection with a transaction permitted under Section 7.04 or Section 7.05, release all or substantially all of the aggregate value of the Guarantees, without the written consent of each Lender (except as otherwise required pursuant to the Second Lien Intercreditor Agreement);

(g) [Reserved]; or

(h) amend, waive or otherwise modify any term or provision (including the availability and conditions to funding under Section 2.14 with respect to Incremental Loans and the rate of interest applicable thereto) which directly affects Lenders of one or more Incremental Loans (including Loans extended under such Commitments) and does not directly affect Lenders under any other Class, in each case, without the written consent of the Required Class Lenders under such applicable Incremental Loans (and in the case of multiple Classes which are affected, such Required Class Lenders shall consent together as one Class); *provided, however*, that the waivers described in this clause (h) shall not require the consent of any Lenders other than (x) the Required Class Lenders under such applicable Incremental Loans and (y) in the case of any waiver that otherwise would be subject to clause (a), (b), (c), (d) or (e) above, each Lender, each directly affected Lender or each directly and adversely affected Lender (as specified in clause (a), (b), (c), (d) or (e) above) under the applicable Class or Classes of Incremental Loans (including Loans extended under such Commitments); *provided further however, that the aggregate amount of Incremental Loans permitted under Section 2.14(d)(iii) shall not be permitted to be increased without the consent of the Required Lenders;*

(i) amend, modify or waive any term or provision of Section 2.13 or 8.03 that would alter the pro rata sharing of payments or priority of payments specified thereby, as applicable, without the consent of each Lender directly and adversely affected thereby;

and *provided, further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; and (ii) Section 10.07(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any such Defaulting Lender may not be increased or extended without the consent of such Lender, (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms materially and adversely affects any Defaulting Lender to a greater extent than other affected Lenders shall require the consent of such Defaulting Lender and (z) the consent of any Defaulting Lender shall be required in respect of any amendments referred to in Section 10.01(b).

Notwithstanding the foregoing, no Lender consent is required to effect any amendment or supplement to any Junior Lien Intercreditor Agreement, the Second Lien Intercreditor Agreement, any Third Lien Intercreditor Agreement, any Subordination Agreement or any other intercreditor agreement or arrangement permitted under this Agreement (i) that is for the purpose of adding the holders of Permitted Pari Passu Secured Refinancing Debt, Permitted Junior Secured Refinancing Debt, subordinated Permitted Unsecured Refinancing Debt, Incremental Equivalent Debt (or, in each case, a Senior Representative with respect thereto), First Lien Incremental Equivalent Debt or First Lien Refinancing Equivalent Debt as parties thereto, as expressly contemplated by the terms of such Second Lien Intercreditor Agreement, such Third Lien Intercreditor Agreement, such Subordination Agreement or such other intercreditor agreement or arrangement permitted under this Agreement, as applicable (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (ii) that is expressly contemplated by the Second Lien Intercreditor Agreement, any Third Lien Intercreditor Agreement, any Subordination Agreement or any other intercreditor agreement or arrangement permitted under this Agreement; *provided, further*, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent.

Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Loans, and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

In addition, notwithstanding the foregoing, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the Replacement Loans (as defined below) to permit the refinancing of all outstanding Loans of any Class (“**Replaced Loans**”) with replacement term loans (“**Replacement Loans**”) hereunder; *provided* that (a) the aggregate principal amount of such Replacement Loans shall not exceed the aggregate principal amount of such Replaced Loans, plus accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees and expenses associated with such Replacement Loans, (b) the All-In Yield with respect to such Replacement Loans (or similar interest rate spread applicable to such Replacement Loans) immediately prior to such refinancing unless the maturity of the Replacement Loans is at least one (1) year later than the maturity of the Replaced Loans, (c) the Weighted Average Life to Maturity of such Replacement Loans shall not be shorter than the Weighted Average Life to Maturity of such Replaced Loans at the time of such refinancing (except by virtue of amortization or prepayment of the Replaced Loans prior to the time of such incurrence) and (d) all other terms applicable to such Replacement Loans shall be substantially identical to, or less favorable to the Lenders providing such Replacement Loans than, those applicable to such Replaced Loans, except to the extent necessary to provide for covenants and other terms applicable to any period after the Latest Maturity Date of the Loans in effect immediately prior to such refinancing. Each amendment to this Agreement providing for Replacement Loans may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent and the Borrower to effect the provisions of this paragraph, and for the avoidance of doubt, this paragraph shall supersede any other provisions in this Section 10.01 to the contrary.

Notwithstanding anything to the contrary contained in this Section 10.01, guarantees, collateral security documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) (A) to comply with local Law or advice of local counsel and/or (B) effectuate the provisions of clause (3)(Y) of the definition of “Permitted Investments”, (ii) to cure ambiguities or defects or (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents.

If the Administrative Agent and the Borrower shall have jointly identified an obvious error (including, but not limited to, an incorrect cross-reference) or any error or omission of a technical or immaterial nature, in each case, in any provision of this Agreement or any other Loan Document (including, for the avoidance of doubt, any exhibit, schedule or other attachment to any Loan Document), then the Administrative Agent (acting in its sole discretion) and the Borrower or any other relevant Loan Party shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document. Notification of such amendment shall be made by the Administrative Agent to the Lenders promptly upon such amendment becoming effective.

Notwithstanding anything to the contrary contained in any Loan Document, no Loan Party shall, nor shall such Loan Party permit any of its Subsidiaries to, pay or cause to be paid, directly or indirectly, any consideration to or for the benefit of any Lender for or as an inducement to any consent, amendment, modification, forbearance or waiver of any Loan Document or provide any Lender a right to purchase or subscribe for any loans, securities or other property on account of or in exchange for Loans held by such Lender unless such consideration or right is offered to be paid or provided to all Lenders, and is paid or provided ratably to all Lenders that approve such consent, amendment, modification, forbearance or waiver or who hold such Loans (and this sentence may not be amended, modified or waived except with the prior written consent of the Borrower and each Lender).

Section 10.02 Notices and Other Communications; Facsimile Copies.

(a) Notices; Effectiveness; Electronic Communications.

(i) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (C) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(A) if to the Borrower, the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(B) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrower and the Administrative Agent.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (C) below shall be effective as provided in such subsection (C).

(C) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender or has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(b) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to the Loan Parties, any Lender, or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Loan Parties, any Lender, or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(c) Change of Address, Etc. Each of the Borrower and the Administrative Agent, may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side

Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(d) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence, willful misconduct or bad faith of such Person, as determined by a final non-appealable judgment of a court of competent jurisdiction. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03 No Waiver; Cumulative Remedies.

No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.09 (subject to the terms of Section 2.13), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided, further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 10.04 Attorney Costs and Expenses.

The Borrower agrees (a) if the Closing Date occurs, to pay or reimburse the Administrative Agent and the other Agents for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs, which shall be limited to Cahill Gordon & Reindel LLP and one local counsel as reasonably necessary in any relevant jurisdiction material to the interests of the Lenders taken as a whole (and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnitees similarly situated) and (b) after the Closing Date, to pay or reimburse the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all respective Attorney Costs, which shall be limited to Attorney Costs of one counsel to the Administrative Agent and the Lenders taken as a whole and one local counsel as reasonably necessary in any relevant jurisdiction material to the interests of the Lenders taken as a whole and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnitees similarly situated). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within thirty (30) days after written demand therefor (together with backup documentation supporting such reimbursement request); *provided* that, with respect to the Closing Date, all amounts due under this Section 10.04 shall be paid on the Closing Date solely to the extent invoiced to the Borrower within three (3) Business Days prior to the Closing Date. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its discretion. For the avoidance of doubt, this Section 10.04 shall not apply to Taxes, except any Taxes that represent costs and expenses arising from any non-Tax claim.

Section 10.05 Indemnification by the Borrower.

The Borrower shall indemnify and hold harmless each Agent, Agent-Related Person, Lender, Arranger and Bookrunner and their Affiliates, and their respective officers, directors, employees, partners, agents, advisors and other representatives of the foregoing (collectively the "**Indemnitees**") from and against any and all liabilities, losses, damages, claims, or out-of-pocket expenses (including Attorney Costs but limited in the case of legal fees and expenses to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, one local counsel for all Indemnitees taken as a whole in each relevant jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnitees similarly

situated) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment or Loan or the use or proposed use of the proceeds therefrom, (c) any actual or alleged Environmental Liability of the Loan Parties or any Subsidiary or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) (a "**Proceeding**") and regardless of whether any Indemnitee is a party thereto or whether or not such Proceeding is brought by the Borrower or any other Person and, in each case, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee (all of the foregoing, collectively, the "**Indemnified Liabilities**"); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, losses, damages, claims or out-of-pocket expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any of its Related Indemnified Persons, as determined by a final non-appealable judgment of a court of competent jurisdiction, (y) a material breach of any obligations under any Loan Document by such Indemnitee or of any of its Related Indemnified Persons, as determined by a final non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent or arranger or any similar role under any Facility and other than any claims arising out of any act or omission of the Borrower or any of its Affiliates (as determined in a final and non-appealable judgment of a court of competent jurisdiction). No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement (except for direct (as opposed to indirect, special, punitive or consequential) damages resulting from the gross negligence, bad faith or willful misconduct, as determined by a court of competent jurisdiction in a final and non-appealable judgment, of any such Indemnitee), nor shall any Indemnitee, Related Indemnified Person, Loan Party or any Subsidiary have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party, or which are included in a third-party claim, and for any out-of-pocket expenses related thereto). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, any Subsidiary of any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents are consummated. All amounts due under this Section 10.05 shall be paid within thirty (30) days after written demand therefor (together with backup documentation supporting such reimbursement request); *provided, however*, that such Indemnitee shall promptly refund such amount to the extent that there is a final judicial or arbitral determination that such Indemnitee was not entitled to indemnification rights with respect to such payment pursuant to the express

terms of this Section 10.05. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. For the avoidance of doubt, this Section 10.05 shall not apply to Taxes, except any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, demands, actions, prepayments, suits, costs, expenses and disbursements arising from any non-Tax claims.

To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under this Section 10.05 or Section 10.04 to be paid by it to the Administrative Agent (or any sub-agent thereof), or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this paragraph are subject to the provisions of Section 2.12(e).

Section 10.06 Payments Set Aside.

To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, or any Lender, or the Administrative Agent, or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (except as permitted by Section 7.04) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Assignee pursuant to an assignment made in accordance with the provisions of Section 10.07(b) (such an assignee, an "**Eligible Assignee**") and (A) in the case of any Assignee that, immediately prior to or upon giving effect to such assignment, is an Affiliated Lender, Section 10.07(k), (B) in

the case of any Assignee that is Holdings or any of its Subsidiaries, Section 10.07(l), or (C) in the case of any Assignee that, immediately prior to or upon giving effect to such assignment, is a Debt Fund Affiliate, Section 10.07(o), (ii) by way of participation in accordance with the provisions of Section 10.07(e), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(g) or (i) or (iv) to an SPC in accordance with the provisions of Section 10.07(h) (and any other attempted assignment or transfer by any party hereto shall be null and void); *provided, however*, that notwithstanding the foregoing, no Lender may assign or transfer by participation any of its rights or obligations hereunder to (i) any Person that is a Defaulting Lender, (ii) a natural Person or a Disqualified Institution or (iii) to Holdings, the Borrower or any of their respective Subsidiaries (except pursuant to Section 2.05(a)(v) or Section 10.07(l)). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(e) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement. The Administrative Agent shall promptly give notice to the Borrower of any request by a Lender to assign any of its rights or obligations hereunder to any Person that is on the Disqualified Institutions List or, to the extent it has knowledge, any Person that is an Affiliate of a Person on the Disqualified Institutions List.

(b) (i) Subject to the limitations set forth in paragraph (a) above and the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (“**Assignees**”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed, except in connection with a proposed assignment to any Disqualified Institution) of:

(A) the Borrower, *provided* that no consent of the Borrower shall be required for (i) an assignment of all or a portion of the Loans to a Lender, an Affiliate of a Lender or an Approved Fund, (ii) other than with respect to any proposed assignment to any Person that is a Disqualified Institution, if an Event of Default under Section 8.01(a) or, solely with respect to the Borrower, Section 8.01(f) has occurred and is continuing, to any Assignee or (iii) an assignment of all or a portion of the Loans pursuant to Section 10.07(k), Section 10.07(l) or Section 10.07(o); *provided* that, other than with respect to any proposed assignment to any Person that is a Disqualified Institution, the Borrower shall be deemed to have consented to any such assignment of the Loans unless it shall have objected thereto by written notice to the Administrative Agent within fifteen (15) Business Days after having received notice thereof; and

(B) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for (X) an assignment of all or a portion of the Loans pursuant to Section 10.07(k), Section 10.07(l) or Section 10.07(o) or (Y) an Approved Fund of any Lender;

Notwithstanding the foregoing or anything to the contrary set forth herein, to the extent any Lender is required to assign any portion of its Commitments, Loans and other rights, duties and obligations hereunder in order to comply with applicable Laws, such assignment may be made by such Lender without the consent of the Borrower, the Administrative Agent, or any other party hereto so long as such Lender complies with the requirements of Section 10.07(b)(ii).

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than an amount of \$1,000,000, and shall be in increments of an amount of \$1,000,000, in excess thereof unless each of the Borrower and the Administrative Agent otherwise consent; *provided* that such assignments shall be aggregated in respect of each Lender and its Affiliates ~~or Approved Funds, if any, if any;~~ *provided further that no such minimum (or minimum increments) shall apply in respect of an assignment by a Lender to an Approved Fund of such Lender;*

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (unless waived or reduced by the Administrative Agent in its sole discretion); *provided that such fee shall not be payable for an assignment by a Lender to an Approved Fund of such Lender;* and

(C) other than in the case of assignments pursuant to Section 10.07(l), the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

This paragraph (b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis among such Facilities.

In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(c) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(d), from and after the effective date specified in each Assignment and Assumption, (1) other than in connection with an assignment pursuant to Section 10.07(l), the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and (2) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (c) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(e).

(d) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption, each Affiliated Lender Assignment and Assumption delivered to it, and each notice of cancellation of any Loans delivered by the Borrower pursuant to Section 10.07(k) or Section 10.07(l) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent and any Lender (but in the case of any Lender, such inspection shall be limited to reviewing such Lender's own entry in the Register only), at any reasonable time and from time to time upon reasonable prior notice. This Section 10.07(d) and Section 2.11 shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations). Notwithstanding the foregoing, in no event shall the Administrative Agent be obligated to ascertain, monitor or inquire as to whether any Lender is an Affiliated Lender nor shall the Administrative Agent be obligated to monitor the aggregate amount of Loans or Incremental Loans held by Affiliated Lenders.

(e) Any Lender may at any time sell participations to any Person (other than a natural person, a Disqualified Institution or a Defaulting Lender) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that

such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (a) through (f) of the first proviso to Section 10.01 that requires the affirmative vote of such Lender. Subject to Section 10.07(f), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender (subject, for the avoidance of doubt, to the limitations and requirements of those Sections (including Sections 3.01(d) and Sections 3.06 and 3.07) applying to each Participant as if it were a Lender), and it being understood that documentation required under Section 3.01(d) shall be delivered solely to the participating Lender) and had acquired its interest by assignment pursuant to Section 10.07(c). To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. No Lender shall have the obligation to disclose all or a portion of the Participant Register (including the identity of the Participant or any information relating to a Participant's interest in any Loans or other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that any loans are in registered form for U.S. federal income tax purposes.

(f) A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent (not to be unreasonably withheld or delayed; for the avoidance of doubt, the Borrower shall have a reasonable basis for withholding consent if such Participant would result in a materially increased indemnification obligation to the Borrower at such time).

(g) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "**SPC**") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such

option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof, shall be appropriately reflected in the Participant Register. Each party hereto hereby agrees that (i) an SPC shall be entitled to the benefit of Sections 3.01, 3.04 and 3.05 (subject to the requirements and the limitations of such Sections and Sections 3.06 and 3.07 and it being understood that the documentation required under Section 3.01(d) shall be delivered solely to the Granting Lenders) but neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement except, in the case of Section 3.01, to the extent that the grant to the SPC was made with the prior written consent of the Borrower which may be withheld in the Borrower's sole and absolute discretion, (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the Lender hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of \$3,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(i) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the Administrative Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(j) [Reserved].

(k) Any Lender may at any time, assign all or a portion of its rights and obligations with respect to Loans under this Agreement to a Person who is or will become, after such assignment, an Affiliated Lender through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis consistent with the procedures set forth in Section 2.05(a)(v) or (y) open market purchase on a non-pro rata basis, in each case subject to the following limitations:

(i) the assigning Lender and the Affiliated Lender purchasing such Lender's Loans shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit J hereto (an "**Affiliated Lender Assignment and Assumption**");

(ii) Affiliated Lenders will not receive information provided solely to Lenders by the Administrative Agent or any Lender and will not be permitted to attend or participate in conference calls or meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices of prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II;

(iii) (A) each Affiliated Lender that purchases any Loans pursuant to clause (x) above shall represent and warrant to the selling Lender and the Administrative Agent (other than any other Affiliated Lender), or shall make a statement that such representation cannot be made, that it does not possess material non-public information with respect to Holdings and its Subsidiaries or the securities of any of them that has not been disclosed to the Lenders generally (other than Lenders who elect not to receive such information) and (B) each Lender (other than any other Affiliated Lender) that assigns any Loans to an Affiliated Lender pursuant to clause (k)(y) above shall deliver to the Administrative Agent and the applicable Affiliated Lender a customary Big Boy Letter;

(iv) the aggregate principal amount of Loans held at any one time by Affiliated Lenders shall not exceed 25% of the original principal amount of all Loans at such time outstanding; (such percentage, the "**Affiliated Lender Cap**"); *provided* that to the extent any assignment to an Affiliated Lender would result in the aggregate principal amount of all Loans held by Affiliated Lenders exceeding the Affiliated Lender Cap, the assignment of such excess amount will be void *ab initio*; and

(v) as a condition to each assignment pursuant to this clause (k), the Administrative Agent and the Borrower shall have been provided a notice in the form of Exhibit E-2 to this Agreement in connection with each assignment to an Affiliated Lender or a Person that upon effectiveness of such assignment would constitute an Affiliated Lender pursuant to which such Affiliated Lender shall waive any right to bring any action in connection with such Loans against the Administrative Agent, in its capacity as such.

Each Affiliated Lender agrees to notify the Administrative Agent promptly (and in any event within ten (10) Business Days) if it acquires any Person who is also a Lender, and each Lender agrees to notify the Administrative Agent promptly (and in any event within ten (10) Business Days) if it becomes an Affiliated Lender. Such notice shall contain the type of information required and be delivered to the same addressee as set forth in Exhibit E-2.

Notwithstanding anything to the contrary contained herein, any Affiliated Lender that has purchased Loans pursuant to this subsection (k) and any Debt Fund Affiliate that has purchased Loans may, in their sole discretion, contribute, directly or indirectly, principal amount of such Loans, plus all accrued and unpaid interest thereon, to the Borrower for the purpose of cancelling and extinguishing such Loans. Upon the date of such contribution, assignment or transfer, (x) the aggregate outstanding principal amount of Loans shall reflect such cancellation and extinguishing of the Loans then held by the Borrower and (y) the Borrower shall promptly provide notice to the Administrative Agent of such contribution of such Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Loans in the Register.

(l) Any Lender may, so long as no Default or Event of Default has occurred and is continuing, at any time, assign all or a portion of its rights and obligations with respect to Loans under this Agreement to Holdings or the Borrower through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis consistent with the procedures set forth in Section 2.05(a)(v) or (y) notwithstanding Sections 2.12 and 2.13 or any other provision in this Agreement, open market purchase on a non-pro rata basis; *provided that*:

(i) if Holdings is the assignee, upon such assignment, transfer or contribution, Holdings shall automatically be deemed to have contributed the principal amount of such Loans, plus all accrued and unpaid interest thereon, to the Borrower; and

(ii) (a) the principal amount of such Loans, along with all accrued and unpaid interest thereon, so contributed, assigned or transferred to the Borrower shall be deemed automatically cancelled and extinguished on the date of such contribution, assignment or transfer, (b) the aggregate outstanding principal amount of Loans of the remaining Lenders shall reflect such cancellation and extinguishing of the Loans then held by the Borrower and (c) the Borrower shall promptly provide notice to the Administrative Agent of such contribution, assignment or transfer of such Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Loans in the Register.

(m) Notwithstanding anything in Section 10.01 or the definition of "Required Lenders" or "Required Class Lenders" to the contrary, for purposes of determining whether the Required Lenders and Required Class Lenders (in respect of a Class of Loans) have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, or subject to Section 10.07(n), any plan of reorganization pursuant to the U.S. Bankruptcy Code, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, no Affiliated Lender shall have any right to consent (or not consent), otherwise act or direct or require the Administrative Agent or any Lender to take (or refrain from taking) any such action, and all Loans held by any Affiliated Lenders shall be disregarded for all purposes of calculating whether the Required Lenders, Required Class Lenders (in respect of a Class of Loans) or all Lenders have taken any actions (and shall be deemed to have voted pro rata with other lenders that are not Affiliated Lenders), except that no amendment, modification or waiver of any Loan Document shall, without the consent of the applicable Affiliated Lender, deprive any Affiliated Lender of its Pro Rata Share of any payment to which all Lenders of the applicable Class of Loans are entitled or affect an Affiliated Lender in a manner that is disproportionate to the effect on any Lender of the same Class of Loans.

(n) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, each Affiliated Lender hereby agrees that (and each Affiliated Lender Assignment and Assumption shall provide a confirmation that) if a proceeding under any Debtor Relief Law shall be commenced by or against the Borrower or any other Loan Party at a time when such Lender is an Affiliated Lender, such Affiliated Lender irrevocably authorizes and empowers the Administrative Agent to vote on behalf of such Affiliated Lender with respect to the Loans held by such Affiliated Lender in a manner such that all Affiliated Lenders will be deemed to vote in

the same proportion as Lenders that are not Affiliated Lenders, unless the Administrative Agent instructs such Affiliated Lender to vote, in which case such Affiliated Lender shall vote with respect to the Loans held by it in order to provide that all Affiliated Lenders will be deemed to vote in the same proportion as Lenders that are not Affiliated Lenders; *provided* that such Affiliated Lender shall be entitled to vote in accordance with its sole discretion (and not in accordance with the direction of the Administrative Agent) in connection with any plan of reorganization to the extent any such plan of reorganization proposes to treat any Obligations held by such Affiliated Lender in a manner that has a disproportionate effect on such Affiliated Lender as compared to the proposed treatment of similar Obligations held by Lenders that are not Affiliated Lenders.

(o) Although Debt Fund Affiliates shall be Eligible Assignees and shall not be subject to the provisions of Section 10.07(m) or (n), any Lender may, at any time, assign all or a portion of its rights and obligations with respect to Loans under this Agreement to a Person who is or will become, after such assignment, a Debt Fund Affiliate only through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis consistent with the procedures set forth in Section 2.05(a)(v) (for the avoidance of doubt, without requiring any representation as to the possession of material non-public information by such Affiliate and without regard to whether a Default or an Event of Default has occurred and is continuing) or (y) open market purchase on a non-pro rata basis. Notwithstanding anything in Section 10.01 or the definition of "Required Lenders" to the contrary, for purposes of determining whether the Required Lenders have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, (ii) otherwise acted on any matter related to any Loan Document or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, all Loans held by Debt Fund Affiliates, in the aggregate, may not account for more than 49.9% of the Loans of Lenders included in determining whether the Required Lenders have consented to any action pursuant to Section 10.01.

(p) The aggregate outstanding principal amount of the Loans of the applicable Class shall be deemed reduced by the full par value of the aggregate principal amount of the Loans purchased by, or contributed to (in each case, and subsequently cancelled hereunder), the Borrower pursuant to Section 10.07(k) or (l) and the principal repayment on the Maturity Date with respect to the Loans of such Class pursuant to Section 2.07 shall be reduced by the par value of the aggregate principal amount of Loans so purchased or contributed (and subsequently cancelled), with such reduction being applied solely to the Loans of the Lenders which sold such Loans.

Section 10.08 Confidentiality.

Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and its and its Affiliates' managers, administrators, directors, officers, employees, trustees, partners, investors, ~~investment advisors~~ beneficial owners and/or prospective investors, prospective Eligible Assignees (including their respective beneficial owners and/or prospective investors), investment advisors (including prospective investors of such investment advisors) and agents, including

accountants, legal counsel, service providers and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any Governmental Authority or self-regulatory authority having or asserting jurisdiction over such Person (including any Governmental Authority regulating any Lender or its Affiliates), *provided* that the Administrative Agent or such Lender, as applicable, agrees that it will notify the Borrower prior to any such disclosure by such Person to the extent practicable (other than at the request of a regulatory authority or any self-regulatory authority having or asserting jurisdiction over such Person) unless such notification is prohibited by law, rule or regulation; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, *provided* that the Administrative Agent or such Lender, as applicable, agrees that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority or any self-regulatory authority having or asserting jurisdiction over such Person) unless such notification is prohibited by law, rule or regulation; (d) to any other party to this Agreement; (e) subject to an agreement containing provisions at least as restrictive as those of this Section 10.08 (or as may otherwise be reasonably acceptable to the Borrower), to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be an Additional Lender, any pledgee referred to in Section 10.07(g), or any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations; (f) with the written consent of the Borrower; (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.08 or becomes available to the Administrative Agent, any Arranger, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than a Loan Party or any Sponsor or their respective related parties (so long as such source is not known to the Administrative Agent, such Arranger, such Lender or any of their respective Affiliates to be bound by confidentiality obligations to any Loan Party); (h) to any rating agency when required by it on a customary basis and after consultation with the Borrower (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to Loan Parties and their Subsidiaries received by it from such Lender); (i) in connection with the exercise of any remedies hereunder, under any other Loan Document or the enforcement of its rights hereunder or thereunder; or (j) to the extent such Information is independently developed by such Person or its Affiliates so long as not based on Information obtained in a manner that would otherwise violate this Section 10.08.

For purposes of this Section 10.08, “**Information**” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof other than as a result of a breach of this Section 10.08; *provided* that all information received after the Closing Date from Holdings, the Borrower or any of its Subsidiaries shall be deemed confidential unless such information is clearly identified at the time of delivery as not being confidential.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower or any of its Subsidiaries, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

Section 10.09 Setoff.

In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates (and the Administrative Agent, in respect of any unpaid fees, costs and expenses payable hereunder) is authorized at any time and from time to time, without prior notice to the Borrower, any such notice being waived by the Borrower (on its own behalf and on behalf of each Loan Party and each of its Subsidiaries) to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates or the Administrative Agent to or for the credit or the account of the respective Loan Parties and their Subsidiaries against any and all Obligations (other than, with respect to any Guarantor, Excluded Swap Obligations of such Guarantor) owing to such Lender and its Affiliates or the Administrative Agent hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; *provided* that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent and each Lender under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent and such Lender may have at Law.

Section 10.10 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "**Maximum Rate**"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.11 Counterparts; Electronic Execution of Assignments and Certain Other Documents.

This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier, .pdf or other electronic imaging means of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Agents may also require that any such documents and signatures delivered by telecopier, .pdf or other electronic imaging means be confirmed by a manually signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by telecopier, .pdf or other electronic imaging means.

The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.12 Integration; Termination.

This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements (other than the Fee Letter) written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided* that the inclusion of supplemental rights or remedies in favor of the Agents or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof. Notwithstanding anything contained herein or in any Loan Document or any other agreement among the parties or anything else to the contrary, the Fee Letter and all obligations thereunder shall survive the execution, delivery and performance of the Loan Documents and the occurrence of the Closing Date.

Section 10.13 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied (other than Obligations under Secured Hedge Agreements, Treasury Services Agreements or contingent indemnification obligations, in any such case, not then due and payable).

Section 10.14 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.14, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 10.15 GOVERNING LAW.

(a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY (BOROUGH OF MANHATTAN) OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY, EACH AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS AND AGREES THAT IT WILL NOT COMMENCE OR SUPPORT ANY SUCH ACTION OR PROCEEDING IN ANOTHER JURISDICTION. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN OR IN ANY OTHER LOAN DOCUMENT WILL PREVENT ANY LENDER OR THE ADMINISTRATIVE AGENT FROM BRINGING ANY ACTION TO ENFORCE ANY AWARD OR JUDGMENT OR EXERCISE ANY RIGHT UNDER THE SECURITY DOCUMENTS OR AGAINST ANY COLLATERAL OR ANY OTHER PROPERTY OF ANY LOAN PARTY IN ANY OTHER FORUM IN WHICH JURISDICTION CAN BE ESTABLISHED. EACH LOAN PARTY, EACH AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED

THERE TO. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS IN THE MANNER PROVIDED FOR NOTICES (OTHER THAN TELECOPIER) IN SECTION 10.02. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.16 WAIVER OF RIGHT TO TRIAL BY JURY.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.16.

Section 10.17 Binding Effect.

This Agreement shall become effective when (i) it shall have been executed by the Loan Parties and the Administrative Agent and (ii) the Administrative Agent shall have been notified by each Lender that each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Loan Parties, each Agent and each Lender and their respective successors and assigns, in each case in accordance with Section 10.07 (if applicable) and except that no Loan Party shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders except as permitted by Section 7.04.

Section 10.18 USA Patriot Act.

Each Lender that is subject to the USA Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name, address and tax identification number of such Loan Party and other information regarding such Loan Party that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the USA Patriot Act. This notice is given in accordance with the requirements of the USA Patriot Act and is effective as to the Lenders and the Administrative Agent. [The Borrower shall, promptly following a written request by the Administrative Agent \(or the Administrative Agent on behalf of any Lender\), provide all documentation, including a Beneficial Ownership Certification, and other information that the Administrative Agent reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act and the Beneficial Ownership Regulation.](#)

Section 10.19 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the other Arrangers are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Administrative Agent, the other Arrangers and the Lenders, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, each other Arranger and each Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for each Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, any other Arranger nor any Lender has any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the other Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Administrative Agent nor any other Arranger nor any Lender has any obligation to disclose any of such interests to the Loan Parties or any of their respective Affiliates. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the other Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.20 INTERCREDITOR AGREEMENTS.

(a) PURSUANT TO THE EXPRESS TERMS OF EACH INTERCREDITOR AGREEMENT, IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE TERMS OF THE RELEVANT INTERCREDITOR AGREEMENT AND ANY OF THE LOAN DOCUMENTS, THE PROVISIONS OF THE RELEVANT INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL.

(b) EACH LENDER AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT TO ENTER INTO THE RELEVANT INTERCREDITOR AGREEMENT ON BEHALF OF SUCH LENDER, AND TO TAKE ALL ACTIONS (AND EXECUTE ALL DOCUMENTS) REQUIRED (OR DEEMED ADVISABLE) BY IT IN ACCORDANCE WITH THE TERMS OF SUCH INTERCREDITOR AGREEMENT(S). EACH LENDER AGREES TO BE BOUND BY AND WILL TAKE NO ACTIONS CONTRARY TO THE PROVISIONS OF THE RELEVANT INTERCREDITOR AGREEMENT.

(c) THE PROVISIONS OF THIS SECTION 10.20 ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF THE RELEVANT INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO THE RELEVANT INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF THE RELEVANT INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NO AGENT (AND NONE OF ITS AFFILIATES) MAKES ANY REPRESENTATION TO ANY LENDER AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN THE RELEVANT INTERCREDITOR AGREEMENT.

(d) THE PROVISIONS OF THIS SECTION 10.20 SHALL APPLY WITH EQUAL FORCE, MUTATIS MUTANDIS, TO THE SECOND LIEN INTERCREDITOR AGREEMENT, THE THIRD LIEN INTERCREDITOR AGREEMENT, THE SUBORDINATION AGREEMENT AND ANY OTHER INTERCREDITOR AGREEMENT OR ARRANGEMENT PERMITTED BY THIS AGREEMENT.

(e) EACH LENDER HEREUNDER (I) ACKNOWLEDGES THAT IT HAS RECEIVED A COPY OF THE SECOND LIEN INTERCREDITOR AGREEMENT AND (II) CONSENTS TO THE SUBORDINATION OF LIENS PROVIDED FOR IN THE SECOND LIEN INTERCREDITOR AGREEMENT.

(f) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, (I) THE LIENS AND SECURITY INTERESTS GRANTED TO THE ADMINISTRATIVE AGENT PURSUANT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT ARE EXPRESSLY SUBJECT AND SUBORDINATE TO THE LIENS AND SECURITY INTERESTS GRANTED IN FAVOR OF THE SENIOR SECURED PARTIES (AS DEFINED IN THE SECOND LIEN INTERCREDITOR AGREEMENT) TO THE EXTENT SET FORTH IN THE SECOND LIEN INTERCREDITOR AGREEMENT, INCLUDING LIENS AND SECURITY INTERESTS GRANTED TO FIRST LIEN ADMINISTRATIVE AGENT, PURSUANT TO OR IN CONNECTION WITH THE FIRST LIEN CREDIT AGREEMENT AND (II) THE EXERCISE OF ANY RIGHT OR REMEDY BY THE ADMINISTRATIVE AGENT HEREUNDER IS SUBJECT TO THE LIMITATIONS AND PROVISIONS OF THE SECOND LIEN INTERCREDITOR AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE SECOND LIEN INTERCREDITOR AGREEMENT AND THE TERMS OF THIS AGREEMENT, THE TERMS OF THE SECOND LIEN INTERCREDITOR AGREEMENT SHALL GOVERN.

Section 10.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 10.22 Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.22, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

ARTICLE XI. GUARANTEE

Section 11.01 The Guarantee.

Each Guarantor hereby jointly and severally with the other Guarantors guarantees, as a primary obligor and not as a surety, to each Secured Party and their respective successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of (i) the Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code and (ii) any other Debtor Relief Laws) on the Loans made by the Lenders to, and the Notes held by each Lender of, the Borrower, and all other Obligations (excluding, with respect to any Guarantor, any Excluded Swap Obligations of such Guarantor) from time to time owing to the Secured Parties by any Loan Party under any Loan Document or any Secured Hedge Agreement or any Treasury Services Agreement, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the “**Guaranteed Obligations**”). The Guarantors hereby jointly and severally agree that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Section 11.02 Obligations Unconditional.

The obligations of the Guarantors under Section 11.01 shall constitute a guaranty of payment and to the fullest extent permitted by applicable Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower under this Agreement, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

- (i) at any time or from time to time, without notice to the Guarantors, to the extent permitted by Law, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;
- (ii) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;
- (iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or except as permitted pursuant to Section 11.09, any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;
- (iv) any Lien or security interest granted to, or in favor of any Lender or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or
- (v) the release of any other Guarantor pursuant to Section 11.09.

The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and, to the extent permitted by Law, all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive, to the extent permitted by Law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This

Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other Person at any time of any right or remedy against the Borrower or against any other Person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Lenders, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

Section 11.03 Reinstatement.

The obligations of the Guarantors under this Article XI shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

Section 11.04 Subrogation; Subordination.

Each Guarantor hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 11.01, whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party to any Non-Loan Party permitted pursuant to Section 7.03(b)(ii) or 7.03(d) shall be subordinated to such Loan Party's Obligations in the manner set forth in the Intercompany Note evidencing such Indebtedness.

Section 11.05 Remedies.

The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in Section 8.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 8.02) for purposes of Section 11.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 11.01.

Section 11.06 Instrument for the Payment of Money.

Each Guarantor hereby acknowledges that the guarantee in this Article XI constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

Section 11.07 Continuing Guarantee.

The guarantee in this Article XI is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

Section 11.08 General Limitation on Guarantee Obligations.

In any action or proceeding involving any state corporate limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under Section 11.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, any Loan Party or any other Person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 11.10) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

Section 11.09 Release of Guarantors.

If, in compliance with the terms and provisions of the Loan Documents, (i) all or substantially all of the Equity Interests or property of any Subsidiary Guarantor are sold or otherwise transferred to a Person or Persons none of which is a Loan Party or (ii) any Subsidiary Guarantor becomes an Excluded Subsidiary (any such Subsidiary Guarantor, and any Subsidiary Guarantor referred to in clause (i), a “**Transferred Guarantor**”), such Transferred Guarantor shall, upon the consummation of such sale or transfer or other transaction, be automatically released from its obligations under this Agreement (including under Section 10.05 hereof) and its obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and, in the case of a sale of all or substantially all of the Equity Interests of the Transferred Guarantor, the pledge of such Equity Interests to the Administrative Agent pursuant to the Collateral Documents shall be automatically released, and, so long as the Borrower shall have provided the Agents such certifications or documents as any Agent shall reasonably request, the Administrative Agent shall take such actions as are necessary to effect each release described in this Section 11.09 in accordance with the relevant provisions of the Collateral Documents; provided further, that notwithstanding the foregoing, if any Subsidiary Guarantor becomes an Excluded Subsidiary pursuant to clause (a) of the definition of Excluded Subsidiary, such Guarantor shall not be released from its obligations under the Guaranty or any other Loan Document unless (x) such Subsidiary Guarantor would no longer be a direct or indirect Subsidiary of the Borrower or (y) after giving pro forma effect to such release and the consummation of the relevant transaction, the Borrower would be permitted to make an Investment in such Person to be so released pursuant to clause (1) of the definition of “Permitted Investments” (and, if this clause (y) shall be applicable, Borrower shall be deemed to have made such an Investment in such Person pursuant to such clause (1)).

Subject to the immediately preceding paragraph of this Section 11.09, the Guarantees made herein shall remain in full force and effect so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) obligations under Treasury Services Agreements or obligations under Secured Hedge Agreements) hereunder which is accrued and payable shall remain unpaid or unsatisfied.

Section 11.10 Right of Contribution.

Each Guarantor hereby agrees that to the extent that a Subsidiary Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Subsidiary Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Subsidiary Guarantor's right of contribution shall be subject to the terms and conditions of Section 11.04. The provisions of this Section 11.10 shall in no respect limit the obligations and liabilities of any Subsidiary Guarantor to the Administrative Agent, and the Lenders, and each Subsidiary Guarantor shall remain liable to the Administrative Agent and the Lenders for the full amount guaranteed by such Subsidiary Guarantor hereunder.

Section 11.11 Keepwell.

Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally, and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guaranty in respect of any Swap Obligation (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 11.11 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 11.11, or otherwise under this Guaranty, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 11.11 shall remain in full force and effect until the payment in full and discharge of the Guaranteed Obligations. Each Qualified ECP Guarantor intends that this Section 11.11 constitute, and this Section 11.11 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Guarantor for all purposes of section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

~~IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.~~

~~PHD INTERMEDIATE LLC~~

By: _____

Name:

Title:

~~PHD MERGER SUB LLC~~

By: _____

Name:

Title:

~~{GUARANTORS}~~

By: _____

Name:

Title: SIGNATURE PAGES INTENTIONALLY
OMITTED

~~UBS AG, STAMFORD BRANCH,~~
as Administrative Agent and as a Lender

By: _____

Name:

Title:

PHD GROUP HOLDINGS LLC

2014 EQUITY INCENTIVE PLAN

1. DEFINED TERMS

Exhibit A, which is incorporated by reference, defines the terms used in the Plan and sets forth certain operational rules related to those terms.

2. PURPOSE

The Plan has been established to attract, retain and motivate the employees, officers, directors and consultants of the Company and its Affiliates, and to advance the interests of the Company by providing them with appropriate incentives and rewards either through a proprietary interest in the long-term success of the Company or compensation based on fulfilling certain performance goals. The Plan is a “compensatory benefit plan” within the meaning of Rule 701 under the Securities Act of 1933 (the “Securities Act”), as amended, and all Awards granted under the Plan are intended to qualify for an exemption from the registration requirements (i) under the Securities Act, pursuant to Rule 701 of the Securities Act or another applicable exemption, and (ii) under applicable state securities laws.

3. ADMINISTRATION

The Administrator has full discretionary authority, subject only to the express provisions of the Plan, to interpret, clarify, construe or resolve any ambiguity in any provision of the Plan or any Award; administer the Plan; determine eligibility for, and grant Awards; determine the type and amount of Awards to be granted to each Participant; determine, modify or waive the terms and conditions of any Award (including by accelerating or waiving vesting of Awards and exercisability of Awards, extending the term or period of exercisability of any Awards (subject to the limitations set forth in Section 6(b)(4) of this Plan), and modifying the purchase price or exercise price of any Award (subject to the limitations set forth in Section 6(a)(10) of this Plan)); prescribe forms, rules and procedures; and otherwise do all things necessary or advisable to carry out the purposes of the Plan. Awards may, in the discretion of the Administrator, be made under this Plan in assumption of, or in substitution for, outstanding awards previously granted by the Company or an Affiliate or a company acquired by the Company or with which the Company combines. The Administrator shall have full and exclusive discretionary power to adopt rules, forms, instruments and guidelines for administering this Plan as the Administrator deems necessary or proper. All actions taken and all interpretations and determinations of the Administrator or the Board (or any other committee or sub-committee thereof), as applicable, made under the Plan will be final and conclusive and will bind all interested parties (including, without limitation, Participants and their beneficiaries or successors). The Administrator may delegate to one or more of its members (if any), one or more officers of the Company or any Affiliate, or one or more agents or advisors such administrative duties or powers as it may deem advisable. The Administrator shall not be liable for and the Company shall indemnify and hold harmless the Administrator from and against any action taken or omitted to be taken by the Administrator in connection with the Plan, except for such actions or omissions arising from or as a result of the Administrator’s own willful misconduct.

4. LIMITS ON AWARDS UNDER THE PLAN

A maximum of 32,482,177 Class A Units may be delivered in satisfaction of Awards under the Plan, subject to Section 7(b) hereof. The number of Class A Units delivered in satisfaction of Awards shall, for purposes of the preceding sentence, be determined net of Class A Units withheld by the Company in payment of the exercise price of an Award or in satisfaction of tax withholding requirements with respect to an Award, to the extent permitted by the Administrator in its sole discretion. In the event that any outstanding Award expires, is forfeited, cancelled or otherwise terminated without consideration (i.e., Class A Units or cash) therefor, the Class A Units subject to such Award to the extent of any such forfeiture, cancellation, expiration, or termination shall again be available for Awards under the Plan. Class A Units issued under awards of an acquired company that are assumed, converted, replaced or adjusted in connection with the acquisition shall not reduce the number of Class A Units available for Awards under the Plan.

5. ELIGIBILITY AND PARTICIPATION

The Administrator in its sole discretion and from time to time will select Participants from among those key employees and directors of, and consultants and advisors to, the Company or its Affiliates who, in the opinion of the Administrator, are in a position to make a significant contribution to the success of the Company and its Affiliates. Options and UARs may only be granted to those key employees, directors and consultants and advisors with respect to whom the Company is an "eligible issuer" within the meaning of Section 409A of the Code. Designation of a Participant in any year shall not require the Administrator to designate such Person to receive an Award in any other year or, once designated, to receive the same type or amount of Award as granted to the Participant in any other year.

6. RULES APPLICABLE TO AWARDS

(a) All Awards

(1) Award Provisions. The Administrator in its sole discretion will determine the terms of all Awards, subject to the limitations provided herein. By accepting (or, under such rules as the Administrator may prescribe, being deemed to have accepted) an Award, the Participant agrees to the terms of the Award and the Plan. Notwithstanding any provision of the Plan to the contrary, awards of an acquired company that are converted, replaced or adjusted in connection with the acquisition may contain terms and conditions that are inconsistent with the terms and conditions specified herein, as determined by the Administrator in its sole discretion.

(2) **Term of Plan.** No Awards may be made on or after December 10, 2024, which is the tenth (10th) anniversary of the date the Plan was adopted, or if earlier, the termination of the Plan by the Administrator, however, previously granted Awards may continue beyond that date in accordance with their terms.

(3) **Transferability.** No Awards, except as the Administrator otherwise expressly provides in accordance with the second sentence of this Section 6(a)(3), may be transferred other than by will or by the laws of descent and distribution. The Administrator may permit Awards to be transferred by gift, subject to such limitations as the Administrator may impose.

(4) **Vesting, Etc.** The Administrator may determine the time or times (including upon the achievement of performance conditions) at which an Award will vest or become exercisable and the terms on which an Award requiring exercise will remain exercisable, which terms need not be the same for each grant of Awards or for each Participant. An Award shall not become exercisable unless such Award is fully vested and exercisable pursuant to the terms of the applicable Award Agreement. Without limiting the foregoing, the Administrator may at any time accelerate the vesting or exercisability of an Award, regardless of any adverse or potentially adverse tax consequences resulting from such acceleration.

(5) **Taxes.**

(A) The Company shall have the power and the right to deduct or withhold automatically from any amount deliverable under an Award or otherwise, or require a Participant to remit to the Company, the minimum statutory amount to satisfy federal, state, and local taxes, domestic or foreign, required by law or regulation to be withheld with respect to any taxable event arising as a result of the Plan. With respect to required withholding, Participants may elect (subject to the Company's automatic withholding right set out above), subject to the approval of the Administrator in its sole discretion, to satisfy the withholding requirement, in whole or in part, by having the Company withhold Class A Units having a Fair Market Value on the date that the tax is to be determined equal to the minimum statutory total tax that could be imposed on the transaction.

(B) Participants (or their beneficiaries) shall be responsible for all taxes with respect to any Awards under the Plan. Notwithstanding anything contained herein to the contrary, the Administrator and the Company make no guarantees to any Person regarding the tax treatment of Awards or payments made under the Plan.

(6) Distribution Equivalents, Etc. The Administrator may provide for the payment of amounts in lieu of cash distributions with respect to Class A Units subject to an Award. Any entitlement to dividend equivalents or similar entitlements shall be established and administered consistent either with exemption from, or compliance with, the requirements of Section 409A of the Code.

(7) Section 83(b) Election. Restricted Class A Unit. If a Participant makes an election pursuant to Section 83(b) of the Code (a "Section 83(b) Election") concerning a Restricted Class A Unit, the Participant shall be required to file promptly a copy of such election with the Company.

(8) Rights Limited. Nothing in the Plan will be construed as giving any person the right to continued Employment with the Company or its Affiliates, or any rights as a unitholder except as to Class A Units actually issued under the Plan. The loss of existing or potential profit in Awards will not constitute an element of damages in the event of termination of Employment for any reason, even if the termination is in violation of an obligation of the Company or any Affiliate to the Participant.

(9) Coordination with Other Plans. Awards under the Plan may be granted in tandem with, or in satisfaction of or substitution for, other Awards under the Plan or awards made under other compensatory plans or programs of the Company or its Affiliates.

(10) Section 409A. Notwithstanding anything to the contrary in this Plan or any Award Agreement:

(A) To the extent that the Plan and/or Awards are subject to Section 409A of the Code, the Administrator may, in its sole discretion and without a Participant's prior consent, amend the Plan and/or Awards, adopt policies and procedures, or take any other actions (including amendments, policies, procedures and actions with retroactive effect) as are necessary or appropriate to (i) exempt the Plan and/or any Award from the application of Section 409A of the Code, United States Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the date of the grant of an Award ("Section 409A Guidance"), (ii) preserve the intended tax treatment of any such Award, and/or (iii) comply with the requirements of Section 409A Guidance. This Plan shall be interpreted at all times in such a manner that the terms and provisions of the Plan and Awards are exempt from or comply with Section 409A Guidance. In no event shall the Company or any of its Affiliates be liable for any additional tax, interest or penalties that may be imposed on a Participant under Section 409A of the Code or any damages that may be imposed on a Participant or any other Person for failing to comply with Section 409A of the Code.

(B) Notwithstanding any contrary provision in the Plan or Award Agreement, any payment(s) that are otherwise required to be made under the Plan to a “specified employee” (as defined under Section 409A Guidance) as a result of his or her Separation from Service (other than a payment that is exempt from Section 409A of the Code) shall be delayed for the first six (6) months following such Separation from Service (or, if earlier, the date of death of the specified employee) and shall instead be paid (in a manner set forth in the Award Agreement) on the date that immediately follows the end of such six-month period or as soon as administratively practicable thereafter. Any remaining payments of nonqualified deferred compensation shall be made without delay at the time or times such payments are otherwise scheduled to be made.

(b) Awards Requiring Exercise

(1) Time and Manner of Exercise. Unless the Administrator expressly provides otherwise, an Award requiring exercise by the Participant may not be exercised until the latest of (i) the date that the Administrator receives a notice of exercise (in form acceptable to the Administrator) signed by the appropriate Person, (ii) if applicable, the date that all payments required under the Award in accordance with Section 6(a)(5) and Section 6(b)(3) hereof are received by the Administrator, and (iii) the condition specified in Section 6(b)(5) is satisfied. If the Award is exercised by any Person other than the Participant, the Administrator may require satisfactory evidence that the Person exercising the Award has the right to do so.

(2) Exercise Price. The exercise price (or the base value from which appreciation is to be measured) of each Award requiring exercise shall be 100% of the Fair Market Value of the Class A Units subject to the Award, determined as of the date of grant, or such greater amount as the Administrator may determine in connection with the grant.

(3) Payment Of Exercise Price. Where the exercise of an Award is to be accompanied by payment, payment of the exercise price shall be made by cash or check, at the election of the Participant, or by such other means as are permitted by the Administrator in its sole discretion or as set forth in the applicable Award Agreement.

(4) Maximum Term. Awards requiring exercise will have a term not to exceed ten (10) years from the date of grant.

(5) LLC Agreement. Unless the Administrator determines otherwise, or unless the Participant is already fully bound by the terms set forth therein, exercise of an Award shall be conditioned upon the execution by the Participant of a joinder agreement pursuant to which such Participant shall become fully bound by the terms set forth in the Company’s LLC Agreement.

7. EFFECT OF CERTAIN TRANSACTIONS

(a) **Mergers, etc.** Except as otherwise provided in an Award, the following provisions shall apply in the event of a Sale Transaction:

(1) **Assumption or Substitution.** If the Sale Transaction is one in which there is an acquiring or surviving entity, the Administrator may, in its sole discretion, provide for the assumption of some or all outstanding Awards or for the grant of new awards in substitution therefor by the acquiror or survivor or an affiliate of the acquiror or survivor.

(2) **Cash-Out of Awards.** If the Sale Transaction is one in which holders of Class A Units will receive upon consummation a payment (whether cash, noncash or a combination of the foregoing), the Administrator may, in its sole discretion, provide for the termination of some or all outstanding Awards or any portion thereof in exchange for a payment (a "cash-out"), equal in the case of each affected Award or portion thereof to the excess, if any, of (A) the Fair Market Value of one Class A Unit times the number of Class A Units subject to the Award or such portion, over (B) the aggregate exercise or purchase price, if any, under the Award or such portion (in the case of a UAR, the aggregate base value above which appreciation is measured), in each case on such payment terms (which need not be the same as the terms of payment to holders of Class A Units) and other terms, and subject to such conditions as the Administrator determines, including, but not limited to, conditioning the Participant's receipt of payments pursuant to this Section 7(a)(2) on the Participant's agreement to waive any and all rights with respect to any such payment that may become payable after the fifth (5th) anniversary of the date of consummation of the Sale Transaction in order to comply with Treasury Regulations Section 1.409A-3(i)(5)(iv).

(3) **Acceleration of Certain Awards.** In the event of a Sale Transaction the Administrator may, in its sole discretion, give the holders of some or all outstanding Options and UARs a reasonable period of time, as determined by the Administrator, prior to the consummation of the Sale Transaction to exercise such Options or UARs, and at the end of such period, such Options and UARs shall terminate and be forfeited to the extent not so exercised during such period without consideration therefor (unless otherwise specified by the Administrator).

(4) **Additional Limitations.** Any Class A Units and any cash or other property delivered pursuant to this Section 7(a) with respect to an Award may, in the discretion of the Administrator, contain such restrictions, if any, as the Administrator deems appropriate to reflect any performance or other vesting conditions to which the Award was subject and that did not lapse (and were not satisfied) in connection with the Sale Transaction. Subject to Section 6(a)(10) hereof, in the case of an Award that does not vest in connection with the Sale Transaction, the Administrator may require that any amounts delivered, exchanged or otherwise paid in respect of such Award in connection with the Sale Transaction be placed in escrow or otherwise made subject to such restrictions as the Administrator, in its sole discretion, deems appropriate to carry out the intent of the Plan.

(b) Changes in and Distributions With Respect to Class A Units

(1) Basic Adjustment Provisions. In the event of a merger, consolidation, reorganization, conversion to corporate form, unit distribution, extraordinary cash distribution, distribution in-kind, unit split or combination of Class A Units (including a reverse unit split), split-up, spin-off, exchange of Class A Units, recapitalization or other change in the Company's capital structure, the Administrator, without liability to any Person, shall take such equitable actions as are appropriate in its reasonable judgment to preserve the economic rights of the Participants, whether by adjusting the terms of the Awards or such other means as the Administrator shall determine, and, in each case, compliance with applicable tax laws (including, but not limited to, Section 409A of the Code), as determined by the Administrator.

(2) Continuing Application of Plan Terms. References in the Plan to Class A Units will be construed to include any Class A Units or securities resulting from an adjustment pursuant to this Section 7.

8. LEGAL CONDITIONS AND RESTRICTIONS ON CLASS A UNITS; COMPLIANCE WITH LAW

The Administrator may impose such other conditions or restrictions on Class A Units received in connection with an Award as it may deem advisable or desirable. These restrictions may include, but shall not be limited to, a requirement that the Participant hold the Class A Units received for a specified period of time or a requirement that a Participant represent and warrant in writing that the Participant is acquiring the Class A Units for investment and without any present intention to sell or distribute such Class A Units. The certificates, if any, for Class A Units may include any legend which the Administrator deems appropriate to reflect any conditions and restrictions applicable to such Class A Units and the Company may hold the certificates pending lapse of the applicable restrictions.

The Company will not be obligated to deliver any Class A Units pursuant to the Plan or to remove any restriction from Class A Units previously delivered under the Plan until: (i) the Company is satisfied that all legal matters in connection with the issuance and delivery of such Class A Units have been addressed and resolved, including, if applicable, compliance with the requirements of the Securities Act of 1933, as amended; (ii) if the outstanding Class A Units are, at the time of delivery, listed on any stock exchange or national market system, the Class A Units to be delivered have been listed or authorized to be listed on such exchange or system upon official notice of issuance; and (iii) all conditions of the Award have been satisfied or waived. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Class A Unit hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Class A Units as to which such requisite authority shall not be obtained.

Awards shall be granted and administered consistent with the requirements of applicable Delaware law relating to the issuance of units and the consideration to be received therefor, applicable requirements of the Securities Act of 1933, as amended, and with the applicable requirements of the stock exchanges or other trading systems on which the Class A Units are listed or entered for trading, in each case as determined by the Administrator. For the avoidance of doubt, the Administrator may, in its sole discretion and without a Participant's prior consent, amend the Plan and/or Awards, adopt policies and procedures, or take any other actions (including amendments, policies, procedures and actions with retroactive effect) as are necessary or appropriate to bring the Plan and/or Awards into compliance with applicable law.

9. AMENDMENT AND TERMINATION

The Administrator may at any time or times amend the Plan or any outstanding Award for any purpose which may at the time be permitted by law, and may at any time terminate the Plan as to any future grants of Awards; provided, that, except as otherwise expressly provided by the Plan or an Award, the Administrator may not, without the Participant's consent, alter the terms of an Award so as to affect materially and adversely a Participant's rights under an Award, unless the Administrator expressly reserved the right to do so at the time of the Award. Any amendments to the Plan shall be conditioned upon unitholder approval only to the extent, if any, such approval is required by law (including the Code) or regulatory authority, as determined by the Administrator.

10. OTHER COMPENSATION ARRANGEMENTS

The existence of the Plan or the grant of any Award will not in any way affect the Company's right to award a Person bonuses or other compensation in addition to Awards under the Plan.

11. MISCELLANEOUS

(a) Waiver of Jury Trial. BY ACCEPTING AN AWARD UNDER THE PLAN, EACH PARTICIPANT WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THE PLAN AND ANY AWARD, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, AND AGREES THAT ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BY ACCEPTING AN AWARD UNDER THE PLAN, EACH PARTICIPANT CERTIFIES THAT NO OFFICER, REPRESENTATIVE, OR ATTORNEY OF THE COMPANY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE COMPANY WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS.

(b) Limitation of Liability. Notwithstanding anything to the contrary in the Plan, neither the Company, nor any Affiliate, nor the Administrator, nor any Person acting on behalf of the Company, any Affiliate, or the Administrator, shall be liable to any Participant or to the estate or beneficiary of any Participant or to any other holder of an Award by reason of any acceleration of income, or any additional tax, asserted by reason of the failure of an Award to satisfy the requirements of Section 409A of the Code, or by reason of Section 4999 of the Code.

(c) Severability. If any provision of the Plan or any Award is or becomes or is deemed to be invalid, illegal or unenforceable in any jurisdiction, or as to any Person or Award, or would disqualify the Plan or any Award under any law or regulatory authority deemed applicable by the Administrator, such provision shall be construed or deemed amended to conform to such laws or regulatory authority, or if it cannot be so construed or deemed amended without, in the determination of the Administrator, materially altering the intent of the Plan or the Award, such provision shall be stricken as to such jurisdiction, Person, or Award, and the remainder of the Plan and any such Award shall remain in full force and effect.

(d) Unfunded Plan. Participants shall have no right, title or interest whatsoever in or to any investments that the Company may make to aid it in meeting its obligations under the Plan. Nothing contained in the Plan, and no action taken pursuant to its provisions, shall create or be construed to create a trust of any kind, or a fiduciary relationship between the Company and any Participant, beneficiary, legal representative, or any other Person. To the extent that any person acquires a right to receive payments from the Company, such right shall be no greater than the right of an unsecured general creditor of the Company. All payments to be made hereunder shall be paid from the general funds of the Company, and no special or separate fund shall be established and no segregation of assets shall be made to assure payment of such amounts. The Plan is not subject to the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time.

(e) No Constraint on Company Action. Nothing in the Plan shall be construed to (i) limit, impair, or otherwise affect the Company's right or power to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure, or to merge or consolidate, or dissolve, liquidate, sell, or transfer all or any part of its business or assets, or (ii) limit the right or power of the Company or its Affiliates to take any action which such entity deems to be necessary or appropriate.

(f) Foreign Laws. To comply with the laws (including tax laws) in countries other than the United States in which the Company or any Affiliate operates or has employees, directors or consultants, the Administrator, in its sole discretion, shall have the power and authority to: (i) determine which Affiliates shall be covered by the Plan; (ii) determine which employees, directors or consultants outside the United States are eligible to participate in the Plan; (iii) modify the terms and conditions of any Award granted to employees, directors or consultants outside the United States to comply with applicable foreign laws; (iv) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local government regulatory exemptions or approvals; and (v) establish sub-plans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable.

(g) Successors. All obligations of the Company under the Plan with respect to Awards granted hereunder shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business or assets of the Company.

(h) Governing Law. This Plan and each Award (including, without limitation, the validity, construction, effect or performance hereof or thereof and any remedies hereunder or thereunder or related hereto or thereto) and all claims or causes of action or other matters (whether in contract, tort or otherwise) that may be based upon, arise out of or relate to this Plan or any Award or the negotiation, execution, performance or breach of this Plan or any Award shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, without giving effect to any choice or conflict of law provisions (whether Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

(i) Effective Date. The Plan shall be effective as of the date of adoption by the Board, which date is set forth below (the "Effective Date").

* * *

This Plan was duly adopted and approved by the Board on the 10th day of December, 2014.

EXHIBIT A

Definition of Terms

The following terms, when used in the Plan, will have the meanings and be subject to the provisions set forth below:

“Administrator”: The Board, except that the Board may delegate its authority under the Plan to a committee of the Board, in which case references herein to the Board shall refer to such committee. The Board may delegate: (i) to one or more of its members such of its duties, powers and responsibilities as it may determine; (ii) to one or more officers of the Company the power to grant rights or options; and (iii) to such employees or other Persons as it determines such ministerial tasks as it deems appropriate. In the event of any delegation described in the preceding sentence, the term “Administrator” shall include the Person or Persons so delegated to the extent of such delegation.

“Affiliate”: Any entity that stands in a relationship to the Company that would result in the Company and such other entity being treated as one employer under Section 414(b) and Section 414(c) of the Code, except that in determining eligibility for the grant of an Option or UAR by reason of service for an Affiliate, Sections 414(b) and 414(c) of the Code shall be applied by substituting “at least 50%” for “at least 80%” under Section 1563(a) (1), (2) and (3) of the Code and Treas. Regs. § 1.414(c)-2; provided, that, to the extent permitted under Section 409A of the Code, “at least 20%” shall be used in lieu of “at least 50%”; and further, provided, that, the lower ownership threshold described in this definition (50% or 20% as the case may be) shall apply only if the same definition of affiliation is used consistently with respect to all compensatory unit options or unit awards (whether under the Plan or another plan). The Company may at any time by amendment provide that different ownership thresholds (consistent with Section 409A of the Code) apply but any such change shall not be effective for twelve (12) months.

“Award”: Any or a combination of the following:

- (i) Options.
- (ii) UARs.
- (iii) Restricted Class A Unit
- (iv) unrestricted Class A Unit.
- (v) Performance Awards.
- (vi) Awards (other than Awards described in (i) through (v) above) that are convertible into or otherwise based on Class A Units.

“Award Agreement”: A written agreement, setting forth the terms and conditions of an Award.

“Berkshire Owner Group”: Berkshire Fund VIII, L.P., Berkshire Fund VIII-A, L.P., Berkshire Investors III LLC and Berkshire Investors IV LLC, and any Affiliate of the foregoing, which invests in equity of the Company, which term shall be deemed to include any Permitted Transferee (as such term is defined in the LLC Agreement) of the foregoing. For the avoidance of doubt, neither the Company nor any of its subsidiaries shall be considered an Affiliate of the Berkshire Owner Group for purposes of this Plan.

“Board”: The Board of Managers of the Company.

“Cause”: (i) In the case of any Participant who is employed by the Company or one of its Affiliates pursuant to an Employment Agreement, if any, in which there is a definition of “Cause”, the definition of “Cause” as set forth in such Employment Agreement; provided, that, such definition shall apply solely for such Participant and only for so long as such Employment Agreement remains effective; or (ii) in all other cases, the term “Cause” shall mean that the Board has determined in its reasonable good faith judgment that any one or more of the following has occurred:

- (a) the Participant shall have been indicted for, shall have been convicted of, or shall have pleaded guilty or nolo contendere to, any felony or any crime involving dishonesty or moral turpitude;
- (b) the Participant shall have committed any fraud, theft, embezzlement, misappropriation of funds, breach of fiduciary duty or act of dishonesty;
- (c) the Participant shall have breached, in any material respect, any of the provisions of the Plan and/or Award Agreement or any restrictive covenants (including confidentiality, non-competition or non-solicitation covenants) contained in any agreements with the LLC, its Subsidiaries and/or any of their respective Affiliates;
- (d) the Participant shall have engaged in conduct that (i) is likely to make the LLC, its Subsidiaries and/or any of their respective Affiliates subject to criminal liabilities, (ii) involves a material breach of fiduciary obligation on the part of the Participant or (iii) could reasonably be expected to have a material adverse effect upon the business, interests or reputation of the LLC, its Subsidiaries and/or any of their respective Affiliates;
- (e) the Participant shall have (i) acted in a grossly negligent manner or otherwise failed to perform his or her duties to the LLC and its Subsidiaries, (ii) failed or refused to comply with a reasonable written directive of the Board or, where a Participant does not report directly to the Board, the Chief Executive Officer of the LLC or such other senior executive of the LLC that the Board or Chief Executive Officer may designate from time to time, or (iii) failed or refused to comply with the policies of the LLC and its Subsidiaries and, in each case, if any such action or failure or refusal to act is capable of cure or remedy, has not cured or remedied such action or failure or refusal to act within ten (10) days of receipt of notice from the LLC advising such Participant of such breach; or

(f) the Participant shall have deliberately refused to devote such time and attention to fulfilling his responsibilities to the LLC, its Subsidiaries and/or any of their respective Affiliates as would be reasonably expected from an executive having similar responsibilities in a comparable company (other than due to Disability or temporary disability which, in the reasonable judgment of the Board, causes the Participant to be incapable of devoting such time and energy), and such refusal has continued for thirty (30) days after delivery of written notification by the Board of Directors (which notice includes detailed information regarding such alleged refusal and the reasonable steps to be taken to correct such failure) that, in the good faith judgment of the Board, the Participant has failed to cure.

“Class A Unit”: An equity interest in the Company entitled to certain distributions and other rights as specified in the LLC Agreement, or any other securities or equity interests into which such units shall be converted or exchanged pursuant to an amalgamation, arrangement, merger, business combination, recapitalization or other transaction.

“Code”: The U.S. Internal Revenue Code of 1986, as from time to time amended and in effect, or any successor statute as from time to time in effect.

“Company”: PHD Group Holdings LLC.

“Disability”: If the Participant is, at the time of determination, a party to a separate Employment Agreement or retention agreement between the Company and/or one of its Affiliates and the Participant, that defines such term, the meaning given therein, and in all other cases, that the Participant is unable to perform by reason of physical or mental incapacity his or her duties or obligations to the Company or one of its Affiliates for a period of one-hundred fifty (150) consecutive calendar days or a total period of two-hundred ten (210) calendar days in any three-hundred sixty (360) calendar day period, as determined by the Board; provided, that, solely for purposes of determining the timing of payment or timing of distribution of any compensation or benefit under this Plan that constitutes “nonqualified deferred compensation” within the meaning of Section 409A of the Code, a “Disability” shall not be deemed to have occurred unless the events that have occurred will also constitute a “disability” under Section 409A of the Code and the applicable Treasury Regulations.

“Employment”: The employment or other service relationship (including, solely for the purposes of this Plan, as a director on the Board or any board of the Company’s Affiliates or as an independent contractor, consultant or otherwise) between a natural person, on the one hand, and the Company and/or its Affiliates, on the other hand.

“Employment Agreement”: With respect to a given Participant, one or more effective written contracts (whether or not related) providing for, relating to or in connection with the Employment of such Participant by the Company or one of its Affiliates, including any contract containing Restrictive Covenants, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“Fair Market Value”: With respect to Class A Units, the fair value per unit of the applicable Class A Units as of the applicable date determined in good faith by the Board and, to the extent applicable, consistent with Section 409A of the Code.

“Good Reason”: (i) In the case of any Participant who is employed by the Company or one of its Affiliates pursuant to an Employment Agreement, if any, in which there is a definition of “Good Reason”, the definition of “Good Reason” as set forth in such Employment Agreement; provided, that, such definition shall apply solely for such Participant and only for so long as such Employment Agreement remains effective; or (ii) in all other events, the term “Good Reason” shall mean that any one or more of the following has occurred as a result of an action by the Company or its applicable Subsidiary:

(a) a material reduction in such Participant’s aggregate annual base salary as in effect from time to time other than as part of an across-the-board reduction applicable to all members of management that results in a proportional reduction to such Participant equal to that of other members of management;

(b) a material diminution of position or duties; provided, however, that a diminution of position or duties as a result of a sale of part of the business of the LLC or its Subsidiaries, the acquisition of another business by the LLC or its Subsidiaries, or organic growth of the business of the LLC or its Subsidiaries shall not constitute “Good Reason”; or

(c) relocation of such Participant’s principal place of business by more than one-hundred (100) miles.

Notwithstanding the foregoing, none of the circumstances described above may serve as the basis for “Good Reason” unless (i) the Participant notifies the Board in writing of any event constituting “Good Reason” within ninety (90) days following the initial existence of such circumstance and the LLC or its applicable Subsidiary has failed to cure such circumstance within thirty (30) days following such written notice, and (ii) the Participant’s separation from service due to such circumstance occurs within the one-hundred twenty-five (125) day period following the initial existence of such circumstance. For the avoidance of doubt, any determination by the Board of (A) whether or not to pay bonuses to any Participant, or (B) the aggregate amount of any such bonuses, shall not constitute “Good Reason”.

“IPO”: The first completion of a sale of equity securities in the capital of the Company pursuant to a registration statement which has become effective under the United States Securities Act of 1933, as amended (excluding registration statements on Form S-4, S-8 or similar limited purpose forms), in which equity shares in the capital of the Company, or its successor, shall be listed and traded on a national exchange in the United States or quoted on Nasdaq.

“LLC Agreement”: That certain Amended and Restated LLC agreement dated as of August 1, 2014, of PHD Group Holdings LLC (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof).

“Option”: An option entitling the Participant to acquire Class A Units upon payment of the exercise price.

“Participant”: A Person who is granted an Award under the Plan.

“Person”: Any individual, partnership, corporation, association, limited liability company, trust, joint venture, unincorporated organization or entity, or any government, governmental department or agency or political subdivision thereof.

“Plan”: The PHD Group Holdings, LLC 2014 Equity Incentive Plan as from time to time amended and in effect.

“Restrictive Covenants”: With respect to a given Participant, any restrictive covenant obligations of such Participant contained in an agreement between such Participant and the Company (or any Affiliate thereof) requiring such Participant to: (i) take certain actions (including, by way of example, assignment of intellectual property rights), and/or (ii) refrain from taking certain actions (including, by way of example, noncompetition, no-hire, non-solicitation, confidentiality or other similar restrictive covenant obligations).

“Restricted Class A Unit”: A Class A Unit that is, or as to which the delivery of Class A Units or cash in lieu of Class A Units is, subject to the satisfaction of specified performance or other vesting conditions.

“Sale Transaction”: (i) Any transaction or series of related transactions in which any Person or group of Persons other than the Berkshire Owner Group or their Affiliates shall (a) directly or indirectly, acquire, whether by purchase, exchange, tender offer, merger, consolidation, recapitalization or otherwise, or (b) otherwise be the owner of (as a result of a redemption of Class A Units or otherwise), Class A Units or other equity in a successor entity (by merger, consolidation or otherwise) such that following such transaction or transactions, such Person or group and their respective Affiliates beneficially own fifty percent (50%) or more of the voting power at elections for the Board of the Company or any successor entity, or (ii) the sale, transfer or other disposition of all or substantially all of the Company’s assets, in one or a series of related transactions. For the avoidance of doubt, neither a Recapitalization Transaction (as such term is defined in the LLC Agreement), nor an IPO shall constitute a Sale Transaction.

Notwithstanding the foregoing, solely for purposes of determining the timing of payment or timing of distribution of any compensation or benefit under this Plan that constitutes “nonqualified deferred compensation” within the meaning of Section 409A of the Code, a “Sale Transaction” shall not be deemed to have occurred unless the events that have occurred will also constitute a “change in the ownership or effective control, or a change in the ownership of a substantial portion of the assets,” of the Company under Treasury Regulation 1.409A-3(i)(5), or any successor provision.

“UAR”: A right entitling the Participant upon exercise to receive an amount (payable in cash or in Class A Units of equivalent value) equal to the excess of the Fair Market Value of the Class A Units subject to the right over the base value from which appreciation under the UAR is to be measured.

“Separation From Service”: A termination of Employment that is also a “separation from service” within the meaning of Section 409A of the Code.

“Unit”: Class A Unit of the Company.

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of August 3, 2018, by and between Michael Osanloo ("Executive") and PHD Group Holdings LLC (the "Company").

WHEREAS, the Company desires to employ Executive, and Executive desires to be employed by the Company, on the terms set forth in this Agreement; and

WHEREAS, the Company and Executive intend for this Agreement to become effective on October 1, 2018 (the "Effective Date").

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

1. Employment Term. The Company hereby agrees to employ Executive, and Executive hereby agrees to accept employment with the Company, upon the terms and conditions contained in this Agreement. Executive's employment with the Company pursuant to this Agreement shall commence on the Effective Date and shall continue until the third anniversary of the Effective Date (the "Initial Term"); provided, that the term of this Agreement shall automatically be extended for one (1) additional year commencing on the third anniversary of the Effective Date and on each anniversary thereafter (each, a "Renewal Term") unless, not less than thirty (30) days prior to the commencement of any such Renewal Term, either party shall have given written notice to the other that it does not wish to extend this Agreement (a "Non-Renewal Notice"), in which case, Executive's employment under this Agreement shall terminate upon the close of business on the last day of the Initial Term or the then-current Renewal Term, as applicable. The period during which Executive is employed by the Company pursuant to this Agreement is hereinafter referred to as the "Term."

2. Employment Duties. Executive shall have the title of President and Chief Executive Officer of the Company and shall have such duties, authorities and responsibilities as are consistent with such position and as the Board of Managers of the Company (the "Board") may designate from time to time. Executive shall report directly to the Board. Executive shall devote Executive's full working time and attention and Executive's best efforts to Executive's employment and service with the Company and shall perform Executive's services in a capacity and in a manner consistent with Executive's position for the Company; provided, that this Section 2 shall not be interpreted as prohibiting Executive from (i) managing Executive's personal investments (so long as such investment activities are of a passive nature), or (ii) engaging in charitable or civic activities, in each case of (i) and (ii), so long as such activities do not, individually or in the aggregate, (a) materially interfere with the performance of Executive's duties and responsibilities hereunder, (b) create a fiduciary conflict, or (c) result in a violation of Section 17 of this Agreement. Executive shall serve as an executive officer and member of the Board. If requested, Executive shall also serve as an executive officer and/or board member of the board of directors (or similar governing body) of any entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Company (an "Affiliate") without any additional compensation.

3. Base Salary. During the Term, the Company shall pay Executive a base salary at an annual rate of \$750,000, payable in accordance with the Company's normal payroll practices for employees as in effect from time to time. Executive's base salary shall be subject to review by the Board from time to time and may be increased by the Board in its sole discretion. Executive's annual base salary, as in effect from time to time, is hereinafter referred to as the "Base Salary."

4. Annual Bonus. With respect to each fiscal year during the Term, Executive shall be eligible to earn an annual cash bonus award (the "Annual Bonus"), with a target Annual Bonus of 100% of the actual amount of Base Salary paid during such fiscal year, up to a maximum of 150% of such Base Salary, based upon the achievement of annual performance targets relating to the fiscal year of the Company established by the Board, in consultation with Executive, within ninety (90) days of the beginning of each such fiscal year (or within sixty (60) days following the Effective Date for the fiscal year 2018). The Annual Bonus, if any, for each fiscal year during the Term shall be paid to Executive as soon as reasonably practicable after the certification of the financial statements for the performance period to which such Annual Bonus relates, but no later than the end of the calendar year after the fiscal year to which the bonus relates, at the same time that other senior executives of the Company receive annual bonus payments; provided, that the Annual Bonus shall be prorated for any partial fiscal years during the Term. For fiscal year 2018, Executive shall be guaranteed an Annual Bonus of a minimum of 100% of Base Salary, pro-rated for the number of days Executive was employed by the Company in fiscal year 2018. Executive shall not be paid any Annual Bonus with respect to a fiscal year unless Executive is employed with the Company on the day such Annual Bonus is paid.

5. Signing Bonus. The Executive shall be entitled to a signing bonus equal to \$200,000 (the "Signing Bonus") payable within thirty (30) days of the Effective Date. If the Executive's employment is terminated by the Company for Cause or if Executive voluntarily resigns without Good Reason prior to the first anniversary of the Effective Date, the Executive shall repay the entire amount of the Signing Bonus to the Company within five (5) business days after such termination of employment. If Executive's employment is terminated by the Company for Cause or if Executive voluntarily resigns without Good Reason following the first anniversary of the Effective Date and prior to the second anniversary of the Effective Date, the Executive shall repay an amount equal to 50% of the Signing Bonus to the Company within five (5) business days after such termination of employment.

6. Incentive Equity Awards. The Executive shall be eligible to participate in the Company's incentive equity plan as determined by the Board, in its sole discretion, subject to the terms and conditions of such plan and any applicable award agreement. As soon as reasonably practicable following the Effective Date, subject to approval by the Board, Executive shall be granted options to acquire 15,000,000 Class A Units of the Company. Fifty percent (50%) of such options shall be subject to time-based vesting over a period of five (5) years and fifty percent (50%) of such options shall be subject to both time- and performance-based vesting. Such options will be granted pursuant to the Company's standard forms for award agreements attached hereto as Exhibit A.

7. Benefits. During the Term, Executive shall be entitled to participate in any compensation or employee benefit plans or programs and receive all benefits and perquisites for which salaried employees of the Company generally are eligible under any plan or program in place as of the Effective Date or later established by the Company, as in effect from time to time, excluding any severance or bonus plans unless specifically referenced in this Agreement (collectively, "Benefit Plans"), on the same basis as those generally made available to other senior executives of the Company, to the extent consistent with applicable law and the terms of the applicable Benefit Plan. The Company does not promise the adoption or continuance of any particular Benefit Plan and reserves the right to amend or cancel any Benefit Plan at any time in its sole discretion (subject to the terms of such Benefit Plan and applicable law). To the extent the Company is not able to provide the Executive fully funded health and dental insurance, the Company shall pay an amount to Executive equal to the cost of such health and dental insurance that must be paid by the Executive. For the avoidance of doubt, any amounts paid to Executive for such benefits shall not count toward, be substituted in lieu of, or be considered in determining payments or benefits due to the Executive under any other plan, program or agreement of the Company, including the Annual Bonus calculation.

8. Co-investment. On or prior to the Effective Date, Executive shall have the opportunity to purchase Class A Common Units of the Company with a fair market value, as determined by the Board on the date of such investment, up to \$1,500,000.

9. Vacation. Executive shall be entitled to twenty (20) days' paid vacation in accordance with Company policy, as in effect on the Effective Date, which shall accrue and be useable by Executive in accordance with such policy.

10. Expense Reimbursement. The Executive shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment and travel expenses incurred by Executive in connection with the performance of the Executive's duties hereunder in accordance with the Company's expense reimbursement policies and procedures.

11. Relocation Expenses. The Company shall reimburse Executive for all reasonable and necessary relocation expenses incurred by Executive in connection with his relocation to Illinois within six (6) months of the Effective Date (including, without duplication, moving expenses, the broker's fee relating to the sale of Executive's principal residence in the Phoenix, Arizona area, customary closing costs, air fare and travel expenses to/from Executive's current residence to company headquarter, temporary housing for six (6) months following the Effective Date, car rental, and other reasonable living expenses and incidentals), subject to presentation by Executive of documentation reasonably satisfactory to the Company that the applicable expense has been incurred. To the extent that the reimbursement of any amounts pursuant to this Section 11 is taxable to the Executive, the Executive will be grossed up for income tax at Executive's marginal income tax rate for such amount. Payment of reimbursements shall be made in calendar year 2019 and any gross up amounts applicable to the reimbursed expenses shall be paid no later than December 31, 2019, but as soon as practicable after the computation thereof.

12. Termination of Employment. The Term and Executive's employment hereunder may be terminated as follows:

(a) Automatically in the event of the death of Executive;

(b) At the option of the Company, by written notice to Executive or Executive's personal representative in the event of the Disability of Executive. As used herein, the term "Disability" shall mean a physical or mental incapacity or disability which, despite any reasonable accommodation required by applicable law, has rendered, or is likely to render, Executive unable to perform Executive's material duties for a period of either (i) 180 days in any twelve-month period or (ii) 90 consecutive days, as determined by a medical physician selected by the Board;

(c) At the option of the Company for Cause, on prior written notice to Executive;

(d) At the option of the Company at any time without Cause by delivering written notice of its determination to terminate to Executive;

(e) At the option of Executive for Good Reason;

(f) At the option of Executive without Good Reason, upon sixty (60) days prior written notice to the Company (which the Company may, in its sole discretion, make effective as a resignation earlier than the termination date provided in such notice), or

(g) Upon the close of business on the last day of the Initial Term or the then-current Renewal Term, as applicable, as a result of a Non-Renewal Notice.

13. Payments by Virtue of Termination of Employment.

(a) Termination by the Company Without Cause, by the Company's Non-Renewal Notice or by Executive For Good Reason. If Executive's employment is terminated at any time during the Term by the Company without Cause, by the Company's Non-Renewal Notice or by Executive for Good Reason, subject to Section 13(d) of this Agreement, Executive shall be entitled to:

(i) (A) within thirty (30) days following such termination, (i) payment of Executive's accrued and unpaid Base Salary and (ii) reimbursement of expenses under Section 10 of this Agreement, in each case of (i) and (ii), accrued through the date of termination and (B) all other accrued amounts or accrued benefits due to Executive in accordance with the Company's benefit plans, programs or policies (other than severance);

(ii) an amount equal to Executive's Base Salary as in effect immediately prior to Executive's date of termination, which amount shall be payable during the eighteen (18) months commencing on the date of termination (the "Severance Period") in substantially equal installments in accordance with the Company's regular payroll practices as in effect from time to time; provided, that the first payment pursuant to this Section 13(a)(ii) shall be made on the next regularly scheduled payroll date following the sixtieth (60th) day after Executive's termination and shall include payment of any amounts that would otherwise be due prior thereto;

(iii) an amount equal to the pro-rata portion of Executive's Annual Bonus for the fiscal year of termination based on actual performance for the full fiscal year as if Executive had been continuously employed throughout the entire fiscal year, determined by multiplying the amount of such annual bonus which would be due for the fiscal year by a fraction, the numerator of which is the number of days in such fiscal year through the date of such termination and the denominator of which is 365, payable in a lump-sum on such date as the Company generally pays Annual Bonuses to other senior executives of the Company; and

(iv) subject to Executive's timely election of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), the Company shall pay to Executive each month an amount equal to the monthly amount of the COBRA continuation coverage premium under the Company's group medical plans as in effect from time to time less the amount of Executive's portion of the premium as if Executive was an active employee under the same terms as provided to senior executive officers of the Company until the earliest of (i) eighteen (18) months after the date of Executive's termination of employment; (ii) the date Executive is no longer eligible for benefits under COBRA; or (iii) the date Executive obtains other employment that offers medical benefits, provided, that the first payment pursuant to this Section 13(a)(iv) shall be made on the next regularly scheduled payroll date following the sixtieth (60th) day after Executive's termination and shall include payment of any amounts that would otherwise be due prior thereto.

(b) Termination Due to Death or Disability. If Executive's employment terminates due to Executive's death or Disability, Executive or Executive's legal representatives shall be entitled to receive: (A) within thirty (30) days following such termination, (i) payment of Executive's accrued and unpaid Base Salary, (ii) payment of Executive's earned but unpaid Annual Bonus with respect to the calendar year prior to the year of termination, if any, and (iii) reimbursement of expenses under Section 10 of this Agreement, in each case of (i), (ii) and (iii), accrued through the date of termination, (B) all other accrued amounts or accrued benefits due to Executive in accordance with the Company's benefit plans, programs or policies (other than severance) and (C) an amount equal to the pro-rata portion of Executive's Annual Bonus for the fiscal year of termination based on actual performance for the full fiscal year as if Executive had been continuously employed throughout the entire fiscal year, determined by multiplying the amount of such annual bonus which would be due for the fiscal year by a fraction, the numerator of which is the number of days in such fiscal year through the date of such termination and the denominator of which is 365, payable in a lump-sum on such date as the Company generally pays Annual Bonuses to other senior executives of the Company.

(c) Termination by the Company for Cause, by Executive without Good Reason or by Executive's Non-Renewal Notice. If (i) the Company terminates Executive's employment for Cause during the Term, (ii) Executive terminates his employment without Good Reason during the Term or (iii) Executive's employment terminates at the expiration of the Term pursuant to a Non-Renewal Notice by Executive, Executive shall be entitled to receive the payments and benefits described under Section 13(a)(i) of this Agreement.

(d) Conditions to Payment. All payments and benefits due to Executive under this Section 13 which are not otherwise required by applicable law shall be payable only if Executive executes and delivers to the Company a general release of claims in a form reasonably satisfactory to the Company and such release is no longer subject to revocation (to the extent applicable), in each case, within sixty (60) days following termination of employment. Failure to timely execute and return such release or the revocation of such release shall be a waiver by

Executive of Executive's right to severance (which, for the avoidance of doubt, shall not include any amounts described in Section 13(a)(i) of this Agreement). In addition, severance shall be conditioned on Executive's continued compliance with Section 17 of this Agreement and compliance with any restrictive covenants in any other agreements to which the Executive is a party with the Company or any Affiliates.

(e) No Other Severance. Executive hereby acknowledges and agrees that, other than the severance payments described in this Section 13, upon the effective date of the termination of Executive's employment, Executive shall not be entitled to any other severance payments or benefits of any kind under any Company benefit plan, severance policy generally available to the Company's employees or otherwise and all other rights of Executive to compensation under this Agreement shall end as of such date.

14. Definitions. For purposes of this Agreement,

(a) "Cause" shall mean that the Board has determined in its reasonable good faith judgment that any one or more of the following has occurred:

(i) Executive shall have been convicted of, or shall have pleaded guilty or nolo contendere to, any felony or any crime involving dishonesty or moral turpitude;

(ii) Executive shall have committed any fraud, theft, embezzlement, misappropriation of funds, breach of fiduciary duty or act of dishonesty;

(iii) Executive shall have breached, in any material respect, any of the provisions of this Agreement or any other material agreement with the Company or an Affiliate and, if any such breach is capable of cure or remedy, has not cured or remedied such breach within ten (10) days of receipt of notice from the Company advising such Executive of such breach;

(iv) Executive shall have engaged in conduct that (A) is likely to make the Company, its subsidiaries and/or any of their respective Affiliates subject to criminal liabilities, (B) involves a material breach of fiduciary obligation on the part of Executive or (C) could reasonably be expected to have a material adverse effect upon the business, interests or reputation of the Company, its subsidiaries and/or any of their respective Affiliates and, in each case, if any such conduct is capable of cure or remedy, has not cured or remedied such conduct within ten (10) days of receipt of notice from the Company advising such Executive of such conduct;

(v) Executive shall have (A) acted in a grossly negligent manner or otherwise failed to perform his duties to the Company and its subsidiaries, (B) failed or refused to comply with a reasonable written directive of the Board or, where an Executive does not report directly to the Board, the Chief Executive Officer of the Company or such other senior executive of the Company that the Board or Chief Executive Officer may designate from time to time, or (iii) failed or refused to comply with the policies of the Company and its subsidiaries and, in each case, if any such action or failure or refusal to act is capable of cure or remedy, has not cured or remedied such action or failure or refusal to act within ten (10) days of receipt of notice from the Company advising such Executive of such breach; or

(vi) Executive shall have deliberately refused to devote such time and attention to fulfilling his responsibilities to the Company, its subsidiaries and/or any of their respective Affiliates as would be reasonably expected from an executive having similar responsibilities in a comparable company (other than due to Disability or temporary disability which, in the reasonable judgment of the Board, causes Executive to be incapable of devoting such time and energy), and such refusal has continued for thirty (30) days after delivery of written notification by the Board (which notice includes detailed information regarding such alleged refusal and the reasonable steps to be taken to correct such failure) that, in the good faith judgment of the Board, Executive has failed to cure.

(b) “Good Reason” shall mean that any one or more of the following has occurred as a result of an action by the Company and without Executive’s consent:

(i) a material reduction in Executive’s Base Salary other than as part of an across-the-board reduction applicable to all members of management that results in a proportional reduction to Executive equal to that of other members of management;

(ii) a material diminution of Executive’s position or duties; provided, however, that a diminution of position or duties as a result of a sale of part of the business of the Company or its subsidiaries, the acquisition of another business by the Company or its subsidiaries, or organic growth of the business of the Company or its subsidiaries shall not constitute “Good Reason”; or

(iii) relocation of Executive’s principal place of business by more than one-hundred (100) miles.

Notwithstanding the foregoing, none of the circumstances described above may serve as the basis for “Good Reason” unless (x) Executive notifies the Board in writing of any event constituting “Good Reason” within thirty (30) days following the initial existence of such circumstance and (y) the Company or its applicable subsidiary has failed to cure such circumstance within sixty (60) days following such written notice. Failing such cure, a termination of employment by Executive for Good Reason shall be effective on the day following the expiration of such cure period.

15. Return of Company Property. Within ten (10) days following the effective date of Executive’s termination for any reason, Executive or Executive’s personal representative shall, return all property of the Company or any of its Affiliates in Executive’s possession, including, but not limited to, all Company-owned computer equipment (hardware and software), telephones, facsimile machines, tablet computer and other communication devices, credit cards, office keys, security access cards, badges, identification cards and all copies (including drafts) of any documentation or information (however stored) relating to the business of the Company or any of its Affiliates, the Company’s or any of its Affiliates’ customers and clients or their respective prospective customers or clients. Anything to the contrary notwithstanding, Executive shall be entitled to retain (i) personal papers and other materials of a personal nature; (ii) information showing Executive’s compensation or relating to reimbursement of expenses, and (iii) copies of plans, programs and agreements relating to Executive’s employment, or termination thereof, with the Company which he received in Executive’s capacity as a participant; provided, that, in each case of (i)—(iii), such papers or materials do not include Confidential and Proprietary Information (as defined in Section 17(a)).

16. Resignation as Officer or Director. Upon the effective date of any Executive's termination, Executive shall be deemed to have resigned, to the extent applicable, as an officer of the Company, as a member of the board of directors or similar governing body of the Company or any of its Affiliates, and as a fiduciary of any Company benefit plan. On or immediately following the effective date of any such termination of Executive's employment, Executive shall confirm the foregoing by submitting to the Company in writing a confirmation of Executive's resignation(s).

17. Restrictions on Activities of Executive.

(a) Confidential and Proprietary Information. Executive shall not, during the Term or at any time thereafter directly or indirectly, disclose, reveal, divulge or communicate to any person other than authorized officers, directors and employees of the Company or use or otherwise exploit for Executive's own benefit or for the benefit of anyone other than the Company, any Confidential and Proprietary Information (as defined below). Executive shall not have any obligation to keep confidential any Confidential and Proprietary Information if and to the extent disclosure thereof is specifically required by applicable law, court order or other legal or regulatory process. Upon termination of Executive's employment, Executive agrees that all Confidential and Proprietary Information, directly or indirectly, in his possession in any form (together with all duplicates thereof) will promptly (and in any event within 10 days following such termination) be returned to the Company and will not be retained by Executive or furnished to any person, either by sample, facsimile film, audio or video cassette, electronic data, verbal communication or any other means of communication. "Confidential and Proprietary Information" means any information with respect to the Company or any of its Affiliates, including methods of operation, customer lists, products, prices, fees, costs, technology, formulas, inventions, trade secrets, know-how, software, marketing methods, plans, personnel, suppliers, competitors, markets or other specialized information or proprietary matters; provided, that, there shall be no obligation hereunder with respect to, information that (i) is generally available to the public on the Effective Date, (ii) becomes generally available to the public other than as a result of a disclosure not otherwise permissible hereunder, or (iii) is required to be disclosed by law, court order or other legal or regulatory process and Executive gives the Company prompt written notice and the opportunity to seek a protective order. This Agreement does not limit or interfere with Executive's right, without notice to or authorization of the Company, to communicate and cooperate in good faith with any self-regulatory organization or U.S. federal, state, or local governmental or law enforcement branch, agency, commission, or entity (collectively, a "Government Entity") for the purpose of (i) reporting a possible violation of any U.S. federal, state, or local law or regulation, (ii) participating in any investigation or proceeding that may be conducted or managed by any Government Entity, including by providing documents or other information, or (iii) filing a charge or complaint with a Government Entity, provided that in each case, such communications, participation, and disclosures are consistent with applicable law. Additionally, Executive shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (i) in confidence to a federal, state, or local government official, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law, or (ii)

in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. If Executive files a lawsuit for retaliation by an employer for reporting a suspected violation of law, Executive may disclose the trade secret to the Executive's attorney and use the trade secret information in the court proceeding, if Executive files any document containing the trade secret under seal; and does not disclose the trade secret, except pursuant to court order. All disclosures permitted under this Section 17(a) are herein referred to as "Permitted Disclosures." Notwithstanding the foregoing, under no circumstance will Executive be authorized to disclose any Confidential and Proprietary Information as to which the Company may assert protections from disclosure under the attorney-client privilege or the attorney work product doctrine, without prior written consent of Company's General Counsel or other authorized officer designated by the Company.

(b) Assignment of Inventions.

(i) Executive agrees that during the Term, any and all inventions, discoveries, innovations, writings, domain names, improvements, trade secrets, designs, drawings, formulas, business processes, secret processes and know-how, whether or not patentable or a copyright or trademark, which Executive may create, conceive, develop or make, either alone or in conjunction with others and related or in any way connected with the Company's strategic plans, products, processes or apparatus or the business (collectively, "Inventions"), shall be fully and promptly disclosed to the Company and shall be the sole and exclusive property of the Company as against Executive or any of Executive's assignees. Regardless of the status of Executive's employment by the Company, Executive and Executive's heirs, assigns and representatives shall promptly assign to the Company any and all right, title and interest in and to such Inventions made during employment with the Company.

(ii) Whether during or after the Term, Executive further agrees to execute and acknowledge all papers and to do, at the Company's expense, any and all other things necessary for or incident to the applying for, obtaining and maintaining of such letters patent, copyrights, trademarks or other intellectual property rights, as the case may be, and to execute, on request, all papers necessary to assign and transfer such Inventions, copyrights, patents, patent applications and other intellectual property rights to the Company and its successors and assigns. In the event that the Company is unable, after reasonable efforts and, in any event, after ten (10) business days, to secure Executive's signature on a written assignment to the Company, of any application for letters patent, trademark registration or to any common law or statutory copyright or other property right therein, whether because of Executive's physical or mental incapacity, or for any other reason whatsoever, Executive irrevocably designates and appoints the Secretary of the Company as Executive's attorneyin fact to act on Executive's behalf to execute and file any such applications and to do all lawfully permitted acts to further the prosecution or issuance of such assignments, letters patent, copyright or trademark.

(c) Non-Disparagement. During the Term and at any time thereafter, Executive agrees not to disparage or encourage or induce others to disparage the Company, any Affiliate, any of their respective employees that were employed during Executive's employment with the Company or its Affiliates or any of their respective past and present, officers, directors, products or services (the "Company Parties"). For purposes of this Section 17(c), the term "disparage" includes, without limitation, comments or statements to the press, to the Company's or any Affiliate's employees or to any individual or entity with whom the Company or any

Affiliate has a business relationship (including, without limitation, any vendor, supplier, customer or distributor), or any public statement, that in each case is intended to, or can be reasonably expected to, materially damage any of the Company Parties. Upon termination of Executive's employment, the Company shall instruct its chief executive officer, chief financial officer and chief operating officer not to disparage or encourage or induce others to disparage Executive while such senior executives are employed by the Company. Notwithstanding the foregoing, nothing in this Section 17(c) shall prevent Executive or the chief executive officer, chief financial officer and chief operating officer of the Company from making any truthful statement to the extent, but only to the extent (A) necessary with respect to any litigation, arbitration or mediation involving this Agreement, including, but not limited to, the enforcement of this Agreement, in the forum in which such litigation, arbitration or mediation properly takes place or (B) required by law, legal process or by any court, arbitrator, mediator or administrative or legislative body (including any committee thereof) with apparent jurisdiction over Executive. Nothing in this Section 17(c) shall interfere with Executive's ability to make the Permitted Disclosures as defined in Section 17(a) above

18. Cooperation. From and after an Executive's termination of employment, Executive shall provide Executive's reasonable cooperation in connection with any action or proceeding (or any appeal from any action or proceeding) which relates to events occurring during Executive's employment hereunder, provided, that the Company shall reimburse Executive for Executive's reasonable out-of-pocket costs and expenses (including legal counsel selected by Executive and reasonably acceptable to the Company) and such cooperation shall not unreasonably burden Executive or unreasonably interfere with any subsequent employment that Executive may undertake.

19. Injunctive Relief and Specific Performance. Executive understands and agrees that Executive's covenants under Sections 15, 17 and 18 are special and unique and that the Company and its Affiliates may suffer irreparable harm if Executive breaches any of Sections 15, 17, or 18 because monetary damages would be inadequate to compensate the Company and its Affiliates for the breach of any of these sections. Accordingly, Executive acknowledges and agrees that the Company shall, in addition to any other remedies available to the Company at law or in equity, be entitled to obtain specific performance and injunctive or other equitable relief by a federal or state court in Illinois to enforce the provisions of Sections 15, 17, and/or 18 without the necessity of posting a bond or proving actual damages, without liability should such relief be denied, modified or vacated. The party who prevails in any such action or proceeding shall be entitled to obtain attorney's fees. Further, if the Executive prevails in any such action or proceeding previously described, the Executive shall be entitled to obtain attorney's fees in respect of such action or proceeding. Additionally, in the event of a breach or threatened breach by Executive of Section 17, in addition to all other available legal and equitable rights and remedies, the Company shall have the right to cease making payments, if any, being made pursuant to Section 13(a)(ii) hereunder. Executive also recognizes that the territorial, time and scope limitations set forth in Section 17 are reasonable and are properly required for the protection of the Company and its Affiliates and in the event that any such territorial, time or scope limitation is deemed to be unreasonable by a court of competent jurisdiction, the Company and Executive agree, and Executive submits, to the reduction of any or all of said territorial, time or scope limitations to such an area, period or scope as said court shall deem reasonable under the circumstances.

20. Recoupment; Offset. Notwithstanding anything to the contrary, any compensation payable under this Agreement shall be subject to any recoupment, repayment, "clawback" or similar policy adopted by the Company or required under applicable law or stock exchange rules. Subject to applicable law, the Company may offset any amount payable under this Agreement, other than "nonqualified deferred compensation" as defined under Section 409A (defined below), against any obligations owed by the Executive to the Company.

21. Attorney Fees. The Company shall promptly reimburse Executive for reasonable legal fees incurred in connection with the review of this Agreement and the option award agreements, up to \$10,000.

22. Miscellaneous.

(a) All notices hereunder, to be effective, shall be in writing and shall be deemed effective when delivered by hand or mailed by (i) certified mail, postage and fees prepaid, or (ii) nationally recognized overnight express mail service, as follows:

If to the Company:

PHD Group Holdings LLC
2001 Spring Road, Suite 500
Oak Brook, IL 60523
Attn: General Counsel

With a copy which shall not constitute notice to:

Berkshire Partners LLC
200 Clarendon Street
35th Floor
Boston, MA 02116
Attn: Joshua A. Lutzker and Sharlyn C. Heslam

Weil, Gotshal & Manges LLP
767 Fifth Avenue
22nd Floor
New York, NY 10153
Attn: Shayla Harlev and Michael Nissan

If to Executive:

At his home address as then shown in the Company's personnel records, or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

(b) This Agreement is personal to the Executive and shall not be assigned by the Executive. Any purported assignment by the Executive shall be null and void from the initial date of the purported assignment. The Company may assign this Agreement to any successor or assign (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company. This Agreement shall inure to the benefit of the Company and its successors and assigns.

(c) This Agreement contains the entire agreement between the parties with respect to the subject matter hereof superseding all other agreements, term sheets, offer letters, and drafts thereof, oral or written, between the parties hereto with respect to the subject matter hereof. No promises, statements, understandings, representations or warranties of any kind, whether oral or in writing, express or implied, have been made to Executive by any person or entity to induce him to enter into this Agreement other than the express terms set forth herein, and Executive is not relying upon any promises, statements, understandings, representations, or warranties other than those expressly set forth in this Agreement.

(d) No change or modification of this Agreement shall be valid unless the same shall be in writing and signed by all of the parties hereto. No waiver of any provisions of this Agreement shall be valid unless in writing and signed by the party charged with waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, unless so provided in the waiver.

(e) If any provisions of this Agreement (or portions thereof) shall, for any reason, be held invalid or unenforceable, such provisions (or portions thereof) shall be ineffective only to the extent of such invalidity or unenforceability, and the remaining provisions of this Agreement (or portions thereof) shall nevertheless be valid, enforceable and of full force and effect. If any court of competent jurisdiction finds that any restriction contained in this Agreement is invalid or unenforceable, then the parties hereto agree that such invalid or unenforceable restriction shall be deemed modified so that it shall be valid and enforceable to the greatest extent permissible under law, and if such restriction cannot be modified so as to make it enforceable or valid, such finding shall not affect the enforceability or validity of any of the other restrictions contained herein.

(f) This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

(g) The section or paragraph headings or titles herein are for convenience of reference only and shall not be deemed a part of this Agreement. The parties have jointly participated in the drafting of this Agreement, and the rule of construction that a contract shall be construed against the drafter shall not be applied. The terms “including,” “includes,” “include” and words of like import shall be construed broadly as if followed by the words “without limitation.” The terms “herein,” “hereunder,” “hereof” and words of like import refer to this entire Agreement instead of just the provision in which they are found.

(h) Notwithstanding anything to the contrary in this Agreement:

(i) The parties agree that this Agreement shall be interpreted to comply with or be exempt from Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations and authoritative guidance promulgated thereunder to the extent applicable (collectively "Section 409A"), and all provisions of this Agreement shall be construed in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A. In no event whatsoever will the Company, any of its Affiliates, or any of their respective directors, officers, agents, attorneys, employees, executives, shareholders, investors, members, managers, trustees, fiduciaries, representatives, principals, accountants, insurers, successors or assigns be liable for any additional tax, interest or penalties that may be imposed on Executive under Section 409A or any damages for failing to comply with Section 409A.

(ii) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits considered "nonqualified deferred compensation" under Section 409A upon or following a termination of employment unless such termination is also a "separation from service" within the meaning of Section 409A, and for purposes of any such provision of this Agreement, references to a "resignation," "termination," "terminate," "termination of employment" or like terms shall mean separation from service. If any payment, compensation or other benefit provided to Executive in connection with the termination of his employment is determined, in whole or in part, to constitute "nonqualified deferred compensation" within the meaning of Section 409A and Executive is a specified employee as defined in Section 409A(2)(B)(i) of the Code, no part of such payments shall be paid before the day that is six (6) months plus one (1) day after the date of termination or, if earlier, ten business days following the Executive's death (the "New Payment Date"). The aggregate of any payments that otherwise would have been paid to the Executive during the period between the date of termination and the New Payment Date shall be paid to Executive in a lump sum on such New Payment Date. Thereafter, any payments that remain outstanding as of the day immediately following the New Payment Date shall be paid without delay over the time period originally scheduled, in accordance with the terms of this Agreement.

(iii) All reimbursements for costs and expenses under this Agreement shall be paid in no event later than the end of the calendar year following the calendar year in which Executive incurs such expense. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, and (ii) the amount of expenses eligible for reimbursements or in-kind, benefits provided during any taxable year shall not affect the expenses eligible for reimbursement or in-kind benefits to be provided in any other taxable year.

(iv) If under this Agreement, an amount is paid in two or more installments, for purposes of Section 409A, each installment shall be treated as a separate payment. Whenever a payment under this Agreement specifies a payment period with reference to a number of days (e.g., "payment shall be made within thirty (30) days following the date of termination"), the actual date of payment within the specified period shall be within the sole discretion of the Company.

(i) This Agreement, for all purposes, shall be construed in accordance with the laws of the State of Illinois without regard to conflicts of law principles. Any action or proceeding by either of the parties to enforce this Agreement shall be brought only in a state or federal court located in the State of Illinois. The parties hereby irrevocably submit to the jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.

(j) Other than the Company's right to seek injunctive relief or specific performance as provided in this Agreement, any dispute, controversy, or claim between Executive, on the one hand, and the Company, on the other hand, arising out of, under, pursuant to, or in any way relating to this Agreement shall be submitted to and resolved by confidential and binding arbitration ("Arbitration"), administered by the American Arbitration Association ("AAA") and conducted pursuant to the rules then in effect of the AAA governing commercial disputes. The Arbitration hearing shall take place in Illinois. Such Arbitration shall be before three neutral arbitrators (the "Panel") licensed to practice law and familiar with commercial disputes. Any award rendered in any Arbitration shall be final and conclusive upon the parties to the Arbitration and not subject to judicial review, and the judgment thereon may be entered in the highest court of the forum (state or federal) having jurisdiction over the issues addressed in the Arbitration, but entry of such judgment will not be required to make such award effective. The Panel may enter a default decision against any party who fails to participate in the Arbitration. The administration fees and expenses of the Arbitration shall be borne equally by the parties to the Arbitration; provided that each party shall pay for and bear the cost of his/her/its own experts, evidence, and attorney's fees, except that, in the discretion of the Panel, any award may include the costs of a party's counsel and/or its share of the expense of Arbitration if the Panel expressly determines that an award of such costs is appropriate to the party whose position substantially prevails in such Arbitration. Notwithstanding any other provision of this Agreement, no party shall be entitled to an award of special, punitive, or consequential damages. To submit a matter to Arbitration, the party seeking redress shall notify in writing, in accordance with Section 22(a) of this Agreement, the party against whom such redress is sought, describe the nature of such claim, the provision of this Agreement that has been allegedly violated and the material facts surrounding such claim. The Panel shall render a single written, reasoned decision. The decision of the Panel shall be binding upon the parties to the Arbitration, and after the completion of such Arbitration, the parties to the Arbitration may only institute litigation regarding the Agreement for the sole purpose of enforcing the determination of the Arbitration hearing or, with respect to the Company, to seek injunctive or equitable relief pursuant to Section 19f of this Agreement. The Panel shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this agreement to arbitrate, including any claim that all or part of this Agreement is void or voidable and any claim that an issue is not subject to arbitration. All proceedings conducted pursuant to this agreement to arbitrate, including any order, decision or award of the arbitrator, shall be kept confidential by all parties except to the extent such disclosure is required by law, or in a proceeding to enforce any rights under this Agreement.

EXECUTIVE ACKNOWLEDGES THAT, BY SIGNING THIS AGREEMENT, HE IS WAIVING ANY RIGHT THAT HE MAY HAVE TO A JURY TRIAL OR A COURT TRIAL RELATED TO THIS AGREEMENT.

(k) Executive hereby represents and warrants to the Company that (i) the execution, delivery and performance of this Agreement by Executive do not and shall not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Executive is a party or by which he/she is bound, (ii) Executive is not a party to or bound by any employment agreement, non-compete agreement or confidentiality agreement with any other person or entity and (iii) upon the execution and delivery of this Agreement by the Company, this Agreement shall be the valid and binding obligation of Executive on and after the date hereof, enforceable in accordance with its terms. Executive hereby acknowledges and represents that he has had the opportunity to consult with independent legal counsel or other advisor of his choice and has done so regarding his rights and obligations under this Agreement, that he is entering into this Agreement knowingly, voluntarily, and of his own free will, that he is relying on his own judgment in doing so, and that he fully understands the terms and conditions contained herein.

(l) The Company shall have the right to withhold from any amount payable hereunder any Federal, state and local taxes in order for the Company to satisfy any withholding tax obligation it may have under any applicable law or regulation.

(m) The covenants and obligations of the Company under Sections 10, 13, 18, 19 and 21 hereof, and the covenants and obligations of Executive under Sections 13, 15, 16, 17, 18, 19 and 21 hereof, shall continue and survive any expiration of the Term, termination of Executive's employment or any termination of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

PHD GROUP HOLDINGS LLC

By: /s/ Joshua A Urcker

Name: Joshua A Urcker

Title:

Forms of Award Agreements

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of August 1, 2014, by and between Sherri Abruscato ("Executive") and PHD Group Holdings LLC (the "Company").

WHEREAS, pursuant to that certain Agreement and Plan of Merger (as the same may be amended, modified or supplemented from time to time, the "Merger Agreement"), dated as of June 28, 2014, by and among Portillo's Holdings, LLC, a Delaware limited liability company (the "Portillo's"), PHD Intermediate LLC, a Delaware limited liability company (the "Purchaser"), PHD Merger Sub LLC, a Delaware limited liability company and wholly-owned subsidiary of the Purchaser (the "Merger Sub"), and RP & SP Holdings, Inc., a Delaware corporation (the "Representative"), as representative for the Members (as defined in the Merger Agreement), Merger Sub shall merge with and into Portillo's, whereupon the separate existence of Merger Sub shall cease, and Portillo's shall be the surviving company;

WHEREAS, the Company desires to continue to employ Executive, and Executive desires to continue to be employed by the Company, on the terms set forth in this Agreement; and

WHEREAS, the Company and Executive intend for this Agreement to become effective upon the Closing (as defined in the Merger Agreement) (the "Effective Date").

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

1. **Employment Term.** The Company hereby agrees to continue to employ Executive, and Executive hereby agrees to accept continued employment with the Company, upon the terms and conditions contained in this Agreement. Executive's employment with the Company pursuant to this Agreement shall commence on the Effective Date and shall continue until the third anniversary of the Effective Date (the "Initial Term"); provided, that the term of this Agreement shall automatically be extended for one (1) additional year commencing on the third anniversary of the Effective Date and on each anniversary thereafter (each, a "Renewal Term") unless, not less than thirty (30) days prior to the commencement of any such Renewal Term, either party shall have given written notice to the other that it does not wish to extend this Agreement (a "Non-Renewal Notice"), in which case, Executive's employment under this Agreement shall terminate upon the close of business on the last day of the Initial Term or the then-current Renewal Term, as applicable. The period during which Executive is employed by the Company pursuant to this Agreement is hereinafter referred to as the "Term."

2. **Employment Duties.** Executive shall have the title of Chief Operating Officer of the Company and shall have such duties, authorities and responsibilities as are consistent with such position and as the Board of Managers of the Company (the "Board") or the Chief Executive Officer ("CEO") may designate from time to time. Executive shall report directly to the Board or the CEO. Executive shall devote Executive's full working time and attention and Executive's best efforts to Executive's employment and service with the Company and shall perform Executive's services in a capacity and in a manner consistent with Executive's position for the Company; provided, that this Section 2 shall not be interpreted as prohibiting Executive

from (i) managing Executive's personal investments (so long as such investment activities are of a passive nature), or (ii) engaging in charitable or civic activities, in each case of (i) and (ii), so long as such activities do not, individually or in the aggregate, (a) materially interfere with the performance of Executive's duties and responsibilities hereunder, (b) create a fiduciary conflict, or (c) result in a violation of Section 14 of this Agreement. If requested, Executive shall also serve as an executive officer and/or board member of the board of directors (or similar governing body) of any entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Company (an "Affiliate") without any additional compensation.

3. Base Salary. During the Term, the Company shall pay Executive a base salary at an annual rate of \$325,000, payable in accordance with the Company's normal payroll practices for employees as in effect from time to time. Executive's base salary shall be reviewed annually by the Board and may be increased by the Board in its sole discretion. Executive's annual base salary, as in effect from time to time, is hereinafter referred to as the "Base Salary."

4. Annual Bonus. With respect to each fiscal year during the Term, Executive shall be eligible to earn an annual cash bonus award (the "Annual Bonus"), with a target Annual Bonus of fifty percent (50%) of the actual amount of Base Salary paid during such fiscal year, based upon the achievement of annual performance targets relating to the fiscal year of the Company established by the Board, in consultation with the CEO, within ninety (90) days of the beginning of each such fiscal year. The Annual Bonus, if any, for each fiscal year during the Term shall be paid to Executive as soon as reasonably practicable after the certification of the financial statements for the performance period to which such Annual Bonus relates, but no later than March 15th of the calendar year after the fiscal year to which the bonus relates, at the same time that other senior executives of the Company receive annual bonus payments; provided, that the Annual Bonus shall be prorated for any partial fiscal years during the Term. Executive shall not be paid any Annual Bonus with respect to a fiscal year unless Executive is employed with the Company on the day such Annual Bonus is paid. For the avoidance of doubt, the Executive shall be eligible to receive a short-year bonus for the period from August 1, 2014 through December 31, 2014, to account for the Company's change from a fiscal year ending July 31st to a fiscal year ending December 31st. Performance targets for such short-year bonus will be set as soon as reasonably practicable.

5. Incentive Equity Awards. Subject to the Company's adoption of an incentive equity plan following the Closing, the Executive shall be eligible to participate in such plan as determined by the Board, in its sole discretion, subject to the terms and conditions of the plan and any applicable award agreement.

6. Benefits. During the Term, Executive shall be entitled to participate in any benefit plans or programs offered by the Company as in effect from time to time, excluding any severance or bonus plans unless specifically referenced in this Agreement (collectively, "Benefit Plans"), on the same basis as those generally made available to other senior executives of the Company, to the extent consistent with applicable law and the terms of the applicable Benefit Plan. The Company does not promise the adoption or continuance of any particular Benefit Plan and reserves the right to amend or cancel any Benefit Plan at any time in its sole discretion (subject to the terms of such Benefit Plan and applicable law). To the extent the Company is not able to provide the Executive fully funded health and dental insurance, the Company shall pay an

amount to each Executive equal to the cost of such health and dental insurance that must be paid by the Executive. For the avoidance of doubt, any amounts paid to Executive for such benefits shall not count toward, be substituted in lieu of, or be considered in determining payments or benefits due to the Executive under any other plan, program or agreement of the Company, including the Annual Bonus calculation.

7. Vacation. Executive shall be entitled to paid vacation days in accordance with Company policy, as in effect on the Effective Date, which shall accrue and be useable by Executive in accordance with such policy.

8. Expense Reimbursement. The Executive shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment and travel expenses incurred by the Executive in connection with the performance of the Executive's duties hereunder in accordance with the Company's expense reimbursement policies and procedures.

9. Termination of Employment. The Term and Executive's employment hereunder may be terminated as follows:

(a) Automatically in the event of the death of Executive;

(b) At the option of the Company, by written notice to Executive or Executive's personal representative in the event of the Disability of Executive. As used herein, the term "Disability" shall mean a physical or mental incapacity or disability which, despite any reasonable accommodation required by applicable law, has rendered, or is likely to render, Executive unable to perform Executive's material duties for a period of either (i) 180 days in any twelve-month period or (ii) 90 consecutive days, as determined by a medical physician selected by the Board;

(c) At the option of the Company for Cause, on prior written notice to Executive;

(d) At the option of the Company at any time without Cause (provided that the assignment of this Agreement to, and assumption of this Agreement by, the purchaser of all or substantially all of the assets of the Company shall not be treated as a termination without Cause under this Section 9(d)), by delivering written notice of its determination to terminate to Executive;

(e) At the option of Executive for Good Reason;

(f) At the option of Executive without Good Reason, upon sixty (60) days prior written notice to the Company (which the Company may, in its sole discretion, make effective as a resignation earlier than the termination date provided in such notice), or

(g) Upon the close of business on the last day of the Initial Term or the then-current Renewal Term, as applicable, as a result of a Non-Renewal Notice.

10. Payments by Virtue of Termination of Employment.

(a) Termination by the Company Without Cause, by the Company's Non-Renewal Notice or by Executive For Good Reason. If Executive's employment is terminated at any time during the Term by the Company without Cause, by the Company's Non-Renewal Notice or by Executive for Good Reason, subject to Section 10(d) of this Agreement, Executive shall be entitled to:

(i) (A) within thirty (30) days following such termination, (i) payment of Executive's accrued and unpaid Base Salary and (ii) reimbursement of expenses under Section 8 of this Agreement, in each case of (i) and (ii), accrued through the date of termination and (B) all other accrued amounts or accrued benefits due to Executive in accordance with the Company's benefit plans, programs or policies (other than severance); and

(ii) an amount equal to Executive's Base Salary as in effect immediately prior to Executive's date of termination, which amount shall be payable during the twelve (12) months commencing on the date of termination (the "Severance Period") in substantially equal installments in accordance with the Company's regular payroll practices as in effect from time to time; provided, that the first payment pursuant to this Section 10(a)(ii) shall be made on the next regularly scheduled payroll date following the sixtieth (60th) day after Executive's termination and shall include payment of any amounts that would otherwise be due prior thereto.

(b) Termination Due to Death or Disability. If Executive's employment terminates due to Executive's death or Disability, Executive or Executive's legal representatives shall be entitled to receive: (A) within thirty (30) days following such termination, (i) payment of Executive's accrued and unpaid Base Salary, (ii) payment of Executive's earned but unpaid Annual Bonus with respect to the calendar year prior to the year of termination, if any, and (iii) reimbursement of expenses under Section 8 of this Agreement, in each case of (i), (ii) and (iii), accrued through the date of termination and (B) all other accrued amounts or accrued benefits due to Executive in accordance with the Company's benefit plans, programs or policies (other than severance).

(c) Termination by the Company for Cause, by Executive without Good Reason or by the Executive's Non-Renewal Notice. if (i) the Company terminates Executive's employment for Cause during the Term, (ii) Executive terminates her employment without Good Reason during the Term or (iii) Executive's employment terminates at the expiration of the Term pursuant to a Non-Renewal Notice by Executive, Executive shall be entitled to receive the payments and benefits described under Section 10(a)(i) of this Agreement.

(d) Conditions to Payment. All payments and benefits due to Executive under this Section 10 which are not otherwise required by applicable law shall be payable only if Executive executes and delivers to the Company a general release of claims in a form reasonably satisfactory to the Company and such release is no longer subject to revocation (to the extent applicable), in each case, within sixty (60) days following termination of employment. Failure to timely execute and return such release or the revocation of such release shall be a waiver by Executive of Executive's right to severance (which, for the avoidance of doubt, shall not include any amounts described in Section 10(a)(i) of this Agreement). In addition, severance shall be conditioned on Executive's continued compliance with Section 14 of this Agreement as provided in Section 16 below and compliance with any restrictive covenants in any other agreements to which the Executive is a party with the Company or any Affiliates.

(e) No Other Severance. Executive hereby acknowledges and agrees that, other than the severance payments described in this Section 10, upon the effective date of the termination of Executive's employment, Executive shall not be entitled to any other severance payments or benefits of any kind under any Company benefit plan, severance policy generally available to the Company's employees or otherwise and all other rights of Executive to compensation under this Agreement shall end as of such date.

11. Definitions. For purposes of this Agreement,

(a) "Cause" shall mean that the Board has determined in its reasonable good faith judgment that any one or more of the following has occurred:

(i) Executive shall have been convicted of, or shall have pleaded guilty or nolo contendere to, any felony or any crime involving dishonesty or moral turpitude;

(ii) Executive shall have committed any fraud, theft, embezzlement, misappropriation of funds, breach of fiduciary duty or act of dishonesty;

(iii) Executive shall have breached, in any material respect, any of the provisions of this Agreement or any other material agreement with the Company or an Affiliate and, if any such breach is capable of cure or remedy, has not cured or remedied such breach within ten (10) days of receipt of notice from the Company advising such Executive of such breach;

(iv) Executive shall have engaged in conduct that (A) is likely to make the Company, its subsidiaries and/or any of their respective Affiliates subject to criminal liabilities, (B) involves a material breach of fiduciary obligation on the part of Executive or (C) could reasonably be expected to have a material adverse effect upon the business, interests or reputation of the Company, its subsidiaries and/or any of their respective Affiliates and, in each case, if any such conduct is capable of cure or remedy, has not cured or remedied such conduct within ten (10) days of receipt of notice from the Company advising such Executive of such conduct;

(v) Executive shall have (A) acted in a grossly negligent manner or otherwise failed to perform his or her duties to the Company and its subsidiaries, (B) failed or refused to comply with a reasonable written directive of the Board or, where a Executive does not report directly to the Board, the Chief Executive Officer of the Company or such other senior executive of the Company that the Board or Chief Executive Officer may designate from time to time, or (iii) failed or refused to comply with the policies of the Company and its subsidiaries and, in each case, if any such action or failure or refusal to act is capable of cure or remedy, has not cured or remedied such action or failure or refusal to act within ten (10) days of receipt of notice from the Company advising such Executive of such breach; or

(vi) Executive shall have deliberately refused to devote such time and attention to fulfilling her responsibilities to the Company, its subsidiaries and/or any of their respective Affiliates as would be reasonably expected from an executive having similar responsibilities in a comparable company (other than due to Disability or temporary disability which, in the reasonable judgment of the Board, causes Executive to be incapable of devoting such time and energy), and such refusal has continued for thirty (30) days after delivery of written notification by the Board (which notice includes detailed information regarding such alleged refusal and the reasonable steps to be taken to correct such failure) that, in the good faith judgment of the Board, Executive has failed to cure.

(b) “Good Reason” shall mean that any one or more of the following has occurred as a result of an action by the Company and without Executive’s consent:

(i) a material reduction in Executive’s Base Salary other than as part of an across-the-board reduction applicable to all members of management that results in a proportional reduction to Executive equal to that of other members of management;

(ii) a material diminution of Executive’s position or duties; provided, however, that a diminution of position or duties as a result of a sale of part of the business of the Company or its subsidiaries, the acquisition of another business by the Company or its subsidiaries, or organic growth of the business of the Company or its subsidiaries shall not constitute “Good Reason”; or

(iii) relocation of Executive’s principal place of business by more than one-hundred (100) miles.

Notwithstanding the foregoing, none of the circumstances described above may serve as the basis for “Good Reason” unless (x) Executive notifies the Board in writing of any event constituting “Good Reason” within thirty (30) days following the initial existence of such circumstance and (y) the Company or its applicable subsidiary has failed to cure such circumstance within sixty (60) days following such written notice. Failing such cure, a termination of employment by Executive for Good Reason shall be effective on the day following the expiration of such cure period.

12. Return of Company Property. Within ten (10) days following the effective date of Executive’s termination for any reason, Executive or Executive’s personal representative shall, return all property of the Company or any of its Affiliates in Executive’s possession, including, but not limited to, all Company-owned computer equipment (hardware and software), telephones, facsimile machines, tablet computer and other communication devices, credit cards, office keys, security access cards, badges, identification cards and all copies (including drafts) of any documentation or information (however stored) relating to the business of the Company or any of its Affiliates, the Company’s or any of its Affiliates’ customers and clients or their respective prospective customers or clients. Anything to the contrary notwithstanding, Executive shall be entitled to retain (i) personal papers and other materials of a personal nature; (ii) information showing Executive’s compensation or relating to reimbursement of expenses, and (iii) copies of plans, programs and agreements relating to Executive’s employment, or termination thereof, with the Company which he received in Executive’s capacity as a participant; provided, that, in each case of (i) – (iii), such papers or materials do not include Confidential and Proprietary Information (as defined in Section 14(a)).

13. Resignation as Officer or Director. Upon the effective date of any Executive's termination, Executive shall be deemed to have resigned, to the extent applicable, as an officer of the Company, as a member of the board of directors or similar governing body of the Company or any of its Affiliates, and as a fiduciary of any Company benefit plan. On or immediately following the effective date of any such termination of Executive's employment, Executive shall confirm the foregoing by submitting to the Company in writing a confirmation of Executive's resignation(s).

14. Restrictions on Activities of Executive.

(a) Confidential and Proprietary Information. Executive shall not, during the Term or at any time thereafter directly or indirectly, disclose, reveal, divulge or communicate to any person other than authorized officers, directors and employees of the Company or use or otherwise exploit for Executive's own benefit or for the benefit of anyone other than the Company, any Confidential and Proprietary Information (as defined below). Executive shall not have any obligation to keep confidential any Confidential and Proprietary Information if and to the extent disclosure thereof is specifically required by applicable law, court order or other legal or regulatory process; provided, however, that in the event disclosure is required by applicable law, Executive shall provide the Company with prompt notice, to the extent reasonably possible, of such requirement prior to making any disclosure so that the Company may seek an appropriate protective order. Upon termination of Executive's employment, Executive agrees that all Confidential and Proprietary Information, directly or indirectly, in her possession in any form (together with all duplicates thereof) will promptly (and in any event within 10 days following such termination) be returned to the Company and will not be retained by Executive or furnished to any person, either by sample, facsimile film, audio or video cassette, electronic data, verbal communication or any other means of communication. "Confidential and Proprietary Information" means any information with respect to the Company or any of its Affiliates, including methods of operation, customer lists, products, prices, fees, costs, technology, formulas, inventions, trade secrets, know-how, software, marketing methods, plans, personnel, suppliers, competitors, markets or other specialized information or proprietary matters; provided, that, there shall be no obligation hereunder with respect to, information that (i) is generally available to the public on the Effective Date, (ii) becomes generally available to the public other than as a result of a disclosure not otherwise permissible hereunder, or (iii) is required to be disclosed by law, court order or other legal or regulatory process and Executive gives the Company prompt written notice and the opportunity to seek a protective order.

(b) Assignment of Inventions.

(i) Executive agrees that during the Term, any and all inventions, discoveries, innovations, writings, domain names, improvements, trade secrets, designs, drawings, formulas, business processes, secret processes and know-how, whether or not patentable or a copyright or trademark, which Executive may create, conceive, develop or make, either alone or in conjunction with others and related or in any way connected with the Company's strategic plans, products, processes or apparatus or the business (collectively, "Inventions"), shall be fully and promptly disclosed to the Company and shall be the sole and exclusive property of the Company as against Executive or any of Executive's assignees. Regardless of the status of Executive's employment by the Company, Executive and Executive's heirs, assigns and representatives shall promptly assign to the Company any and all right, title and interest in and to such Inventions made during employment with the Company.

(ii) Whether during or after the Term, Executive further agrees to execute and acknowledge all papers and to do, at the Company's expense, any and all other things necessary for or incident to the applying for, obtaining and maintaining of such letters patent, copyrights, trademarks or other intellectual property rights, as the case may be, and to execute, on request, all papers necessary to assign and transfer such Inventions, copyrights, patents, patent applications and other intellectual property rights to the Company and its successors and assigns. In the event that the Company is unable, after reasonable efforts and, in any event, after ten (10) business days, to secure Executive's signature on a written assignment to the Company, of any application for letters patent, trademark registration or to any common law or statutory copyright or other property right therein, whether because of Executive's physical or mental incapacity, or for any other reason whatsoever, Executive irrevocably designates and appoints the Secretary of the Company as Executive's attorney-in-fact to act on Executive's behalf to execute and file any such applications and to do all lawfully permitted acts to further the prosecution or issuance of such assignments, letters patent, copyright or trademark.

(c) Non-Disparagement. During the Term and at any time thereafter, Executive agrees not to disparage or encourage or induce others to disparage the Company, any Affiliate, any of their respective employees that were employed during Executive's employment with the Company or its Affiliates or any of their respective past and present, officers, directors, products or services (the "Company Parties"). For purposes of this Section 14(e), the term "disparage" includes, without limitation, comments or statements to the press, to the Company's or any Affiliate's employees or to any individual or entity with whom the Company or any Affiliate has a business relationship (including, without limitation, any vendor, supplier, customer or distributor), or any public statement, that in each case is intended to, or can be reasonably expected to, materially damage any of the Company Parties. Upon termination of Executive's employment, the Company shall instruct its chief executive officer, chief financial officer and chief operating officer not to disparage or encourage or induce others to disparage Executive while such senior executives are employed by the Company. Notwithstanding the foregoing, nothing in this Section 14(e) shall prevent Executive or the chief executive officer, chief financial officer and chief operating officer of the Company from making any truthful statement to the extent, but only to the extent (A) necessary with respect to any litigation, arbitration or mediation involving this Agreement, including, but not limited to, the enforcement of this Agreement, in the forum in which such litigation, arbitration or mediation properly takes place or (B) required by law, legal process or by any court, arbitrator, mediator or administrative or legislative body (including any committee thereof) with apparent jurisdiction over Executive.

15. Cooperation. From and after an Executive's termination of employment, Executive shall provide Executive's reasonable cooperation in connection with any action or proceeding (or any appeal from any action or proceeding) which relates to events occurring during Executive's employment hereunder, provided, that the Company shall reimburse Executive for Executive's reasonable out-of-pocket costs and expenses (including legal counsel selected by Executive and reasonably acceptable to the Company) and such cooperation shall not unreasonably burden Executive or unreasonably interfere with any subsequent employment that Executive may undertake.

16. Injunctive Relief and Specific Performance. Executive understands and agrees that Executive's covenants under Sections 12, 14 and 15 are special and unique and that the Company and its Affiliates may suffer irreparable harm if Executive breaches any of Sections 12, 14, or 15 because monetary damages would be inadequate to compensate the Company and its Affiliates for the breach of any of these sections. Accordingly, Executive acknowledges and agrees that the Company shall, in addition to any other remedies available to the Company at law or in equity, be entitled to obtain specific performance and injunctive or other equitable relief by a federal or state court in Illinois to enforce the provisions of Sections 12, 14 and/or 15 without the necessity of posting a bond or proving actual damages, without liability should such relief be denied, modified or vacated. The party who prevails in any such action or proceeding shall be entitled to obtain attorney's fees. Further, if the Executive prevails in any such action or proceeding previously described, the Executive shall be entitled to obtain attorney's fees in respect of such action or proceeding. Additionally, in the event of a breach or threatened breach by Executive of Section 14, in addition to all other available legal and equitable rights and remedies, the Company shall have the right to cease making payments, if any, being made pursuant to Section 10(a)(ii) hereunder. Executive also recognizes that the territorial, time and scope limitations set forth in Section 14 are reasonable and are properly required for the protection of the Company and its Affiliates and in the event that any such territorial, time or scope limitation is deemed to be unreasonable by a court of competent jurisdiction, the Company and Executive agree, and Executive submits, to the reduction of any or all of said territorial, time or scope limitations to such an area, period or scope as said court shall deem reasonable under the circumstances.

17. Recoupment. Notwithstanding anything to the contrary, any compensation payable under this Agreement shall be subject to any recoupment, repayment, "clawback" or similar policy adopted by the Company or required under applicable law or stock exchange rules.

18. Miscellaneous.

(a) All notices hereunder, to be effective, shall be in writing and shall be deemed effective when delivered by hand or mailed by (i) certified mail, postage and fees prepaid, or (ii) nationally recognized overnight express mail service, as follows:

If to the Company:

PHD Group Holdings LLC
2001 Spring Road, Suite 500
Oak Brook, IL 60523
Attn: Chief Executive Officer and General Counsel

With a copy which shall not constitute notice to:

Berkshire Partners LLC
200 Clarendon Street
35th Floor
Boston, MA 02116
Attn: Joshua A. Lutzker and Sharlyn C. Heslam

Weil, Gotshal & Manges LLP
767 Fifth Avenue
22nd Floor New York, NY 10153
Attn: Shayla Harlev and Michael Nissan

If to Executive:

At her home address as then shown in the Company's personnel records,

or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

(b) This Agreement is personal to the Executive and shall not be assigned by the Executive. Any purported assignment by the Executive shall be null and void from the initial date of the purported assignment. The Company may assign this Agreement to any successor or assign (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company. This Agreement shall inure to the benefit of the Company and its successors and assigns.

(c) This Agreement contains the entire agreement between the parties with respect to the subject matter hereof superseding all other agreements, term sheets, offer letters, and drafts thereof, oral or written, between the parties hereto with respect to the subject matter hereof. No promises, statements, understandings, representations or warranties of any kind, whether oral or in writing, express or implied, have been made to Executive by any person or entity to induce him to enter into this Agreement other than the express terms set forth herein, and Executive is not relying upon any promises, statements, understandings, representations, or warranties other than those expressly set forth in this Agreement.

(d) No change or modification of this Agreement shall be valid unless the same shall be in writing and signed by all of the parties hereto. No waiver of any provisions of this Agreement shall be valid unless in writing and signed by the party charged with waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, unless so provided in the waiver.

(e) If any provisions of this Agreement (or portions thereof) shall, for any reason, be held invalid or unenforceable, such provisions (or portions thereof) shall be ineffective only to the extent of such invalidity or unenforceability, and the remaining provisions of this Agreement (or portions thereof) shall nevertheless be valid, enforceable and of full force and effect. If any court of competent jurisdiction finds that any restriction contained in this Agreement is invalid or unenforceable, then the parties hereto agree that such invalid or unenforceable restriction shall be deemed modified so that it shall be valid and enforceable to the greatest extent permissible under law, and if such restriction cannot be modified so as to make it enforceable or valid, such finding shall not affect the enforceability or validity of any of the other restrictions contained herein.

(f) This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

(g) The section or paragraph headings or titles herein are for convenience of reference only and shall not be deemed a part of this Agreement. The parties have jointly participated in the drafting of this Agreement, and the rule of construction that a contract shall be construed against the drafter shall not be applied. The terms “including,” “includes,” “include” and words of like import shall be construed broadly as if followed by the words “without limitation.” The terms “herein,” “hereunder,” “hereof” and words of like import refer to this entire Agreement instead of just the provision in which they are found.

(h) Notwithstanding anything to the contrary in this Agreement:

(i) The parties agree that this Agreement shall be interpreted to comply with or be exempt from Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”) and the regulations and authoritative guidance promulgated thereunder to the extent applicable (collectively “Section 409A”), and all provisions of this Agreement shall be construed in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A. In no event whatsoever will the Company, any of its Affiliates, or any of their respective directors, officers, agents, attorneys, employees, executives, shareholders, investors, members, managers, trustees, fiduciaries, representatives, principals, accountants, insurers, successors or assigns be liable for any additional tax, interest or penalties that may be imposed on Executive under Section 409A or any damages for failing to comply with Section 409A.

(ii) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits considered “nonqualified deferred compensation” under Section 409A upon or following a termination of employment unless such termination is also a “separation from service” within the meaning of Section 409A, and for purposes of any such provision of this Agreement, references to a “resignation,” “termination,” “terminate,” “termination of employment” or like terms shall mean separation from service. If any payment, compensation or other benefit provided to Executive in connection with the termination of her employment is determined, in whole or in part, to constitute “nonqualified deferred compensation” within the meaning of Section 409A and Executive is a specified employee as defined in Section 409A(2)(B)(i) of the Code, no part of such payments shall be paid before the day that is six (6) months plus one (1) day after the date of termination or, if earlier, ten business days following the Executive’s death (the “New Payment Date”). The aggregate of any payments that otherwise would have been paid to the Executive during the period between the date of termination and the New Payment Date shall be paid to Executive in a lump sum on such New Payment Date. Thereafter, any payments that remain outstanding as of the day immediately following the New Payment Date shall be paid without delay over the time period originally scheduled, in accordance with the terms of this Agreement.

(iii) All reimbursements for costs and expenses under this Agreement shall be paid in no event later than the end of the calendar year following the calendar year in which Executive incurs such expense. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, and (ii) the amount of expenses eligible for reimbursements or in-kind, benefits provided during any taxable year shall not affect the expenses eligible for reimbursement or in-kind benefits to be provided in any other taxable year.

(iv) If under this Agreement, an amount is paid in two or more installments, for purposes of Section 409A, each installment shall be treated as a separate payment. Whenever a payment under this Agreement specifies a payment period with reference to a number of days (e.g., "payment shall be made within thirty (30) days following the date of termination"), the actual date of payment within the specified period shall be within the sole discretion of the Company.

(i) This Agreement, for all purposes, shall be construed in accordance with the laws of the State of Illinois without regard to conflicts of law principles. Any action or proceeding by either of the parties to enforce this Agreement shall be brought only in a state or federal court located in the State of Illinois. The parties hereby irrevocably submit to the jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.

(j) Other than the Company's right to seek injunctive relief or specific performance as provided in this Agreement, any dispute, controversy, or claim between Executive, on the one hand, and the Company, on the other hand, arising out of, under, pursuant to, or in any way relating to this Agreement shall be submitted to and resolved by confidential and binding arbitration ("Arbitration"), administered by the American Arbitration Association ("AAA") and conducted pursuant to the rules then in effect of the AAA governing commercial disputes. The Arbitration hearing shall take place in Illinois. Such Arbitration shall be before three neutral arbitrators (the "Panel") licensed to practice law and familiar with commercial disputes. Any award rendered in any Arbitration shall be final and conclusive upon the parties to the Arbitration and not subject to judicial review, and the judgment thereon may be entered in the highest court of the forum (state or federal) having jurisdiction over the issues addressed in the Arbitration, but entry of such judgment will not be required to make such award effective. The Panel may enter a default decision against any party who fails to participate in the Arbitration. The administration fees and expenses of the Arbitration shall be borne equally by the parties to the Arbitration; provided that each party shall pay for and bear the cost of his/her/its own experts, evidence, and attorney's fees, except that, in the discretion of the Panel, any award may include the costs of a party's counsel and/or its share of the expense of Arbitration if the Panel expressly determines that an award of such costs is appropriate to the party whose position substantially prevails in such Arbitration. Notwithstanding any other provision of this Agreement, no party shall be entitled to an award of special, punitive, or consequential damages. To submit a matter to Arbitration, the party seeking redress shall notify in writing, in accordance with Section 18(a) of this Agreement, the party against whom such

redress is sought, describe the nature of such claim, the provision of this Agreement that has been allegedly violated and the material facts surrounding such claim. The Panel shall render a single written, reasoned decision. The decision of the Panel shall be binding upon the parties to the Arbitration, and after the completion of such Arbitration, the parties to the Arbitration may only institute litigation regarding the Agreement for the sole purpose of enforcing the determination of the Arbitration hearing or, with respect to the Company, to seek injunctive or equitable relief pursuant to Section 16 of this Agreement. The Panel shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this agreement to arbitrate, including any claim that all or part of this Agreement is void or voidable and any claim that an issue is not subject to arbitration. All proceedings conducted pursuant to this agreement to arbitrate, including any order, decision or award of the arbitrator, shall be kept confidential by all parties except to the extent such disclosure is required by law, or in a proceeding to enforce any rights under this Agreement.

EXECUTIVE ACKNOWLEDGES THAT, BY SIGNING THIS AGREEMENT, SHE IS WAIVING ANY RIGHT THAT SHE MAY HAVE TO A JURY TRIAL OR A COURT TRIAL RELATED TO THIS AGREEMENT.

(k) Executive hereby represents and warrants to the Company that (i) the execution, delivery and performance of this Agreement by Executive do not and shall not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Executive is a party or by which he/she is bound, (ii) Executive is not a party to or bound by any employment agreement, non-compete agreement or confidentiality agreement with any other person or entity and (iii) subject to Section 19, upon the execution and delivery of this Agreement by the Company, this Agreement shall be the valid and binding obligation of Executive on and after the date hereof, enforceable in accordance with its terms. Executive hereby acknowledges and represents that he has had the opportunity to consult with independent legal counsel or other advisor of her choice and has done so regarding her rights and obligations under this Agreement, that she is entering into this Agreement knowingly, voluntarily, and of her own free will, that he is relying on her own judgment in doing so, and that she fully understands the terms and conditions contained herein.

(l) The Company shall have the right to withhold from any amount payable hereunder any Federal, state and local taxes in order for the Company to satisfy any withholding tax obligation it may have under any applicable law or regulation.

(m) The covenants and obligations of the Company under Sections 8, 10, 15, 16 and 18 hereof, and the covenants and obligations of Executive under Sections 10, 12, 13, 14, 15, 16 and 18 hereof, shall continue and survive any expiration of the Term, termination of Executive's employment or any termination of this Agreement.

19. Effectiveness of Agreement. Notwithstanding anything to the contrary contained in this Agreement, in the event that the Merger Agreement is terminated in accordance with its terms or the Closing does not occur for any reason, this Agreement shall become null and void *ab initio* and shall have no effect.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

PHD GROUP HOLDINGS LLC

By: /s/ Michael A. Miles, Jr.

Name: Michael A. Miles, Jr.

Title: President

[SIGNATURE PAGE TO EMPLOYMENT AGREEMENT (SHERRI ABRUSCATO)]

/s/ Sherri Abruscato

Sherri Abruscato

[SIGNATURE PAGE TO EMPLOYMENT AGREEMENT (S. ABRUSCATO)]



Portillo's Hot Dogs, LLC • 2001 Spring Road, Suite 400, Oak Brook, IL60523-3930 • (630) 954-3773 • Fax (630) 954-5851 • www.portillos.com

November 14, 2020

Michelle Hook
[REDACTED]
[REDACTED]

Via email: [REDACTED]

Dear Michelle:

Portillo's Hot Dogs, LLC is delighted to make a contingent offer to you for the position of Chief Financial Officer reporting directly to Michael Osanloo, CEO. You will also serve as the Chief Financial Officer of PHD Group Holdings LLC, our parent company and oversee and direct presentations to the Audit Committee of the Board of Managers. We believe that your financial expertise, experience in the restaurant industry, and commitment to developing people will be an essential asset to the restaurants, management leaders and Executive Team and help us achieve our overall strategic goals.

Your starting date is set as December 7, 2020. We will coordinate a suitable schedule with you for time in the restaurants, the Restaurant Support Center, to meet the Senior Team and your direct reports to ensure alignment with Portillo's strategic goals and your success.

The starting salary is \$350,000.00 per year and is paid on a bi-weekly basis. You will also be eligible to participate in a discretionary annual bonus program at 50% of your base salary. Since you will be starting in December 2020, you will not be eligible for the 2020 bonus payout. Direct deposit is available for paychecks, and we highly encourage all employees to use it.

You will receive up to \$75,000 to assist you cover your relocation expenses. These amounts will be reimbursed to you upon submission of receipts, or as funds paid directly by Portillo's in the event we are able to assist you with a moving company or otherwise. In addition, you will receive a Sign-On Bonus of \$115,000 (gross) payable on December 17, 2020. Should your employment be terminated by Portillo's for Cause or if you voluntary resign within 1 year of your starting date, you will be required to repay Portillo's Hot Dogs, LLC the full amount of the Sign-on Bonus. Should your employment be terminated by Portillo's for Cause or if you voluntary resign after the first year but prior to the second anniversary of your start date, you will be required to repay Portillo's Hot Dogs, LLC one-half of the Sign-on Bonus. All repayment requirements will be based on the gross payment amount of your Sign-on Bonus and not the net amount and shall be made within ten (10) business days of termination.

Your position is also eligible to participate in the executive stock option program. Your position will be eligible for a grant of 800,000 options, (split evenly between Time and Time/Performance Options) subject to final approval by the Board of Managers. You will receive an additional 100,000 Options as an additional Sign-On incentive (again, split evenly between Time and Time/Performance Options). During your interview process, you have been provided with information relating to the potential value of these Options.

Full family medical, dental, vision and short-term disability coverage are offered through our company's employee benefit plan and is effective after a 60-day waiting period, with 100% of the premium equivalent paid for by the Company, so long as such full payment is permitted by law. In addition, you are eligible to participate in the long-term disability plan, offered at attractive rates and a financial and tax planning program offered to Portillo's Executive Team and fully paid for by the Company.

In the event you are currently covered under a health plan and intend to exercise your COBRA rights during the waiting period, Portillo's will pay that cost on your behalf until your waiting period is met.

Portillo's offers a paid vacation plan. You will receive 4 weeks' vacation, to be accrued on a prorated monthly basis. Eligibility for the company 401K retirement plan begins after 90 days of employment. In addition, we offer a non-qualified deferred compensation plan for our highly compensated employees. You will be eligible for participation in this plan in 2021.

This is an offer of employment only and should not be construed as an employment contract. Your employment with the company is contingent upon your execution and return of the Confidentiality, Work for Hire and Non-Solicitation Agreement, attached.

I look forward to having you join our Portillo's family and know that you will live our values of family, greatness, energy and fun! Please feel free to contact me via email jwaite@portillo's.com or my cell phone (925) 822-7040 with any questions.

If you choose to accept this contingent job offer, please sign below and return it to me at your earliest convenience.

We look forward to welcoming you to the Portillo's team.

Sincerely,

Jill Waite, CHRO
Portillo's Hot Dogs LLC

I hereby accept the contingent offer as Chief Financial Officer of Portillo's Hot Dogs, LLC

/s/ Michelle Hook

Signature – Michelle Hook

11-16-2020

Date



Portillo's Hot Dogs, LLC • 2001 Spring Road, Suite 400, Oak Brook, IL 60523-3930 • (630) 954-3773 • Fax (630) 954-5851 • www.portillos.com

May 22, 2019

Jill Waite
[REDACTED]

Via email: [REDACTED]

Dear Jill:

Portillo's Hot Dogs, LLC is delighted to offer you the position of Chief HR Officer, reporting directly to me. I and my other team members value your experience and believe your expertise will help us drive our strategic people and other priorities, allowing us to reach our full development capabilities and overall strategic goals.

Your starting date is to be mutually agreed upon, as we understand that you will need to consider the best timing for your family and other personal matters. Abundant flexibility is available while you sell your home. Once we have confirmed a start day, we can arrange a suitable schedule for time in the restaurant and time at the Restaurant Support Center to ensure the alignment with my Senior Team and implementation of programs to support the growth of Portillo's.

The starting salary is \$360,000 per year and is paid on a bi-weekly basis. You will also be eligible to participate in a discretionary annual bonus program for 2019 at 50% of your base salary. Since you will be starting during the 2019 fiscal year, your 2019 bonus payout will be on a pro-rata basis. This bonus plan is generally paid on or around April 1 for performance of the prior year. Direct deposit is available and we highly encourage all employees to use it.

You will receive a sign-on bonus to assist you in covering the cost you will incur to relocate in the net amount of \$75,000.00. Should you resign your employment prior to June 15, 2020, you will be required to repay Portillo's Hot Dogs, LLC the full amount of the sign-on bonus. Should you resign your employment after June 15, 2020 but prior to June 15, 2021, you will be required to repay Portillo's Hot Dogs, LLC one-half of the sign-on bonus. After June 15, 2021, no repayment will be due.

Your position is also eligible to participate in the executive stock option program. Your position will be eligible for a grant of 1.65M options, subject to final approval by the Board of Managers.

Full family medical, dental, and vision coverage are offered through our company's employee benefit plan and is effective after a 60-day waiting period, with 100% payment of the premium equivalent by the Company so long as such full payment is permitted by law. In the event you are currently covered under a health plan and intend to exercise your COBRA rights during the waiting period, Portillo's will pay that cost on your behalf until your waiting period is met. In addition, you will be provided with a Company car. Those arrangements will be completed once you have started your position.

Portillo's offers a paid vacation plan. You will receive 4 weeks' vacation, to be accrued on a pro-rated monthly basis.

Eligibility for the company 401K retirement plan begins after 90 days of employment. In addition, we offer a non-qualified deferred compensation plan for our highly compensated employees. You will be eligible for participation in this plan in 2020.

This is an offer of employment only and should not be construed as an employment contract. Your employment with the company will be on an at-will basis. Further, your employment is contingent on passing a background check and the return of a drug screen, with acceptable results. Finally, it is contingent upon your execution and return of the Confidentiality, Work for Hire and Non-Solicitation Agreement.

I am excited to have you join my team! Please feel free to contact me at or Susan Shelton at (630) 363-3737 (her cell phone) with any questions. She will assist with completing a background check and drug screen.

If you choose to accept this job offer, please sign the second page of this letter and the signature page of the Confidentiality, Work for Hire and Non-Solicitation Agreement and return it to me at your earliest convenience.

We look forward to welcoming you to the Portillo's team.

Sincerely,

/s/ Michael Osanloo, CEO

Michael Osanloo, CEO
Portillo's Hot Dogs LLC

I hereby accept the Chief HR Officer Position.

/s/ Jill Waite

Signature – Jill Waite

5/24/19

Date

List of Subsidiaries

<u>Name</u>	<u>Formation Jurisdiction</u>
PHD Group Holdings LLC	Delaware
PHD Intermediate LLC	Delaware
Portillo's Holdings, LLC	Delaware
Portillo's Hot Dogs, LLC	Delaware
PHD Card Services, LLC	Florida
C & O Chicago, L.L.C.	Illinois
The Heart of Portillo's Fund, Inc	Florida

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Registration Statement on Form S-1 of our report dated September 27, 2021, relating to the balance sheet of Portillo's Inc. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ Deloitte & Touche LLP

Chicago, Illinois
September 27, 2021

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Registration Statement on Form S-1 of our report dated July 16, 2021 (August 27, 2021, as to the effects of the restatement discussed in Note 2), relating to the financial statements of PHD Group Holdings LLC. We also consent to the reference to us under the heading “Experts” in such Registration Statement.

/s/ Deloitte & Touche LLP

Chicago, Illinois
September 27, 2021