

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED December 29, 2024

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM _____ TO _____

COMMISSION FILE NUMBER: 001-40951

Portillo's

PORTILLO'S INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

87-1104304

(I.R.S. Employer Identification No.)

2001 Spring Road, Suite 400, Oak Brook, Illinois 60523

(Address of principal executive offices)

(630) 954-3773

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class
Class A common stock, \$0.01 par value per share

Trading Symbol
PTLO

Name of each exchange on which registered
Nasdaq Global Select Market

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth 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).

Large accelerated filer

Non-accelerated filer

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 pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Yes No

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to § 240.10D-1(b).

Yes No

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

Yes No

The aggregate market value of the common stock held by non-affiliates of the registrant on June 28, 2024, the last business day of the Registrant's most recently completed second fiscal quarter, based on the closing price of the registrant's Class A common stock as reported by The Nasdaq Stock Market on that date, was approximately \$562,202,807. This calculation does not reflect a determination that certain persons are affiliates of the registrant for any other purpose.

As of February 18, 2025, there were 63,869,727 shares of the registrant's Class A common stock, par value \$0.01 per share, and 10,732,800 shares of the registrant's Class B common stock, par value \$0.00001 per share, issued and outstanding.

TABLE OF CONTENTS



<u>Cautionary Note Regarding Forward-Looking Information</u>	1
Part I	
<u>Item 1. Business</u>	2
<u>Item 1A. Risk Factors</u>	2
<u>Item 1B. Unresolved Staff Comments</u>	16
<u>Item 1C. Cybersecurity</u>	16
<u>Item 2. Properties</u>	17
<u>Item 3. Legal Proceedings</u>	18
<u>Item 4. Mine Safety Disclosure</u>	18
Part II	
<u>Item 5. Market For Registrant's Common Equity, Related Stockholder Matters And Issuer Purchases Of Equity Securities</u>	19
<u>Item 6. [Reserved]</u>	21
<u>Item 7. Management's Discussion And Analysis Of Financial Condition And Results Of Operations</u>	22
<u>Item 7A. Quantitative And Qualitative Disclosures About Market Risk</u>	35
<u>Item 8. Financial Statements And Supplementary Data</u>	36
<u>Item 9. Changes In And Disagreements With Accountants On Accounting And Financial Disclosures</u>	73
<u>Item 9A. Controls And Procedures</u>	73
<u>Item 9B. Other Information</u>	75
<u>Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections</u>	75
Part III	
<u>Item 10. Directors, Executive Officers And Corporate Governance</u>	76
<u>Item 11. Executive Compensation</u>	76
<u>Item 12. Security Ownership Of Certain Beneficial Owners And Management And Related Stockholder Matters</u>	76
<u>Item 13. Current Relationships And Related Transactions, And Director Independence</u>	76
<u>Item 14. Principal Accounting Fees And Services</u>	76
Part IV	
<u>Item 15. Exhibits And Financial Statement Schedules</u>	77
<u>Item 16. Form 10-K Summary</u>	77
<u>Exhibit Index</u>	
<u>Signatures</u>	

Cautionary Note Regarding Forward-Looking Information



This Annual Report on Form 10-K ("Form 10-K") contains forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which are subject to known and unknown risks, uncertainties and other important factors that may cause actual results to be materially different from the statements made herein, including, but not limited to: risks related to or arising from our organizational structure; risks of food-borne illness and food safety and other health concerns about our food; risks relating to the economy and financial markets, including inflation, fluctuating interest rates, stock market activity, or other factors; the impact of unionization activities of our team members on our reputation, operations and profitability; risks associated with our reliance on certain information technology systems, including our new enterprise resource planning system, and potential failures or interruptions; risks associated with data, privacy, cybersecurity and the use and implementation of information technology systems, including our digital ordering and payment platforms for our delivery business; risks associated with increased adoption, implementation and use of artificial intelligence technologies across our business; the impact of competition, including from our competitors in the restaurant industry or our own restaurants; the increasingly competitive labor market and our ability to attract and retain the best talent and qualified employees; the impact of federal, state or local government regulations relating to privacy, data protection, advertising and consumer protection, building and zoning requirements, labor and employment matters, costs of or ability to open new restaurants, or the sale of food and alcoholic beverages; the inability to achieve our growth strategy, such as the availability of suitable new restaurant sites in existing and new markets and opening of new restaurants at the anticipated rate and on the anticipated timeline; the impact of consumer sentiment and other economic factors on our sales; increases in food and other operating costs, tariffs and import taxes, and supply shortages; and certain other risk factors identified in Part I, Item 1A of this Form 10-K.

All statements other than statements of historical fact are forward-looking statements. Many of the forward-looking statements are located in Part II, Item 7 of this Form 10-K under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations." Forward-looking statements discuss our current expectations and projections relating to our financial position, results of operations, plans, objectives, future performance and business, and are based on currently known operating, financial and competitive information which are subject to various risks and uncertainties, so you should not place undue reliance on forward-looking statements. You may identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. These statements may include words such as "aim," "anticipate," "believe," "estimate," "expect," "forecast," "future," "outlook," "potential," "project," "projection," "plan," "intend," "seek," "may," "could," "would," "will," "should," "can," "likely," the negatives thereof and other similar expressions.

All forward-looking statements are expressly qualified in their entirety by these cautionary statements. You should evaluate all forward-looking statements made in this Form 10-K in the context of the risks and uncertainties disclosed in Part I, Item 1A of this Form 10-K under the heading "Risk Factors" and Part II, Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations."

The forward-looking statements included in this Form 10-K are made only as of the date hereof. The Company undertakes no obligation to publicly update or revise any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law.

PART I

ITEM 1. BUSINESS

Portillo's Inc. (the "Company") was incorporated as a Delaware corporation on June 8, 2021, in connection with our initial public offering in October 2021 ("IPO") and related reorganization transactions (collectively, the "Transactions") in order to carry on the business of PHD Group Holdings LLC and its subsidiaries ("Portillo's OpCo"). Following the consummation of the Transactions on October 20, 2021, the Company became the sole managing member of Portillo's OpCo and now operates and controls all of the business and affairs of Portillo's OpCo. As a result, the Company consolidates the financial results of Portillo's OpCo and reports a non-controlling interest representing the economic interest in Portillo's OpCo held by the other members of Portillo's OpCo (the "pre-IPO LLC Members"). Portillo's Inc. Class A common stock trades on the Nasdaq under the symbol "PTLO." Unless the context otherwise requires, references to "we," "us," "our," "Portillo's," the "Company" and other similar references refer to Portillo's Inc. and its subsidiaries, including Portillo's OpCo.

Overview of Portillo's

Portillo's serves iconic Chicago street food in high-energy, multichannel restaurants designed to ignite the senses and create memorable dining experiences. Since our founding in 1963 in a small trailer that Dick Portillo called "The Dog House," we have 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, char-broiled burgers, fresh chopped salads, crinkle-cut fries, homemade chocolate cake and our signature chocolate cake shake. 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 in a 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, delivery and catering to quickly and efficiently serve our guests. We believe the combination of our craveable food, multichannel sales model, dedication to operational excellence, and distinctive team member-driven culture gives us a competitive advantage. Our business, including many of the elements described below, is subject to certain risks that may materially and adversely affect our ability to achieve our desired outcomes. For a more in-depth discussion of such risks, see Part I, Item 1A, "Risk Factors."

As of December 29, 2024, we owned and operated 94 restaurants across 10 states, including a restaurant owned by C&O Chicago, L.L.C. ("C&O") of which we own 50% of the equity. As of December 29, 2024, the Company owned 85.6% of Portillo's OpCo and the pre-IPO LLC Members owned the remaining 14.4% of Portillo's OpCo.

Our Story

We relish the opportunity to create lifelong memories by igniting the senses with unrivaled food and experiences.

An Iconic and Beloved Brand with Obsessed, Lifelong Fans. We capture the hearts, minds and stomachs of our guests with every meal. Our menu features something for everyone and appeals to a broad demographic, which enables our restaurants to thrive and generate strong and balanced volumes across multiple dayparts, weekdays and occasions. Guests *cake shake* their way in for our Chicago-style hot dogs, Italian beef sandwiches, char-broiled burgers, cheese fries, fresh salads and famous chocolate cake.

Energetic Restaurant Atmosphere that Engages the Senses. While our operating model is focused on getting delicious, made-to-order food to our guests quickly, we believe our atmosphere makes the experience 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 1930s prohibition motif to a 1950s diner to a 1960s flower-power bus, as well as a retro automotive garage theme. 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 local community. The layouts create comfortable spaces for individual diners, families, large groups, and even wedding parties.

Beyond the space itself, we believe the energy of Portillo's is unique. Our guests can see into our 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 guests who are all excited to be there and enjoying their Portillo's. We want every guest that visits to leave with good memories, a satiated appetite and a desire to return.

Our Strategy

Our strategic plan is comprised of four pillars, which guide our short-term objectives and form the basis for growth:

- Run World-Class Operations
- Innovate and Amplify the Portillo's Experience
- Build Restaurants with Industry-Leading Returns
- Take Great Care of Our Teams

We believe that by focusing on the components of each of these simple, but focused, strategies we feed a virtuous cycle in which we take care of our team members, our team members take care of our guests, and our guests reward our shareholders.

Run World-Class Operations. We believe that delivering a consistently exceptional guest experience, including having guests try our delicious food is one of the most effective forms of marketing. By running world class operations, we will fuel Portillo's same-restaurant sales growth. The core tactics we use in this strategy are:

- **Flexing our Multichannel Muscle:** Portillo's aims to offer industry-leading experiences across our traditional sales channels, while continuing to grow and innovate in growth sales channels. Dine-in provides the best Portillo's experience, so we strive for our dine-in experience to represent the heart of Portillo's and our company values of Family, Greatness, Energy, and Fun. In our drive-thru, we strive to maintain top performance in the industry across speed, service, and accuracy. In new markets, we show new guests the value and efficiency of our drive-thrus. In our sales channels of digital pickup, delivery, and catering we have made great strides operationally that will allow us to win additional market share.
- **Greatness in Drive-Thru:** Portillo's pioneered a winning drive-thru model beginning in the 1980s, combining speed and hospitality via outside order takers, food runners, and multi-lane drive-thrus. Our teams are focused on continuously improving and innovating the drive-thru experience to improve throughput and order accuracy. All new restaurants are opened with drive-thru doors to aid our runners and improve the guest experience. We have also started a camera vision test in select restaurants to provide operators with real-time actionable insights.
- **Unrivaled Value in Fast Casual:** Experience, service, and food quality define value in our brand, but maintaining a strong price point remains a high priority given how broadly we compete in the restaurant industry. Our teams consistently monitor price points across many categories and occasions that are relevant to our guests. To succeed moving forward, we will continue our pricing strategy combined with a focus on operational excellence and aim to remain an unrivaled value compared to fast casual competitors.

Innovate and Amplify the Portillo's Experience. We believe one of the most effective ways to market Portillo's is by having people experience our food firsthand. Our efforts in field marketing, social media, digital engagement, advertising, and menu innovation support the following aspirations:

- **Craveable & Fresh For Everyone:** Our industry-leading AUVs are bolstered by a broad menu that offers something truly craveable for everyone. We constantly research our menu, our guests, and our competition to keep the menu fresh and relevant while also balanced to ensure operational efficiency. For example:
 - In 2024 we launched two new salads, our Chicken Pecan Salad with Bacon to appeal to health-driven foodies and our Spicy Chicken Chopped Salad, a new twist on a Portillo's classic to increase visits from longtime fans. Both items added excitement and variety to the menu while enhancing average ticket. To celebrate the launch, we unveiled a limited-time brown paper bag with green stripes. Similar to its predecessor, the new bag is 100% recyclable, bleach-free, and is made from fibers certified by the Sustainable Forestry Initiative. We believe this purposeful menu innovation drives increased guest frequency and reinforces the everyday value proposition that is key to our success.
 - We enhance our menu with seasonal shakes and specialty cakes, offering something special throughout the year. In Fall 2024, we launched our first new cake flavor in 20 years: the Salted Caramel Spice Cake. To celebrate, September 2024 became "Spice-Tember", in which we sold our new cake for \$1 a slice with the purchase of an entree. In October 2024, we also partnered with former Chicago Bear, Anthony "Spice" Adams, to create energetic and entertaining content, spotlighting the Salted Caramel Spice Cake in a fun and engaging way.
- **Local & Experiential:** Whether it's an influencer night for a launch of new menu items, hosting a community fundraiser, partnering with local and national sport teams, or a visit from our mobile food truck, lovingly dubbed "The Beef Bus," we aim to create lifelong memories via grassroots field-marketing efforts. In each of our markets we employ field marketing managers who partner with local restaurant General Managers to personalize a marketing plan and introduce Portillo's to the local area. We believe this approach creates a personal and emotional connection with the communities in which we operate and creates incremental returns on our marketing investments. We use a full suite of communication channels, such as email, X (formerly known as "Twitter"), Instagram, TikTok, Facebook, and other platforms to spread our message to different customer segments. When a compelling opportunity arises, Portillo's also utilizes traditional advertising in Chicagoland to drive frequency and outside Chicagoland to drive trial and awareness. Below are a few advertising and marketing highlights of the fiscal year ended December 29, 2024 ("fiscal 2024"):
 - We launched an ad campaign in Arizona in the first quarter of 2024 to drive trial and awareness.
 - In April, we re-launched our Famous Five combo meal menu that features a classic entree, side, and drink.
 - We re-launched our advertising in the Chicagoland market. Our comprehensive advertising campaign coincided with the start of the NFL season. We continued the theme of "Portillo's. It always sounds good." The ad campaign consisted of commercials, billboards, and partnerships with several digital media outlets, such as Barstool Sports, to reach our guests across the Chicagoland area.
- **Digitally Engage Guests:** Our guests increasingly interact with Portillo's in the digital space, whether engaging with us on social media, learning about us through digital advertising, or placing an order on our app or in one of our new self-order kiosks. Kiosks have been a resounding success, adding incrementality to the check and providing a stellar guest experience. In 2025 we are launching our "Portillo's Perks"™ loyalty program to drive and reward repeat visits and make the Portillo's experience even more engaging for our longtime fans.

Build Restaurants with Industry-Leading Returns. En route to our current goal of over 900 US restaurants (see "Our Growth" below for more details) we continue to innovate our business model in ways that meet a rapidly changing economic and consumer environment while delivering outstanding returns to investors.

- **Best-In-Class AUVs:** The average Portillo's generates per-restaurant sales that sit far atop the fast-casual and limited-service restaurant segments. A key element of our strong restaurant-level adjusted EBITDA margin, we aim to keep our average unit volumes ("AUVs") high via discerning market and site selection.

- **Optimize Capital Investments:** We are continuously refining our restaurant prototypes while investing in existing restaurants to drive great guest experiences and great returns. In the past, some of our restaurants were over 10,000 square feet and had 105-foot production lines. Restaurants built in 2023 were approximately 7,700 square feet with a 65-foot production line all while capable of generating an equivalent AUV. In 2024 we opened two restaurants with our “Restaurant of the Future” prototype, a 6,250 square foot restaurant with a 47-foot production line that is more efficient to build and also better reflects the way consumers interact with our brand today. Our teams will continue to make strides in this space to further reduce our build costs and achieve attractive returns.
- **Scale Quickly:** Having scale in markets creates brand awareness, drives sales, and expands profit margins. We aim to have minimum efficient scale (6-8 restaurants) in new markets within 24 months of our first opening. Our entry into the Dallas-Fort Worth, Texas market is a great example of this strategy, where our first restaurant opened in January of 2023 and our 7th restaurant opened in December 2024.
- **Replicable Processes:** Scaling quickly requires standardizing leases and deal structures, leveraging select general contractors and vendors, and standardizing the base of our prototypes. With these scalable and predictable processes, we will be able to adhere to or beat a target 18-month development cycle time and be more meticulous in our market penetration strategies.

Take Great Care of Our Teams. Our team members put in the hard work to help create happy guests (and value for our shareholders). To attract, train, retain, and engage the best team members we strive to offer great rewards, talent management, learning, development, and people technology programs that drive obsession with Portillo’s. Identifying, developing, and placing internal talent fuels our increasing rate of growth.

- **Meaningful Work Environment:** We cultivate an environment where every individual feels valued, empowered to share ideas, and actively engaged in their work. We prioritize clear expectations and communication while providing our team with the necessary tools and resources for success. This creates a work environment that enhances overall experience and productivity for our team members resulting in happy guests and industry-leading retention.
- **Total Rewards that Matter:** Delivering competitive compensation, benefit, and recognition programs attracts great talent and helps create happy, long-term team members. We will continue to evolve rewards, specifically those that differentially drive retention. We continuously evaluate our wages with the goal of paying above market in our restaurants.
- **Igniting Talents and Careers:** Identifying, nurturing, and developing talent is critical to our growth strategy as we aim to open each new restaurant with an experienced Portillo’s manager. Our Ignite development programs identify high potential individuals to become hourly supervisors, restaurant managers, assistant general managers (“AGMs”), general managers (“GMs”), and multi-unit Market Managers and develops their skills via off-site leadership development and in-field shoulder-to-shoulder coaching. These programs demonstrate a clear and enticing career path for our team members and keeps our talent pipeline robust. At the end of 2024, we have 70+ team members in-line for future restaurant management positions.
- **Enhanced Digital Workplace Experience:** Just as consumers engage with their favorite brands digitally so do team members. In 2024 we launched Portillo’s Connect, an all-in-one communications platform that allows team members and managers to receive critical communications, engage with one another via social media, access resources such as recipes and standard operating procedures, and much more. This strategy allows individuals to connect with the people they work with, support their growth and development, and enhance their well-being and sense of belonging.

Our Growth

We are in the early stages of our nationwide growth plan, with 94 locations across ten states at the end of fiscal 2024, including C&O. In fiscal 2024, we opened 10 new restaurants, representing 12% unit growth. Over the long term, we aim to increase our number of restaurants by approximately 12% to 15% annually. Our near-term restaurant growth strategy is focused on leveraging our proven unit economic model primarily in markets outside Chicagoland with favorable macro-economic tailwinds where we already have a presence. Particularly, our current focus is in the Sunbelt, with growth across markets in Arizona, Texas, and Florida. We are also actively sourcing sites in Georgia, Colorado, Nevada, North Carolina, and South Carolina. Simultaneously, we will continue to fill-in Chicagoland and adjacent markets as opportunities come available. Over the past year, our development function has made great strides in creating scalable, repeatable processes, giving us confidence as we grow nationally.

Based on a whitespace analysis prepared in partnership with a third-party vendor in 2023, we believe we have a substantial runway for growth, including, a long-term opportunity to grow to more than 900 restaurants domestically and we are well-positioned for global growth in the future. Of the 900 domestic restaurants- to which we aspire, we currently project 800 to be full-scale restaurants and 100 to be pick-up/walk-up models. We see these company-operated full-scale restaurants as our largest opportunity moving forward. At the same time, we continue to evaluate innovative operating models. On the heels of opening a third Portillo’s Pickup location, we will continue to analyze where these, and other operating models such as urban walk-ups, airports and campuses, fit within our growth trajectory to add sales, manage cannibalization, and provide additional pipeline growth.





Our Team – Human Capital Management

Our team member base, as of December 29, 2024, consisted of 8,512 team members. This included 216 Restaurant Support Center (“RSC”) team members, 482 restaurant managers, AGMs, and GMs, and 7,714 restaurant hourly team members in positions such as crew chief, training lead, food production and guest services. We also have 88 hourly team members, which also includes crew chiefs, and 12 salaried team members, which includes managers and senior managers, at our commissaries. Our team members are not covered by any collective bargaining agreements. Certain of our team members at our commissaries in Addison, IL and Aurora, IL voted on April 13, 2023 and April 30, 2024, respectively, in favor of being represented by a union. We filed objections to the 2023 election with the National Labor Relations Board (“NLRB”) on April 19, 2023, asserting that the union and its agent’s promises prevented a free and fair election. We are actively pursuing litigation to set aside the election results. We filed an objection to the 2024 election with the NLRB on May 7, 2024, asserting that the promises made by the union and its agents prevented a free and fair election. Although we have not received other petitions to unionize, it is possible that additional team members may seek to be represented by labor unions in the future. See our risk factor “Matters relating to employment and labor law could have a material adverse effect, result in litigation or union activities, add significant costs and divert management attention” identified in Part I, Item 1A of this Form 10-K.

Our Board of Directors and Board committees provide oversight of certain human capital programs. The Compensation Committee, with input from management and an independent third-party compensation consultant, has responsibility for administering and approving compensation, including our incentive and equity-based plans for executive officers. We discuss talent and succession plans annually for key positions and levels including the executive team. We have implemented and are executing several initiatives to support our objectives to attract, develop and retain team members, including at the executive level.

Values-Driven, People-Centric Culture. We believe this reflects our conviction that our people are the Heart of Portillo’s. We aim to attract, hire and develop great people who turn their obsession for our brand into a profession. Our team members are passionate about our food, love our guests, and call their teammates “family.” We are proud that Portillo’s family reflects the communities in which we operate. We strive to foster a sense of individuality, safety, support, belonging and fairness through our people-centered practices in talent acquisition, talent management, total rewards and learning and development.

Our people-centric culture is centered on working together to create a fun, energetic atmosphere while living 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.

We believe these values extend beyond our restaurants, to every Portillo’s team member. Living these values reinforces the culture we’re proud to have built. It’s why we are passionate about attracting and selecting team members who are aligned with our purpose and values, as well as why we established an employee value proposition centered around culture. It’s also why our team members are among our best ambassadors and why we’ve seen success with our Relish Referrals team member referral program.

Leadership Development. We provide a full spectrum of resources, from skill building to leadership development, in the organization. Our philosophy is to develop people to be ready before a position is open, as opposed to waiting for a position to be open and then training them. We view this investment as fundamental to our growth, building a pipeline of leaders for our future.

We are committed to continuing education and providing ways for individuals to build their talents. Portillo’s has invested in LinkedIn Learning for all hourly crew chiefs, restaurant management, commissary crew chiefs and RSC team members. This initiative allows us to give additional learning and development opportunities above and beyond job skills or initial leadership development. We have also partnered with Better Up Coaching to give our leaders feedback and opportunities for personal growth.

Our leadership program, Ignite, continues to be a stronghold in our growth and development strategy. The creation of a strong talent pipeline while retaining our high performing team members continues to be our mission. Talent management continues to be a top priority with our yearly performance review process focused on Portillo’s seven leadership traits to be successful in the organization. Our growth, development, and retention strategies align on these leadership traits to build skills to be used both professionally and personally. We work with team members and managers to build individual development plans with training and experience, and we hold regularly scheduled development programs throughout the year for each level of leadership. We host webinars, workshops, and conferences each year on a variety of topics that are accessible to all team members. Further, we continue to hold bi-annual talent and succession planning summits to identify and support individuals with career pathing and development opportunities. We encourage team members to connect with one another in an informal mentoring program to build relationships and solidify their sense of belonging.

Engagement & Experience. We aspire to provide an unrivaled experience for every team member during their journey with Portillo’s. Creating lifelong memories for our team members and guests is paramount to the overall experience. We believe in our team members having a voice to share their ideas, feedback and contribute to organizational success. In 2024, we launched a digital engagement platform, Portillo’s Connect, to engage team members at all levels across the Company. This forum allows our teams to recognize each other, celebrate their wins, and share information and ideas. We continue to partner with Gallup to implement our EverEngaged survey to gather, listen to and act on team member feedback. We conduct this survey annually to measure improvement and areas of focus. In 2024, we maintained our team member engagement in alignment with the restaurant industry at large. Our engagement results for multi-unit and general managers continue to be top quartile. Our team members reflected they know what is expected of them at work and they have the necessary materials to do their jobs well, which both strongly influence overall engagement. Our team members also reflected they understand how Portillo’s values impact how they do their jobs. In addition to the survey, we regularly hold roundtable discussions with team members and conduct stay interviews with leaders to gain insights into ways we can cultivate an energizing, collaborative work environment. Additionally, we conduct an annual career aspiration survey for all RSC team members, crew chiefs, and field managers to understand their aspirations in development, career pathing, and what they need to succeed.

We have also prioritized a flexible work environment, addressing life-work flexibility and balance across our different workplaces. Our scheduling system allows hourly team members to align their work schedule with their personal schedule, as well as submit schedules, request time-off and trade their shifts. For our RSC team members, we provide a hybrid work environment, with our teams coming in to the office for

collaboration three days a week. In the spirit of continuing education, we also have a "no meeting" policy for Friday afternoons. Instead, our team members can use this time for professional development or focused work time. From Memorial Day through Labor Day, team members can also take this time for personal use and get an early start to the weekend.

In 2024, we hosted our annual General Manager Summit, bringing together our restaurant leaders from across the country to align on company priorities, share best practices, and celebrate achievements. This event underscores our commitment to leadership development, operational excellence, and fostering a culture of collaboration. We also introduced our inaugural RSC Summit, designed to strengthen connections between corporate and restaurant teams. This event focused on enhancing cross-functional collaboration, improving support for our operations, and driving innovation to achieve our long-term strategic goals. The Summits are critical initiatives for strengthening leadership, fostering teamwork, and achieving business objectives.

Total Rewards. The physical, financial, and mental well-being of our team members remains a top priority, and we continue to invest in their success. We believe in a total rewards philosophy of providing top quartile pay in our restaurants, especially across our leadership positions. We remain focused on compensating our team members fairly and equitably based on their roles and responsibilities.

This commitment is evidenced by our investment in our compensation packages and robust suite of benefit offerings. In 2024, we completed a comprehensive benchmark analysis for our positions and made pay adjustments to preserve our competitive edge. We also enhanced our benefits package by transitioning our 401(k) plan to a new vendor that offers our team members a more streamlined experience and additional financial education resources and opportunities. During 2024, we enhanced existing benefits and offered new ones. We upgraded all medical, dental, and vision plans with the introduction of four coverage tiers, to offer greater flexibility. Our new benefits in 2024 include a commuter program for parking and transit expenses and expanded discount programs, including BenefitsHub for exclusive savings on cars, restaurants, and more. We also integrated OnePass which offers fitness and meal service discounts. Finally, we enhanced educational opportunities through partnerships and our Portillo's Greatness Scholarship Program, reinforcing our commitment to helping our team members achieve personal and professional goals.

We believe all of our team members should act like owners of the Company, and we are committed to providing all team members with an ownership opportunity through our Employee Stock Purchase Plan ("ESPP"), internally referred to as "Beef Stock." Eligible employees can contribute up to 15% of their gross base earnings for purchases under the ESPP through regular payroll deductions, subject to an annual maximum dollar amount. In 2024, we issued 46,959 shares (net of shares withheld for taxes) under the ESPP. In addition to our Beef Stock program, all restaurant team members who are newly hired as, or promoted to, General Manager become eligible to participate in our long-term equity incentive plan. In 2024, many of our leaders received annual equity award grants, providing our team with opportunities to own Portillo's shares, which we believe supports retention of key team members and further drives engagement.

Heart of Portillo's. 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. Our core values of Family, Greatness, Energy and Fun are the "Heart of Portillo's" and are ingrained in everything we do as a company. They guide how we support our Portillo's family, from our recruiting efforts, to the education of our team members, to making sure our Portillo's family is an accurate reflection of the communities in which we operate. It is our goal to make sure everyone across Portillo's knows they are an important part of our company. In 2024, the "Heart of Portillo's Fund," an IRC section 501(c)(3) charitable fund, raised over \$200,000 to provide emergency assistance to team members. In 2024, the fund awarded over 60 grants and has provided support to team members for expenses following illness or injury, the unexpected death of a family member, negative impact from a natural disaster, and other financial hardships.

Our Sourcing and Supply Chain

Our supply chain approach is based on alignment with key strategic partners that are identified through a comprehensive evaluation process to ensure they meet our standards and expectations on a continual basis. We are committed to maintaining our high-quality food standards through fresh ingredients that meet our stringent specifications.

Portillo's strongly believes in engaging with supplier partners who share a similar approach to our corporate values and practices. We align with key strategic partners that are identified through an evaluation process to ensure they can satisfy our standards and expectations. This approach affords our organization the opportunity for real-time performance assessments to identify any potential gaps and implement corrective measures where appropriate.

We review and update our contingency plans on a regular basis to provide a reliable supply of products and services to our business. As part of our risk assessment strategy, the supply chain team identifies areas critical to supporting the restaurants and makes any necessary adjustments or institutes alternate programs.

Suppliers and distribution partners are managed under both a supplier code of conduct and a pricing protocol that provides transparent insight to costing mechanisms. We expect all suppliers to meet rigorous standards set forth in the code, which cover areas such as human rights, business integrity, and environmental management. In addition, we engage directly with manufacturers to ensure compliance with negotiated contract pricing and requisite volume expectations.

Distribution. Our main line distribution network is comprised of several independently-operated partners aligned under the UniPro umbrella, the largest food service distribution cooperative in the United States. This strategy affords us the opportunity to align with right-sized organizations that are dedicated to us which allows us to leverage volume and scale for a competitive advantage and exceptional customer service.

Commissaries. We operate two commissaries to supply our network of restaurants with our signature beef, peppers and gravy for our Italian beef sandwiches and to ensure product consistency and quality. These ingredients are shipped to our restaurants where our team members will finish the preparation in our kitchens to serve our guests.

Quality Systems. Quality and food safety are paramount to protecting our brand and are treated with the utmost priority. Our supplier and distribution partners participate in third-party audits to ensure all applicable quality system expectations are being met. Our restaurant locations are audited for food safety and quality compliance through a combination of third-party organizations and the Portillo's-managed quality and food safety team. Our commissaries also undergo food safety and quality audits on a regular basis and are regulated by the U.S. Department of Agriculture ("USDA") and Food and Drug Administration ("FDA").

Our Competition

The restaurant industry is highly competitive and fragmented. 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 quality and innovation in the food products offered, price and perceived value, quality of service experience (including technological and other innovations), speed of service, personnel, advertising and other marketing efforts, brand identification, restaurant location, and image and attractiveness of the restaurants.

The restaurant industry is often affected by changes in consumer tastes; national, regional or local economic conditions; demographic trends; traffic patterns; the type, number and location of competing restaurants; and consumers' discretionary purchasing power. We compete within each market with national and regional chains and locally-owned restaurants for guests, management and hourly personnel and suitable real estate sites. In addition, expanding product offerings at fast casual and quick-service restaurants and the convenience of home delivery services, together with negative economic conditions, could cause consumers to choose less expensive alternatives or reduce the frequency of their restaurant visits. We expect intense competition to continue in all of these areas.

Our 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. We take steps to enforce and maintain our intellectual property, but infringement, validity challenges and other risks may adversely affect or even eliminate our intellectual property rights.

Governmental Regulation and Environmental Matters

We are subject to extensive federal, state and local government regulation, including those relating to, among others, public health and safety, nutritional content labeling, zoning and fire codes, environmental protection, and employment regulations. Failure to obtain or retain food or other licenses and registrations or exemptions would adversely affect the operations of restaurants.

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 the environment. We believe federal and state environmental regulations have not had a material effect on our 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, state and local laws governing such matters as minimum wages, exempt versus non-exempt classification, overtime, unemployment tax rates, paid leave, workers' compensation rates, citizenship requirements and other working conditions. Our team members are typically 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 Americans with Disabilities Act (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 individuals with disabilities.

Additionally, any difficulties, delays or failures in obtaining 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.

Seasonality

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.

Available Information

Our website is located at www.portillos.com, and our investor relations website is located at <http://investors.portillos.com>. We are subject to the informational requirements of the Securities Exchange Act of 1934 (the "Exchange Act") and file or furnish reports, proxy statements and other information with the U.S. Securities and Exchange Commission ("SEC"). Our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, proxy statements, statements of changes in beneficial ownership and amendments to those reports are available for free on our investor relations website as soon as reasonably practicable after we electronically file them with, or furnish them to, the SEC. The SEC maintains a website (www.sec.gov) that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC.

We webcast our earnings calls and certain events we participate in or host with members of the investment community on our investor relations website. Additionally, we provide notifications of news or announcements regarding our financial performance, including SEC filings, investor events, press and earnings releases as part of our investor relations website. Investors and others can receive notifications of new information posted on our investor relations website in real time by subscribing to email alerts. We also make certain corporate governance documents available on our investor relations website, including our corporate governance guidelines, board committee charters, and code of business conduct. Our code of business conduct applies to all team members, officers and directors. Any future amendments or waivers

from our code of business conduct for our principal executive officer, principal financial officers, principal accounting officer or controller, or persons performing similar functions will be disclosed on our website promptly following the date of such amendment or waiver.

The contents of our website are not incorporated by reference into this Annual Report on Form 10-K or in any other report or document we file with the SEC, and any references to our websites are intended to be inactive textual references only.

ITEM 1A. RISK FACTORS

You should carefully consider each of the following risk factors in conjunction with other information provided in this Annual Report on Form 10-K and in our other public disclosures. Our business is subject to a number of risks, including risks that may prevent us from achieving our business objectives or may adversely affect our business, financial condition, results of operations, cash flows, liquidity or access to sources of financing, and/or the market value of our Class A common stock. These risks could cause our future results to differ materially from historical results and from guidance we may provide regarding our expectations of future financial performance. The risks described below highlight potential events, trends or other circumstances that could adversely affect our business.

Risks Related to Our Business, Industry and Growth Strategies

We are vulnerable to changes in economic conditions, increases in food and commodity costs and consumer preferences.

Like other companies in the restaurant industry, we are dependent upon food and commodity availability and their costs impact our business and results. Food and commodity costs and availability can be volatile and are affected by factors outside of our control, including general economic conditions, inflation, labor shortages, seasonal fluctuations, weather and climate conditions, energy costs, global demand, trade protections and subsidies, food safety issues, infectious diseases, possible terrorist activity, cyberattacks, transportation issues, currency fluctuations, product recalls, and government regulations, among others.

Food and commodity cost volatility has affected our profitability and reputation in the past and could do so in the future. While a portion of our commodities are subject to contract pricing, as our contracts expire we may be unable to successfully (re)negotiate terms that protect us from inflation or the portion not covered by contract pricing might increase unexpectedly, creating unplanned price inflation. We experienced 4.2% and 5.5% commodity price inflation for the years ended December 29, 2024 and December 31, 2023, respectively.

If the cost of our ingredients increase, we may suspend or permanently discontinue certain menu items rather than pay the increased cost for the ingredients. These changes to our menu could negatively impact our restaurant traffic and operational results during the shortage and thereafter. Additionally, we may be unable to offset all or even a portion of a future cost increase through menu price increases. Competitive conditions may

Table of Contents

limit our menu pricing flexibility and implementing menu price increases may change our guests' visit frequencies or purchasing patterns. Our industry depends on consumer discretionary spending and is affected by changes in consumer tastes, and macro- and micro-economic conditions (including economic downturns, consumer sentiment, inflation or increased food or energy costs). Factors such as traffic patterns, weather, fuel prices, local demographics, local regulations and the competitive landscape may adversely affect the performances of our individual locations.

Our restaurants are primarily located in high-activity trade areas that often contain retail, lifestyle, and entertainment centers. We depend on high visitor rates in these trade areas to attract guests to our restaurants. 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 (collectively, "our Results").

We may fail to open new restaurants or establish new markets or our new restaurants may not perform as well as anticipated, may not be profitable, or may close.

Opening and profitably operating new restaurants in existing and new markets is key to our growth. Over the long term, we aim to increase our number of restaurants by approximately 12% to 15% annually. We may struggle to identify target markets, 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. New restaurant success is affected by several factors, many of which are beyond our control, including our ability to secure enough appropriate and attractive sites, and complete construction in a timely and cost-efficient manner.

We may open restaurants in geographic markets where we have little or no prior operating experience. Moreover, consumer recognition of our brand has been important to the success of our existing restaurants, and our concept may have limited appeal in new markets. Restaurants in new markets may take longer to reach expected sales and profit and may have higher construction, occupancy and operating costs than existing restaurants. New restaurants in or near markets with existing restaurants could have a material adverse effect on sales at these existing restaurants. Failure on our part to recognize or respond to these challenges may adversely affect the success of new restaurants and could have a material adverse effect on our Results.

Some of our restaurants have higher-than-normal sales volumes during the initial startup period, and our Restaurant-Level Adjusted EBITDA Margins are generally lower in the first 12 months of operation. In new markets, the period before average sales stabilize is less predictable because of our limited knowledge of these markets and consumers' limited awareness of our brand. In addition, our AUVs 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 AUVs and same-restaurant sales will depend on many factors, some of which are beyond our control.

We employ operating and financial targets, but 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, it could have a material adverse effect on our Results.

Further, our existing restaurant management systems, financial and management controls and information systems (collectively, our "Infrastructure") may be inadequate to support our planned expansion. We may not enhance our Infrastructure quickly enough or effectively hire, train and retain team members, which could have a material adverse effect on our Results. If we experience a decline in financial performance, we may limit, delay or discontinue restaurant openings, or we may decide to close unprofitable restaurants.

Our growth plans and ongoing capital expenditure ("capex") needs require us to spend capital, which may not be readily available.

Our growth strategy depends on opening new restaurants using cash flows from operations. However, these cash flows may be insufficient to meet our needs. If cash is allocated ineffectively among our projects, or if any initiatives are unsuccessful, we may experience reduced profitability and we may need to delay, limit or eliminate planned restaurant openings, which could have a material adverse effect on our Results.

As our restaurants mature, they require capital expenditures to remain competitive and maintain our brand standard. If we cannot fund capital expenditures using cash flows from operations, funds will need to be borrowed or otherwise obtained or capex investments will be delayed or eliminated, which could make those restaurants less attractive to guests and materially, adversely affect the business.

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

Same-restaurant sales continue to be critical to profitability because their profit margin is generally higher than the profit margin on new restaurant sales. Initiatives to grow same restaurant sales may be unsuccessful, we may miss our targets, or same-restaurant sales could decrease. Any such events could have a material adverse effect on our Results.

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

We incur costs and expend other resources on marketing efforts for new and seasonal menu items, advertising campaigns, and restaurant designs and remodels to raise brand awareness and attract and retain guests. As our restaurant count increases and we expand into new markets, we expect to increase our marketing investment. If these initiatives are unsuccessful, we may incur expenses without the benefit of higher revenues.

which could have a material adverse effect on our Results.

Our marketing efforts rely heavily on the use of social media. Many of our competitors are expanding their use of social media, and new social media platforms are rapidly being developed, potentially making more traditional social media platforms obsolete. We must continuously evolve our social media strategies to maintain customer mindshare and brand relevance, particularly given the rise in digital focus among customers. We also invest in other marketing initiatives across digital channels and build customer awareness of, engagement with, and loyalty to our brand. These initiatives may not be successful, resulting in expenses incurred without higher sales or increased brand recognition.

Laws and regulations governing the use of these platforms and devices continue to evolve. The failure by us or our agents to abide by applicable laws and regulations could subject us to investigations, lawsuits, liability, fines or other penalties and have a material adverse effect on our Results. An increase in the use of social media for product promotion and marketing may increase our costs, including those related to compliance, and increase the risk that such materials could contain problematic product or marketing claims or violate applicable regulations.

Incidents involving food-borne illness and food safety could have an adverse effect.

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 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, improper team member conduct, or guests spreading illness while 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 Results.

We cannot guarantee that our food safety controls, procedures and training will be fully effective in preventing all food safety and public health issues at our restaurants. There is no guarantee that our restaurant locations will maintain the high levels of internal controls and training we require. Some food-borne illness incidents could be caused by third-party food suppliers or delivery services or during guest takeout or catered events. The risk may affect multiple restaurant locations. New illnesses resistant to our current precautions may develop in the future, or diseases with long incubation periods could arise, any of which could give rise to retroactive claims or allegations. One or more food safety instances in one of our restaurants could negatively affect sales at nearby or even all our restaurants, especially if highly publicized.

Other restaurant chains have experienced incidents related to food-borne illness incidents that have had material adverse impacts on their operations, and it's possible we could suffer a similar impact if one or more of our restaurants were to experience a material food safety incident. Additionally, even if food-borne illnesses are 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 Results.

The restaurant industry is intensely competitive. We compete directly and indirectly with national, regional and local limited-service (e.g., quick service or fast casual) and full-service restaurants on food quality, brand recognition, service, price and value, convenience, design and location. Some competitors have significantly greater financial, marketing, personnel and other resources, and many are well-established in our target markets. Many of our competitors have greater name recognition locally, regionally, or nationally in these target markets.

Our continued success also depends on the popularity of our menu and guest experience. Consumer tastes, nutritional and dietary trends, traffic patterns and the type, number, and location of competing restaurants often affect restaurant performance, and our competitors may react more effectively to changes. In the past, some of our competitors have implemented promotional programs that provide price discounts or reward programs, and they may continue to do so in the future. If we cannot compete effectively, our traffic, restaurant sales and restaurant operating profit margins could decline, which could have a material adverse effect on our Results. If our competitors increase spending on marketing and other initiatives or our marketing expenditures decrease, or our advertising, promotions, and restaurant designs and locations are less effective than our competitors, it could have a material adverse effect on our Results.

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 71% of our restaurants as of December 29, 2024. Our restaurants in the Chicagoland area represented approximately 45% of our total restaurants and 54% of restaurants in our comparable base, as of December 29, 2024. Our comparable restaurant base is defined as the number of restaurants open for at least 24 full fiscal periods. 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 Results. 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 more distributed national footprint.

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 Results.

Damage to our reputation and negative publicity could have a material adverse effect on our Results.

Our reputation and the perception of our brand are critical to our success. Any incident that erodes our consumer loyalty could significantly 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, health inspection scores, integrity of our suppliers' food processing and other policies, practices and procedures, team member relationships and welfare, employment practices or other matters at one or more of our restaurants. Furthermore, similar negative publicity or occurrences with respect to other restaurants could also decrease our guest traffic and have a similar material adverse effect on our business. In addition, the volume of restaurant commentary has increased dramatically with the proliferation of social media platforms. Negative publicity may adversely affect us or some or all of our restaurants, regardless of whether allegations are valid, and we may not be able to respond effectively. For example, we, or other restaurant companies generally, have and could again come under criticism from animal rights and welfare activists for our business practices or those of our suppliers. We may also face scrutiny and criticism concerning sustainability matters, environmental stewardship, and other social issues. 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, alleged wage and hour violations, discrimination, harassment or wrongful termination may create not only legal and financial liability but negative publicity that could adversely affect us and divert our financial and management resources from more productive initiatives. 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 Results.

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, driving greater and more frequent engagement with new and existing customers. As the digital space continues to evolve, our technology must also evolve to stay competitive. If we do not maintain and innovate competitive digital systems, including our growing use of artificial intelligence in our operations, our digital business and sales may be adversely affected as we lose guests to competitors. We rely on third-parties for our ordering and payment platforms. Services performed by these third-parties have been, and could be in the future, damaged or interrupted by technological issues or cyberattacks, which could negatively impact our sales and harm our reputation.

As availability of food delivery services increase, we understand the importance of meeting our guests' needs. We have invested in marketing to promote our delivery partnerships, which could negatively impact our profitability if that channel does not continue to expand. We rely on third-parties to fulfill delivery orders in a timely and professional fashion. If these third-party delivery companies cease doing business with us, do not continue their relationship with us on favorable terms, or cannot make their scheduled deliveries (including a shortage of drivers), it may have a negative impact on our sales or revenue. Errors in providing adequate delivery services may result in guest dissatisfaction, which could also result in guest attrition, 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, but some risk remains.

Third-party food delivery services are competitive. If our delivery partners fail to effectively compete with other third-party delivery providers, 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.

We have a limited number of suppliers and distributors for certain key ingredients. If our suppliers or distributors do not fulfill their contractual obligations, we could encounter supply shortages and incur higher costs.

Due to the concentration of our suppliers and distributors ("our vendors"), the cancellation, disruption, delay or inability of these suppliers to deliver these products to our restaurants for any reason may materially and adversely affect our operations until we establish an alternative.

We do not control our vendors' operations and our efforts to monitor their performance may be unsuccessful. If our vendors fail to comply with food safety or other laws and regulations, or face allegations of non-compliance, their operations may be disrupted and we may not be able to engage replacement suppliers on commercially reasonable terms or a timely basis, if at all.

If our vendors do not fulfill their contractual obligations or we cannot identify alternative sources, we could encounter supply shortages and incur higher costs, which could have a material adverse effect on our results of operations. We have developed contingency plans to mitigate risks related to secondary supply, floor stocking arrangements, product diversification and inventory management, but there can be no assurance that we can obtain commercially reasonable terms or alternative product of equivalent quality.

Any prolonged disruption in the operations of our two commissaries could harm our business.

We currently operate two commissaries in Illinois, which produce the Italian beef, gravy and sweet peppers used in our restaurants. While we plan to continue investing in additional supply chain capacity in the future, as necessary, any prolonged disruption in the operations of any of our existing facilities, whether due to technical, operational or labor difficulties, product contamination, destruction or damage to the facility, limited capacity or other reasons, could adversely affect our Results.

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.

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 five years and many of our executive officers have numerous years of experience in the food service industry. The loss of any of our executive officers could have a material adverse effect on our Results, as we may be unable to find suitable replacements on a timely basis, without incurring increased costs, or at all. There is a high level of competition for experienced, successful executive personnel in our industry. Our inability to meet our executive staffing requirements could have a material adverse effect on our Results.

Failure to maintain our corporate culture as we grow could have a material adverse effect on our business.

We believe that our corporate culture and values have been a critical component to our success. We have made substantial investments in our team. As we continue to grow, it may be difficult to maintain the innovation, teamwork, passion and focus on execution that are important to our 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 Results.

Matters relating to employment and labor law could have a material adverse effect, result in litigation or union activities, add significant costs and divert management attention.

Various federal and state labor laws govern our relationships with our team members and affect our operating costs, including 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 federal, state and local laws that govern employment law matters like employee classifications, unemployment tax rates, workers' compensation rates, family leave, paid leave, working conditions, safety standards, immigration status, payroll taxes, discrimination, and citizenship requirements. In addition, under the U.S. Patient Protection and Affordable Care Act ("ACA"), we must provide affordable coverage, as defined in ACA, to eligible team members, or make a payment per team member based on ACA's affordability criteria. Additionally, some state and local laws mandate 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, paid leave, 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.

Federal law requires that we verify that our team members have the proper documentation and authorization to work in the U.S. 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 states 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. Unauthorized workers are subject to deportation and we may be subject to fines or penalties if any of our workers are found to be unauthorized. Termination of a significant number of team members who lack work authorization 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. As a result of such events, we could experience adverse publicity that may negatively impact our brand and may make it more difficult to hire and keep qualified team members. These factors could materially adversely affect our Results.

Our business is subject to the risk of litigation by team members, consumers, suppliers, shareholders 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 predict or quantify. In recent years, restaurant companies, including us, have been subject to lawsuits, including class actions, alleging violations of federal and state laws regarding workplace and employment conditions, discrimination, immigration status and similar matters. Some lawsuits have resulted in substantial damage awards. 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. Whether or not claims against us are valid or whether we are found 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 believe we maintain adequate levels of insurance, insurance may not be available at all or in sufficient amounts to cover all potential liabilities with respect to these or other matters. A judgment or other liability in excess of our insurance coverage or any adverse publicity resulting from claims could have a material adverse effect on our Results.

Certain of our team members at our commissaries in Addison, IL and Aurora, IL voted on April 13, 2023 and April 30, 2024, respectively, in favor of being represented by a union. We filed objections to the Addison 2023 election with the National Labor Relations Board ("NLRB") on April 19, 2023, asserting that the promises made by the union and its agent prevented a free and fair election. We are actively pursuing litigation to set aside the election results. We filed an objection to the Aurora 2024 election with the NLRB on May 7, 2024, asserting that the promises made by the union and its agents prevented a free and fair election. Our objections were denied and we filed exceptions to this decision with the NLRB. Although we have not received other petitions to unionize, it is possible that additional team members may seek 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 Results. 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 labor 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.

Labor quality, labor shortages or increased labor costs could have a material adverse effect on our Results.

Our success depends upon our ability to attract, motivate and retain enough qualified team members to meet the needs of our new and existing restaurants. Competition for qualified team members in some areas could require higher wages and greater benefits. Our team members are typically paid more than the applicable minimum wage where they work. Increases in federal or state minimum wages, 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) may also increase wage rates. We invest significant time and money in the qualification and training of our personnel, so failure to retain team members will increase costs without improving Results. Inability to recruit or retain team members could also delay new restaurant openings, could adversely impact existing restaurants, or result in higher team member turnover in existing restaurants, increasing our labor costs and adversely affecting our Results.

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 we increase menu prices to cover increased labor costs, the higher prices could adversely affect demand for our menu items, resulting in lower sales.

We are exposed to risks associated with leasing property including long-term, non-cancelable leases and potential inability to renew expiring leases.

Many of our restaurant leases are non-cancelable with initial terms of 10 to 20 years and typically provide for renewal options in five-year increments. Generally, our leases also require us to pay our share of the costs of real estate taxes, utilities, building operating expenses, insurance and other charges and may include rent escalations. If we close a restaurant, our lease obligations may remain, requiring, among other things, payment of the rent and other costs through the lease term. In addition, as leases expire for restaurants that we continue to operate, we may be unable to negotiate renewals on commercially acceptable terms or at all. As a result, we may close or relocate the restaurant, resulting in unanticipated construction costs, the delay or failure by the landlord to timely deliver the new restaurant location to us, and unfavorable commercial, residential or infrastructure development near our new restaurant location, among other costs and risks. Revenues and profit, if any, generated at a relocated restaurant may not equal those 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 expand service to 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 an annual license that may be revoked or suspended for cause at any time. Alcoholic beverage control regulations impact many parts of restaurant operations, including minimum age of team members, advertising, trade practices, wholesale purchasing, inventory control and handling, storage and dispensing of alcoholic beverages and training. Failure to comply with these regulations and obtain or retain licenses could have a material adverse effect on our Results.

We are also subject to "dram shop" statutes in certain states, which 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; however, litigation against restaurant chains has resulted in significant judgments and settlements under these statutes. These cases often seek punitive damages, which may not be covered by insurance, and such litigation could have a material effect on our Results. Regardless of whether any claims against us are valid or whether we are found liable, claims may be expensive to defend and may divert time and money away from operations, hurting 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 Results.

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 business.

As of December 29, 2024, we had approximately \$394.3 million of goodwill and \$250.0 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. If the book value of goodwill or other indefinite-lived intangible assets is impaired, such impairment would be charged to earnings in the period of impairment. We cannot accurately predict the amount and timing of any impairment. Should the value of goodwill or other indefinite-lived intangible assets become impaired in the future, such impairment could have a material adverse effect on our Results. See Note 6. Goodwill & Intangible Assets in the notes to the consolidated financial statements 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 could have a material adverse impact on 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 Restaurant Support Center, restaurants, 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. Because our restaurants are concentrated in the Midwestern United States and parts of the "Sunbelt," adverse weather conditions or changes in weather patterns, including those that may result in electrical and technological failures, may disrupt our business and may adversely affect our sales and operations. Such events could result in physical damage to one or more restaurants, the temporary closure of some or all of our restaurants or our vendors, a workforce shortage, supply chain disruption, or disruption of our technology support or information systems, all of which would increase our costs and disrupt our business. Pandemics, political or social unrest, and acts of war or terrorism in the past, and could in the future, have negative effects on our Results. The events described herein also could have indirect consequences like increased insurance costs 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 Results.

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

Investors, environmental activists, the media and governmental and nongovernmental organizations remain focused on a variety of environmental, social and other sustainability matters, including energy, water, and food and packaging waste management, food safety, nutritional content, labor practices, and supply chain and management food sourcing. We have experienced and may continue to experience pressure to make sustainability-related commitments. 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 to achieve our sustainability goals, which could have a material adverse impact on our Results. We may also experience backlash from individuals, organizations and investors who do not support such initiatives, including those who support the enactment of "Anti-ESG" legislation or policies.

Our inability or failure to execute on a comprehensive business continuity plan at our Restaurant Support Center following a disaster or force majeure event could have a material adverse impact on our Results.

Many of our corporate systems and processes and corporate support for our restaurant operations are centralized at one location. We have disaster recovery procedures and business continuity plans in place to address crisis-level events, including hurricanes and other natural disasters, and back up and off-site locations for recovery of electronic and other forms of data and information, and events like the COVID-19 pandemic have provided a limited test of our ability to manage our business remotely. However, if we are unable to fully implement our disaster recovery plans, we may experience delays in recovery of data, an inability to perform vital corporate functions, tardiness in reporting and compliance requirements, a failure to adequately support field operations and other breakdowns in normal communication and operating procedures that could have a material adverse effect on our financial condition, results of operation and exposure for administrative and other legal claims. In addition, these threats are constantly evolving, which increases the difficulty of accurately and timely predicting, planning for and protecting against such threats. As a result, our disaster recovery procedures and business continuity plans may not adequately address all threats we face or protect us from resulting losses.

Risks Related to Our Indebtedness

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

Our indebtedness could have significant effects on our business, such as (i) requiring us to dedicate a substantial portion of our cash flow to repay borrowings, reducing cash flow available to fund working capital, capital expenditures, acquisitions, our growth strategy and other general corporate purposes; (ii) limiting our ability to finance capital expenditures, acquisitions, debt service requirements, our growth strategy and other projects; (iii) limiting our ability to make investments, including acquisitions, loans and advances, and to sell, transfer or otherwise dispose of assets; (iv) 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; (v) placing us at a disadvantage compared with our competitors that have less debt; and (vi) exposing us to risks inherent in interest rate fluctuations, including higher interest rate expense, because our borrowings are at variable interest rates.

We may not generate sufficient cash flow to repay our indebtedness when due and meet our other cash needs. If this occurs, we may 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 on favorable terms, if at all, and if we must sell our assets, it may negatively affect our Results. If we are unable to pay our debts on time, credit ratings agencies may downgrade our credit rating, which may make it more difficult or expensive to refinance our existing debt or to obtain additional debt or equity financings in the future.

Events beyond our control, including changes in general economic and business conditions, may affect our ability to satisfy certain financial

covenants that apply under our credit agreements and we cannot guarantee that our lenders will waive any failure to satisfy such financial covenants.

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 Partners, our largest shareholder as of December 29, 2024, continues to own a significant percentage of our common stock. Berkshire 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 shareholders. Our amended and restated certificate of incorporation provides that our directors and shareholders, 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 shareholders will not be liable to us or our shareholders 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 Results. 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 us, 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.

Certain anti-takeover provisions of Delaware law and certain provisions of our current certificate of incorporation and bylaws may make it more difficult for a third-party to acquire control of us, even if a change of control would benefit shareholders. Among other things, these provisions: (i) do not permit cumulative voting for directors; (ii) delegate the sole power of a majority of the Board to fix the number of directors; (iii) provide the power of our Board to fill any vacancy on our Board, regardless of the cause of such vacancy; (iv) authorize the issuance of "blank check" preferred stock without shareholder approval; (v) eliminate the ability of shareholders to call special meetings; (vi) establish advance notice requirements for nominations for election to our Board or for proposing matters that can be acted on by shareholders at shareholder meetings; and (vii) limit use of shareholders' written consent.

Our credit facilities impose, and we anticipate future facilities may impose, limitations on our ability to enter into change of control transactions, the occurrence of which could constitute an event of default. The foregoing factors, as well as the significant common stock ownership by Berkshire, could make acquisition of our Class A common stock less desirable, which, under certain circumstances, could reduce its market value.

We are a holding company and our principal asset is our ownership of LLC Units in Portillo's OpCo. Accordingly, we are 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 whose principal asset is Portillo's OpCo LLC Units. 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 applicable federal, state, and local income taxes. Portillo's OpCo's taxable income 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 payment obligations under the Tax Receivable Agreement. We intend to cause Portillo's OpCo to make distributions to the holders of LLC Units (including us) in amounts sufficient to cover the LLC Unit holders' obligations, however deterioration in the financial condition, earnings or cash flow of Portillo's OpCo and its subsidiaries may impair their ability to make such distributions. Additionally, if we need funds and Portillo's OpCo is restricted from making distributions to us under applicable law or regulation, its debt agreements or otherwise, we may be unable 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. See "Risks Related to Our Indebtedness" above.

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

Under the Amended LLC Agreement, Portillo's OpCo will 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 income 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. Given (i) potential differences in taxable income allocable to us and the other LLC Unit holders, (ii) the lower income tax rate applicable to corporations than individuals and (iii) the use of an assumed income tax rate, we may receive tax distributions significantly in excess of our income 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, but we will have no obligation to distribute such cash (or other available cash other than any declared dividend) to our shareholders. If we do not distribute such excess cash as dividends or otherwise undertake ameliorative actions, 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.

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, including substantial cash payments.

Under the Tax Receivable Agreement, we are required to make cash payments to certain of our pre-IPO LLC Members (the "TRA Parties") equal to 85% of the income 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 existing tax basis in depreciable or amortizable assets related to LLC Units acquired in our IPO, (ii) certain favorable tax attributes we acquired from entities treated as corporations for U.S. tax purposes that held LLC Units prior to the Transactions ("Blocker Companies") (including net operating losses and the Blocker Companies' allocable share of existing tax basis), (iii) increases in our then allocable share of existing tax basis in depreciable or amortizable assets, and adjustments to the tax basis of the tangible and intangible assets of Portillo's OpCo and its subsidiaries, as a result of (x) sales or exchanges of interests in Portillo's OpCo (including repayment of the redeemable preferred units) in connection with our IPO and (y) future exchanges of LLC Units by pre-IPO LLC Members for Class A common stock and (iv) certain other tax benefits related to entering into the Tax Receivable Agreement, including payments made under the Tax Receivable Agreement.

The Company's payment obligations under the Tax Receivable Agreement may be significant. Any payments made under the Tax Receivable Agreement will not be available for reinvestment in our business and will reduce our overall available cash flow. Tax Receivable Agreement payments are not conditioned on the TRA Parties' continued ownership of our shares. Furthermore, our obligations under the Tax Receivable Agreement could make us a less attractive target for an acquisition, particularly if an acquirer cannot use some or all of the tax benefits under the Tax Receivable Agreement. The amount of existing tax basis and anticipated tax basis adjustments and utilization of tax attributes, and 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 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.

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 and may impair our ability to consummate change of control transactions or negatively impact the value received by owners of our Class A common stock.

The Tax Receivable Agreement provides that upon a "Change of Control" (which is defined to include, among other things, a 50% change in control of Portillo's Inc., the approval of a complete plan of liquidation or dissolution of Portillo's Inc., the disposition of all or substantially all of Portillo's Inc.'s direct or indirect assets or a change of a majority of the Board of Directors without approval of at least two-thirds majority of the then-existing Board members), 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 payment obligations under the Tax Receivable Agreement will accelerate. Such accelerated payments will be calculated by reference to the present value (at a discount rate equal to the lesser of (i) 6.5% per annum and (ii) one year LIBOR (or its successor rate) plus 100 basis points) 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.

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. 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, or require us to incur substantial costs to consummate such a 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 our tax reporting positions, and the U.S. Internal Revenue Service (the "IRS") or a state taxing authority may successfully challenge all or part of the tax benefits we claim in connection with such tax positions. 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 TRA Party's consent (not to be unreasonably withheld or delayed). The TRA Parties' interests may differ from or conflict with our interests and they may exercise their consent rights in a manner adverse to our interests.

Payments made under the Tax Receivable Agreement could significantly exceed any tax savings that we realize from the tax attributes that are the subject of the Tax Receivable Agreement. We will not be reimbursed for any cash payments previously made to the TRA Parties under the Tax Receivable Agreement if any tax benefits initially claimed by us and for which payment has been made to a TRA Party are ultimately disallowed. Excess cash payments made by us to a TRA Party will be netted against any future cash payments, if any, that we might otherwise be required to make to such TRA Party under the Tax Receivable Agreement once a challenge is finally settled or determined.

Our business and operations could be negatively affected if we become the target of any securities litigation or shareholder activism efforts, which could cause us to incur significant expenses, hinder execution of our growth strategy and impact our stock price.

After periods of volatility in the market price of a company's securities, securities class action litigation has at times been brought against the company experiencing such volatility. Publicly-traded companies may also become the target of shareholder activism campaigns, which could take many forms or arise in a variety of situations. Due in part to the potential volatility of our stock price, we may become the target of securities litigation or shareholder activism efforts. Securities litigation and shareholder activism, including proxy contests, could result in substantial costs and legal fees and divert management's and our Board of Directors' attention and resources from our day-to-day operations. Additionally, securities litigation and shareholder activism could give rise to perceived uncertainties as to our future, adversely affect our relationships with service providers and make it more difficult to attract and retain qualified personnel. Further, our stock price could be subject to significant fluctuation or otherwise be adversely affected by the events, risks and uncertainties of any securities litigation and shareholder activism matters.

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.

Our intellectual property includes our trademarks and service marks registered with the United States Patent and Trademark Office (including Portillo's®), the trade dress of our restaurants, our websites and domain names (including our website at www.portillos.com) and other unregistered intellectual property (collectively, our "IP"). Our success depends on our continued ability to use our IP and licensed third-party intellectual property. 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 protect our IP are inadequate or if any third-party misappropriates, infringes, dilutes or otherwise violates our IP, the value of our IP may be harmed. For example, failure to register or enforce our trademarks, whether in print, on the Internet or through social media or other media, could prevent us from successfully challenging third parties who use trademarks similar to ours, which may cause consumer confusion, harm the public perception of our brand, prevent our brand and branded products from achieving and maintaining market acceptance and cause a material adverse effect on our Results. There can be no assurance that the steps we have taken to protect our IP in the United States will be adequate or will obtain or maintain any competitive advantage.

It is possible that third parties will assert claims of infringement, misappropriation or other violations of intellectual property against us, or assert claims that a portion of our IP is invalid or unenforceable. Claims decided against us could invalidate or narrow our IP or allow competing uses, which could have a material adverse effect on our Results. Additionally, an infringement or misappropriation claim decided against us could result in us being required to pay damages, cease using our IP, develop or adopt non-infringing intellectual property or acquire a license to use the third-party intellectual property that is the subject of the asserted claim. Regardless of outcome, there could be significant expenses associated with the defense of such a claim. We may also from time to time have to assert claims against third parties and initiate litigation in order to defend our IP. Such litigation could result in substantial costs and diversion of resources, could be protracted with no certainty of success, or could fail to achieve an adequate remedy. Any of these occurrences could have a material adverse effect on our Results.

Security breaches, system interruptions, material failure of our system, or complications with the implementation or usage of our new enterprise resource planning system could disrupt our operations, compromise confidential personally identifying information, subject us to loss, harm our business, and have a material adverse impact on our business, financial condition and results of operations.

Our information technology systems, which in some cases rely on third-party providers, have in the past, and may in the future, 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, natural/weather disasters, power losses, disruptions in telecommunications services, fraud, military or political conflicts, terrorist attacks, computer viruses, ransomware, malware, or other events. Our systems are also subject to break-ins, sabotage, theft, and intentional acts of vandalism perpetrated by criminal third parties, third parties we do business with, or team members. Our reliance on third parties increases our exposure to such risks as we cannot exercise direct control over such persons / entities.

While we endeavor to keep all systems current, there can be no guarantee that we can update and maintain our systems at all times. In instances where we are unable to do so, our risk mitigation efforts may fail. Any such failure could lead to website downtime, disruptions to our information technology systems, or malicious behavior by threat actors. In 2024, we completed the implementation of our new ERP system, designed to accurately maintain the Company's financial records, enhance operational functionality, and provide timely information to the Company's management team related to the operation of the business. The ERP system implementation process has required, and will continue to require, the investment of personnel and financial resources as we support post-implementation efforts and system functionality. These post-implementation efforts could result in delays, increased costs, and other difficulties, and disruptions or difficulties in using our ERP system could result in harm to our business. Additionally, if the ERP system does not operate as intended, the effectiveness of our internal controls over financial reporting could be adversely affected or our ability to adequately assess those controls could be further delayed.

We utilize technologies at our restaurants that support guest experience and transactions processes, including the processing of guest payments. We go to great lengths to vet the security capabilities of third parties that support these services. These services include retail technologies and related software applications. Although vendors similarly endeavor to maintain systems in a current and secure fashion, they are subject to the same implications as noted above, and these services can as a result be denigrated, compromised or otherwise impacted in a manner that disrupts our

ability to operate. Although we will continue to take progressive steps to assess and promote the furthering security capabilities of third parties that support our restaurant operations, compromising events such as distributed denial of service, ransomware attack and other cyber attacks, natural / weather disasters or human error (and other events as noted above) may occur that will cause disruption to our vendors' system, that in turn may impact our ability to interact and transact with guests, on and off premise.

Our business requires the collection, transmission, and retention of large volumes of guest and team member data, including personally identifiable information, through information technology systems maintained by us or vendors retained by us. In particular, our omni-channel approach relies in large part on our information technology systems to operate successfully and allow for capabilities like kiosk transactions, mobile order and pay, third-party delivery, and digital menu boards. Like many other companies, we have experienced, and will continue to experience, attempts to compromise our information technology systems, some of which have been successful but not material. As we expand our business channels, our risk exposure will increase proportionately. The techniques and sophistication used to conduct cyberattacks, as well as the sources and targets of these attacks, change frequently and may not be recognized until or after such attacks have occurred. We continue to make significant investment in physical and technological security measures, team member training, and third-party services to anticipate cyberattacks and prevent breaches, protect our information technology networks and infrastructure, and to identify vendors and service providers that 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, we cannot guarantee that we will be successful in preventing every possible instance of cyberattacks, breach, or data loss, any of which could disrupt our operations, resulting in inefficiencies and a loss of profits.

Additionally, the cybersecurity and privacy requirements, including the regulation of artificial intelligence, imposed by governmental regulations are evolving. Our systems may not be able to immediately satisfy applicable requirements, and may require significant additional investment and time to do so. A significant theft, loss or misappropriation of, or unauthorized access to, our guests' data or other proprietary data 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 Results. Our cyber insurance and business interruption insurance may not be sufficient to cover all losses that may result from a cybersecurity incident. As a result, if we experience any outsized material impacts from a failure of our systems, our Results could be materially and adversely affected. Our reputation as a brand or as an employer could be adversely affected, which could impair our ability to attract and retain guests and qualified employees. There is also the question of interpretation of regulations that are implemented at a federal or state level, and our efforts to assess and validate the applicability of these measures, and if they apply in part or in full from a compliance standpoint. Although we strive to comply with regulations in the most timely manner possible, there may be instances in which an assessment that we deem to be valid and necessary is being conducted, in the face of a differing perspective from a governing agency. It is conceivable that we could be subjected to non-compliance penalties or similar circumstances, that would materially impact our Results.

The rapid development and integration of artificial intelligence ("AI") and emerging technologies into our processes poses risks to our business.

The use of AI technologies within our business processes must be implemented and managed effectively and ethically to avoid outputs that are false, biased, or inconsistent with our values and strategies. Failure to properly manage AI and emerging technologies, could also lead to unauthorized access to sensitive information, of which could harm our reputation and competitive position. At the same time, if we fail to keep pace with the rapid evolution of AI technologies, particularly in our industry, our competitive position and business results could suffer. In addition, the evolving regulatory landscape for AI technologies requires continuous monitoring and adaptation to ensure compliance and mitigate potential legal and operational risks.

Failure to comply with existing and new federal and state laws and regulations relating to privacy, data protection, advertising and consumer protection, could have a material adverse effect.

We rely on a variety of marketing and advertising channels and strategies, 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 practices and activities.

Laws and regulations relating to privacy, data protection, marketing and advertising, and consumer protection are evolving. These requirements may be interpreted inconsistently 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, real or perceived, by us to comply with our privacy policies, 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 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 or may require us to change our practices or stop using certain data sets. We may 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 in our operations.

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 limited and may further limit the ability of companies to engage in these activities. Additionally, some device manufacturers 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, if widely adopted, could result in third-party cookies and other online tracking methods becoming significantly less effective. This could increase our operating costs, including new customer acquisition costs and, consequently, have a material adverse effect on our Results.

Various federal and state legislative and regulatory bodies, or self-regulatory organizations, may expand current or enact new laws or regulations, or issue revised rules or guidance regarding privacy, data protection, consumer protection, and advertising. Additionally, the Federal Trade Commission 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 laws and regulations, changes thereto, and any other new laws or regulations, could require changes to our business practices or restrict our use or storage of personal information, which may increase our compliance expenses and make our business more costly or less efficient. Such changes could harm 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 Results.

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 without limitation those related to building and zoning requirements, and the preparation and sale of food. Such laws and regulations may change and failure to comply with applicable laws and regulations could adversely affect our results of operations. Many licenses, permits and approvals must be renewed annually and may be revoked, suspended or denied renewal if governmental authorities determine that our conduct violates applicable regulations. Difficulties or failure to obtain or maintain the required licenses, permits and approvals could adversely affect our existing restaurants and delay or result in our decision to cancel new restaurant openings, which could have a material adverse effect on our Results.

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. 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. We anticipate that the requirements may impact our industry. Additionally, our suppliers may initiate or otherwise be subject to food recalls that impact product availability, result in adverse publicity or require us to take costly actions 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. Other applicable laws could require us to make costly modifications to our restaurants or operations to comply with such laws.

Compliance with current and future laws and regulations including those regarding permitted ingredients and disclosure of nutritional and allergen content 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 or to litigation. 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 Results. 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 against the fast casual or traditional fast-food segments) may harm our reputation and could have a material adverse effect on our Results.

We are subject to the Americans with Disabilities Act (the "ADA"), which, among other things, requires our restaurants to meet federally mandated requirements for individuals with disabilities. The ADA prohibits discrimination in employment and public accommodations on the basis of disability. Under the ADA, we could be required to modify our restaurants to provide service to, or make reasonable accommodations for the employment of, disabled persons. Our employment practices are also subject to the requirements of the U.S. Citizenship & Immigration Service ("USCIS") relating to citizenship and residency.

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 Results. 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. Compliance with all these laws and regulations can be costly and can increase our exposure to litigation or governmental investigations or proceedings.

Tariffs and other trade policies could have a substantial impact on our business.

The Company's business is dependent upon the availability of, among other things, agricultural commodities and other raw materials. U.S. relations with the rest of the world remain uncertain with respect to taxes, trade policies and tariffs, especially as the political landscape changes due to the recent U.S. presidential and congressional elections. Changes in U.S. administrative policy may lead to significant increases in tariffs for imported goods, which may impact prices for both domestic and imported goods, such as steel, lumber, and agricultural commodities. Imposition of tariffs may strain international trade relations and increase the risk that foreign governments implement retaliatory tariffs on goods imported from the United States. Similarly, interest rates may continue to rise and create further uncertainty and volatility in the market which would negatively impact our Results.

These political and economic changes could have a material effect on global economic conditions and the stability of financial markets and could significantly reduce global trade. In addition to potential increases on tariffs, wars or conflicts could affect our ability to obtain raw materials, which could have a substantial impact on the costs associated with food, beverage and packaging of our menu items, as well as building construction materials and negatively impact our results.

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 another party. Third parties also may make claims 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.

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 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 are also subject to a variety of other claims that could arise in the ordinary course of our business, including personal injury claims, contract claims and claims alleging violations of federal and state securities laws or law regarding workplace and employment matters, equal opportunity, harassment, discrimination and similar matters, and we could encounter 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, attention, and money away from our operations. A judgment in excess of our insurance coverage for any claims could have a material adverse effect on our Results. Allegations may also result in adverse publicity and negatively impact our reputation.

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 Exchange Act, the Sarbanes-Oxley Act ("SOX"), 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. 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 directors or executive officers. Our management and other personnel 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 may need to hire more team members in the future to comply with these requirements, which will increase our costs and expenses.

If we fail to maintain effective internal controls over financial reporting, or if our internal controls are ineffective, our ability to produce timely and accurate financial information or to comply with Section 404 of the Sarbanes-Oxley Act of 2002 could be impaired.

We are required to comply with Section 404 of the Sarbanes-Oxley Act ("Section 404"), which requires 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 controls over financial reporting. In addition, our independent registered public accounting firm must attest to the effectiveness of our internal controls over financial matters. To maintain compliance with Section 404, we will continue to employ internal resources and outside consultants to assess and document the adequacy of our internal controls over financial reporting, including validating that controls are functioning as documented and maintaining a continuous reporting and improvement process for internal controls over financial reporting. Despite our efforts, there is a risk that our internal controls over financial reporting may not comply with Section 404.

Failure to achieve and maintain effective internal controls could have a material adverse effect on our Results. If we are not able to demonstrate Section 404 compliance, or if our internal controls over financial reporting are 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 business, the price of our Class A common stock could decline, we could become subject to investigations by the Nasdaq, the SEC or other regulatory agencies, or our Class A common stock may not be able to remain listed on the Nasdaq.

Although we designed our disclosure controls and procedures to provide reasonable assurance that we are complying with the Exchange Act, any disclosure controls and procedures, no matter how well-conceived and executed, can provide only reasonable, not absolute, assurance. Judgments can be faulty and breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individuals, by collusion of two or more people or by an unauthorized override of the controls. 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 Results.

General Risks

Fluctuations in our tax obligations, 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 U.S. federal and various state tax jurisdictions. We record tax expense based on our estimates of current and future income tax payments, which may include reserves for uncertain tax positions in multiple tax jurisdictions, and valuation allowances related to the realizability of certain deferred tax assets. Significant judgment is required in determining our provision for income taxes, deferred tax assets ("DTAs") and our tax positions. 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. Throughout the year there could be ongoing variability in our quarterly tax rates as events occur and exposures are evaluated.

Our effective tax rate in a given financial reporting period may be materially impacted by a variety of factors including changes in the mix and level of earnings, varying jurisdictional tax rates, tax effects of equity-based compensation, changes in tax laws, regulations or interpretations thereof, cost related to intercompany restructuring, 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.

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

We believe that we maintain insurance customary and appropriate 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 Results.

Changes in accounting principles applicable to us could have a material adverse effect on our Results.

Generally accepted accounting principles in the United States of America ("GAAP") 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 implementation of a change.

Our amended and restated certificate of incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions that may be initiated by our shareholders, and designates 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 shareholders' ability to obtain a favorable judicial forum for certain disputes.

Our current certificate of incorporation provides that, absent our written consent, 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 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 shareholder to us or our shareholders; (c) action asserting a claim arising under any provision of the Delaware General Corporate Law ("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.

Our current certificate of incorporation provides that, absent our written consent, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any action asserting a claim arising under the Securities Act or the rules and regulations promulgated thereunder.

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 certificate of incorporation, limiting such person's ability to bring a claim in a more favorable or

convenient judicial forum, which may discourage such lawsuits, make them more difficult or expensive to pursue and result in less favorable shareholder outcomes. 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 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 Results.

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, including those described in these risk factors and variations in the timing and volume of our sales; the timing of expenditures in anticipation of future sales; changes in the cost or availability of our ingredients or labor; 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; and general market conditions.

Fluctuations in our performance may cause our results to fall below our public guidance or the investor and analyst expectations, which could cause the trading price of our Class A common stock to decline. Fluctuations in our results could also cause other problems, including but not limited to analysts or investors changing their valuation models for our shares, experiencing short-term liquidity issues, diminishing ability to retain or attract key personnel or other unanticipated issues.

Quarterly results of operations may vary in the future and period-to-period comparisons may not be meaningful. Investors should not rely on the results of one quarter as an indication of future performance.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 1C. CYBERSECURITY

Risk Management Strategy

Responsibility for cybersecurity risk management comes from a collective effort, with day-to-day oversight and management from our executive and information technology ("IT") teams. Additionally, the Audit Committee continues to take a more active role in setting both proactive and reactive strategies, with the overall Board overseeing our efforts and helping to guide our strategy.

From a framework standpoint, we primarily utilize the National Institute of Standards and Technology ("NIST") framework to assess and mitigate cybersecurity risks. This framework guides our efforts to identify, analyze and contain any security threats, and advises as to potential actions to consider if a need arose to recover from a security incident.

Our primary source of cybersecurity risk relates to security of our third-party service providers, whose activities and scale may present more desirable targets. However, we do maintain certain systems ourselves and appreciate the need to focus internally as well. We manage cybersecurity risk through a variety of tactics, including (i) the structure of our systems and platforms, (ii) the contractual terms with our third-party vendors, (iii) the proactive vulnerability assessments we conduct (or require our vendors to conduct), (iv) compliance with applicable regulations and continuous improvement around best practices, (v) mitigating user error and human vulnerabilities through training and guidance, (vi) attending security conferences and operationalizing new learnings and/or planning for environment changes in response to these learnings, and (vii) the placement of cybersecurity insurance policies. We also work with cross-functional partners and outside experts, including legal counsel and consultants to identify the legal requirements and industry practices and expectations that the Company's security measures should satisfy.

We employ a "Defense in Depth" strategy to protect the Company, segmenting our systems and networks so that an attack on one segment does not allow for easier compromise of other systems and networks. Within the Company, administrative access to various systems is limited so that there is no universal access if an administrator-level account is compromised.

We involve our IT team when negotiating contracts that could increase our cybersecurity risk exposure, so that the team is aware of the specific risks related to a given vendor and can provide feedback and advice on the contractual provisions necessary to prevent a cybersecurity incident, or in the event an incident does occur, to ensure that the Company has the necessary rights to act quickly to protect team members, guests, and our business and mitigate potential damage. We are continuously improving our processes and contract positions to reflect evolving risks and market

practices.

We appreciate the need to monitor and test our systems to make sure that they are working the way that they should. We negotiate with our vendors about a variety of monitoring, testing, and reporting provisions so that we can work with them to better address vulnerabilities. This may include sharing SOC 1 or 2 Type 2 audit reports, conducting periodic penetration and vulnerability testing, both internally and externally, and confirmation that vendors are adhering to applicable laws. Some of this testing and monitoring is conducted in-house and some is conducted by third-party vendors.

We routinely conduct penetration testing across our various environments and networks, including our Restaurant Support Center, our restaurants and our cloud-based architecture and systems. We review penetration testing outcomes and take steps to address any meaningful findings, while documenting resolution steps these efforts.

We work with team members at all levels to educate them about evolving risks, from well-known tactics and scams (e.g., phishing) to their more sophisticated descendants (e.g., spear phishing and smishing). Team members receive training on data security and privacy practices and are included in periodic awareness campaigns to test real-world responses. We continue to add further training opportunities as they become available and have incorporated "tabletop" exercises for our Board, our management team, and our team members into our risk mitigation efforts to help us refine our business interruption and response plans. The Company also employs and enforces policies to guide team member behavior and help protect against threats, which includes steps such as regular password updates, and obtaining permission to install third-party programs. Team member training reinforces the Company's risk management policies and procedures and the expectation that all team members will adhere to them.

The Company also maintains a cybersecurity insurance policy that we believe is appropriate for a company of our size and risk profile, but it is possible that it may not fully cover the costs associated with a cybersecurity incident.

We do not believe that risks from cybersecurity threats, including as a result of any previous cybersecurity incidents, have materially affected our business strategy, results of operations or financial condition. However, there is no guarantee that a future cybersecurity incident would not materially affect our future strategy, results or financial condition. For a more in-depth discussion of risks associated with cybersecurity and cybersecurity insurance risks, see Item 1A, "Risk Factors."

Cybersecurity Governance

Both the Board and the Audit Committee play an important role in the Board's oversight of cybersecurity threats. The Audit Committee receives periodic updates on the Company's risk profile and mitigation strategies and conducts forward-looking discussions about major IT changes that are planned, the risks involved and the Company's potential mitigation strategies. The Audit Committee shares updates with the broader Board. We presently have three Directors, Ann Bordelon, Chair of the Audit Committee, Paulette Dodson, and Noah Glass, who have cybersecurity risk management experience and we continue to monitor whether supplemental experience may be useful as cybersecurity threats continue to evolve.

The IT Team manages day-to-day cybersecurity risks under the oversight of our Chief Information Officer ("CIO"), who is actively engaged in strategic planning, security assessments, and mitigation efforts. Our CIO has 10+ years of experience overseeing security practices at various multi-national restaurant concepts. Our CIO and Chief Financial Officer discuss IT matters on a routine basis, and as noted above, periodic reviews are conducted with the executive management team and the Audit Committee.

We have an incident response process that is activated in the event of a direct or third-party attack. The plan is designed to help us detect, respond to and recover from cybersecurity incidents. Criteria are in place to determine the scope and severity of an incident, in relation to: incident reporting to the Audit Committee and/or the Board; disclosure or other external reporting; compliance with applicable legal obligations and mitigation of the impact to our brand, its reputation and any impacted parties.

To address any gaps in the Company's collective expertise and to account for the ever-evolving nature of cybersecurity risks, the Company retains various consultants as noted above. The internal and external headcount, and the expertise of the employees and consultants, will change from time to time as we adapt to the changing cybersecurity environment.

ITEM 2. PROPERTIES

Our home office is located at 2001 Spring Road, Suite 400, Oak Brook, IL 60523. We lease our home office.

Table of Contents

Our restaurant footprint consists of 94 Portillo's restaurants across ten states, including C&O. We operate two food production commissaries in Illinois. We lease the majority of our properties on which we operate restaurants and commissaries. We own real property underlying one company-operated restaurant. We also have two non-traditional locations in operation including a food truck and a ghost kitchen in Chicago (small kitchen with no store-front presence, used to fill online orders).

As of December 29, 2024, we operated 94 restaurants, including C&O, located in the following states:

State	Number of Restaurants
Arizona	8
California	2
Florida	7
Illinois	49
Indiana	8
Iowa	1
Michigan	2
Minnesota	3
Texas	10
Wisconsin	4
Total	94

ITEM 3. LEGAL PROCEEDINGS

The disclosure provided in Part II, Item 8 "Financial Statements And Supplementary Data, Note 16. Contingencies" is incorporated herein by reference.

ITEM 4. MINE SAFETY DISCLOSURE

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information

Our Class A common stock is traded on the Nasdaq Global Select Market ("Nasdaq") under the symbol "PTLO."

Our Class B common stock is neither listed nor traded on any stock exchange. Our Class B common stock together with a unit of Portillo's OpCo, are exchangeable for one share of Class A common stock, subject to and in accordance with the limited liability company agreement of Portillo's OpCo.

Holders of Record

As of February 18, 2025, there were approximately 38 shareholders of record of our Class A common stock. The number of record holders does not include persons who held shares of our Class A common stock in nominee or "street name" accounts through brokers. As of February 18, 2025, there were 7 shareholders of record of our Class B common stock.

Dividend Policy

No dividends have been declared or paid on our shares of common stock. We do not anticipate paying any cash dividends on any of our shares of common stock in the foreseeable future. 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.

Securities Authorized for Issuance under Equity Incentive Plans

The following table provides information about our compensation plans under which our Class A common stock is authorized for issuance, as of December 29, 2024:

	Number of securities to be issued upon exercise of outstanding options, warrants and rights (1)	Weighted-average exercise price of outstanding options, warrants and rights (2)	Number of securities remaining available for future issuances under equity compensation plans (3)
Equity compensation plans approved by security holders	7,063,911	\$ 8.28	3,670,837

(1) Includes shares issuable pursuant to stock options, restricted stock units, restricted stock awards and other stock-based awards under the Company's 2021 Plan. Represents 2,782,248 shares under the 2021 Plan, including 4,118,056 shares assumed from the 2014 Plan, and 163,607 shares under the Employee Stock Purchase Plan (the "ESPP").

(2) The weighted-average exercise price set forth in this column is calculated excluding restricted stock units or other awards for which recipients are not required to pay an exercise price to receive the shares subject to the awards.

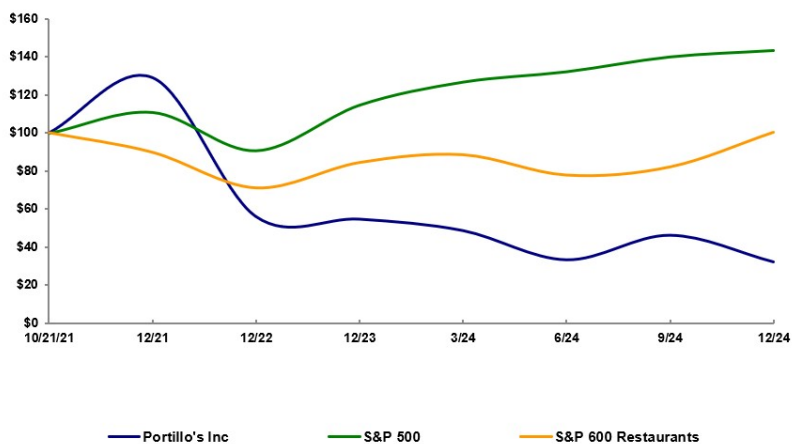
(3) This amount represents shares of common stock available for issuance under the 2021 Plan and the ESPP.

Stock Performance Graph

The following graph and table illustrate the total return from October 21, 2021, the first day of trading for our Class A common stock, through December 29, 2024 for (i) our Class A common stock, (ii) the Standard and Poor's 500 Index and (iii) the Standard and Poor's 600 Restaurant Index, assuming an investment of \$100 on October 21, 2021 of Portillo's Inc. stock or on September 30, 2021 in the indices, including the reinvestment of dividends.

COMPARISON OF 39 MONTH CUMULATIVE TOTAL RETURN*

Among Portillo's Inc, the S&P 500 Index
and the S&P 600 Restaurants Index



	10/21/2021	12/26/2021	12/25/2022	12/31/2023	4/1/2024	7/1/2024	10/1/2024	12/29/2024
Portillo's Inc.	\$100.00	\$131.75	\$59.07	\$54.74	\$48.73	\$33.40	\$46.29	\$30.86
S&P 500	100.00	111.03	90.92	114.82	126.94	132.38	140.17	143.55
S&P 600 Restaurants	100.00	89.79	71.31	84.48	88.53	77.95	82.18	100.21

*\$100 invested on 10/21/21 in Portillo's Inc. stock or 9/30/21 in indices, including reinvestment of dividends.

Indices calculated on month-end basis.
Source Data: Research Data Group Inc.

Recent Sale of Unregistered Securities and Use of Proceeds from Registered Securities

None.

Issuer Purchases of Equity Securities

None.

ITEM 6. [RESERVED]

Not required.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This section and other parts of this Annual Report on Form 10-K ("Form 10-K") contain forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which are subject to known and unknown risks, uncertainties and other important factors that may cause actual results to be materially different from the statements made herein. All statements other than statements of historical fact are forward-looking statements. Forward-looking statements discuss our current expectations and projections relating to our financial position, results of operations, plans, objectives, future performance and business. You can identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. These statements may include words such as "aim," "anticipate," "believe," "estimate," "expect," "forecast," "future," "intend," "outlook," "potential," "project," "projection," "plan," "seek," "may," "could," "would," "will," "should," "can," "can have," "likely," the negatives thereof and other similar expressions.

All forward-looking statements are expressly qualified in their entirety by these cautionary statements. You should evaluate all forward-looking statements made in this Form 10-K in the context of the risks and uncertainties disclosed in Part I, Item 1A "Risk Factors" and in this Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations."

The forward-looking statements included in this Form 10-K are made only as of the date hereof. We undertake no obligation to publicly update any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law. If we do update one or more forward-looking statements, no inference should be made that we will make additional updates with respect to those or other forward-looking statements.

For a comparison of results of operations and financial condition for fiscal years 2023 and 2022, see "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Form 10-K for the fiscal year ended December 31, 2023, filed February 27, 2024.

We use a 52- or 53-week fiscal year ending on the Sunday on or prior to December 31. In a 52-week fiscal year, each quarterly period is comprised of 13 weeks. The additional week (the "53rd week") in a 53-week fiscal year is added to the fourth quarter. The fiscal year ended December 29, 2024 ("fiscal 2024") consisted of 52 weeks and the fiscal year ended December 31, 2023 ("fiscal 2023") consisted of 53 weeks. The 53rd week in fiscal 2023 included Christmas day, resulting in six additional operating days.

Overview

Portillo's serves iconic Chicago street food through high-energy, multichannel restaurants designed to ignite the senses and create a memorable dining experience. Refer to Part I, Item 1, "Business" of this document for additional information about our business.

Recent Developments and Trends

Fiscal 2024 Highlights

Our fiscal 2024 financial highlights include:

- **Total revenue** increased 4.5% or \$30.6 million to \$710.6 million; this increase is inclusive of the impact of the 53rd week in fiscal 2023, which resulted in incremental revenue of approximately \$13.9 million in fiscal 2023.
- **Same-restaurant sales*** decreased 0.6%.
- **Operating income** increased \$2.6 million to \$58.0 million; this increase is inclusive of the impact of the 53rd week in fiscal 2023, which resulted in incremental operating income of approximately \$1.6 million in fiscal 2023.
- **Net income** increased \$10.3 million to \$35.1 million; this increase is inclusive of the impact of the 53rd week in fiscal 2023, which resulted in incremental net income of approximately \$1.2 million in fiscal 2023.
- **Restaurant-Level Adjusted EBITDA**** increased \$2.9 million to \$168.1 million.
- **Adjusted EBITDA**** increased \$2.5 million to \$104.8 million.

* For fiscal 2024, same-restaurant sales compares the 52 weeks from January 1, 2024 through December 29, 2024 to the 52 weeks from January 2, 2023 through December 31, 2023.

** Adjusted EBITDA and Restaurant-Level Adjusted EBITDA are non-GAAP measures. Definitions and reconciliations of Adjusted EBITDA to net income (loss) and Restaurant-Level Adjusted EBITDA to operating income, the most directly comparable financial measures presented in accordance with GAAP, are set forth under the section "Key Performance Indicators and Non-GAAP Financial Measures".

In fiscal 2024, total revenue, operating income, net income, Restaurant-Level Adjusted EBITDA, and Adjusted EBITDA all improved versus the prior year. We believe this improvement stemmed from maintaining concentration on our four strategic pillars, which guide our short-term objectives and form the basis for long-term growth as discussed in Part I. Item 1. Business.

In fiscal 2024, total revenue grew 4.5%, primarily due to new restaurant openings in 2024 and 2023. Same-restaurant sales declined 0.6% during fiscal 2024, compared to an increase of 5.7% during fiscal 2023. Fiscal 2023 includes the positive impact of the 53rd week.

In fiscal 2024, we continued to see commodity inflation stabilize versus 2023 levels. Commodity inflation was 4.2% in fiscal 2024 compared to 5.5% in fiscal 2023. In fiscal 2024, we experienced a decrease of 0.1% in labor expenses, as a percentage of revenue, compared to fiscal 2023 primarily due to an increase in average check and lower variable-based compensation, partially offset by lower transactions and additional wage investments.

In fiscal 2025, we are targeting 11% to 12% revenue growth and flat to 2% growth in same-restaurant sales. We expect our overall commodity inflation to stay consistent with recent trends and are currently estimating commodity inflation to be 3% to 5%. Additionally, we anticipate additional wage investments and are currently estimating 3% to 4% hourly wage inflation. We will continue to strategically offset these expense increases through menu price increases and operational efficiencies, while monitoring the competitive landscape as well as consumer sentiment to inform our pricing decisions. During January of 2025, we increased certain menu prices by approximately 1.5%. We will continue to prioritize strategies to drive higher traffic and mix at our restaurants while optimizing returns and retaining our top talent.

Development Highlights

During fiscal 2024, we opened 10 new restaurants in the Arizona, Florida, Illinois, Michigan, and Texas markets, for a total of 94 restaurants, including a restaurant owned by C&O. Two restaurants in the Texas market were our Restaurant of the Future ("ROTF") concept, a 6,250 square foot prototype restaurant. We also opened our seventh restaurant in the Dallas-Fort Worth market to meet our goal of achieving minimum scale (6-8 restaurants) within 24 months of our first opening. We also made significant strides in the Houston, Texas market with the opening of three new restaurants in the fourth quarter of 2024. Below are the 10 restaurants opened since the beginning of fiscal 2024:

Location	Opening Month	Fiscal Quarter Opened
Denton, Texas	March 2024	Q1 2024
Surprise, Arizona	May 2024	Q2 2024
Livonia, Michigan	July 2024	Q3 2024
Mansfield, Texas	August 2024	Q3 2024
Richmond, Texas	October 2024	Q4 2024
Katy, Texas	December 2024	Q4 2024
Orlando, Florida	December 2024	Q4 2024
Houston, Texas (ROTF)	December 2024	Q4 2024
Grapevine, Texas (ROTF)	December 2024	Q4 2024
Orland Park, Illinois	December 2024	Q4 2024

In fiscal 2025, we plan to open 12 new restaurants. Our near-term restaurant growth strategy is focused on leveraging our proven unit economic model primarily in markets outside Chicagoland with favorable macro-economic tailwinds where we already have a presence. Particularly, our current focus continues to be in the Sunbelt, primarily in Texas, with plans to enter the Atlanta, Georgia market. Simultaneously, we will continue to fill-in existing markets, including Chicagoland and adjacent markets as opportunities come available.

Consolidated Results of Operations

The following table summarizes our results of operations for fiscal 2024 and fiscal 2023 (in thousands).

	Fiscal Years Ended			
	December 29, 2024		December 31, 2023	
REVENUES, NET	\$ 710,554	100.0 %	\$ 679,905	100.0 %
COST AND EXPENSES:				
Restaurant operating expenses:				
Food, beverage and packaging costs	241,679	34.0 %	230,869	34.0 %
Labor	181,091	25.5 %	173,868	25.6 %
Occupancy	36,632	5.2 %	33,358	4.9 %
Other operating expenses	83,038	11.7 %	76,639	11.3 %
Total restaurant operating expenses	542,440	76.3 %	514,734	75.7 %
General and administrative expenses	75,089	10.6 %	78,835	11.6 %
Pre-opening expenses	9,236	1.3 %	9,019	1.3 %
Depreciation and amortization	27,297	3.8 %	24,313	3.6 %
Net income attributable to equity method investment	(1,229)	(0.2)%	(1,401)	(0.2)%
Other income, net	(312)	—%	(1,035)	(0.2)%
OPERATING INCOME	58,033	8.2 %	55,440	8.2 %
Interest expense	25,616	3.6 %	27,470	4.0 %
Interest income	(309)	—%	(212)	—%
Tax Receivable Agreement liability adjustment	(9,149)	(1.3)%	(3,349)	(0.5)%
Loss on debt extinguishment	—	—%	3,465	0.5 %
INCOME BEFORE INCOME TAXES	41,875	5.9 %	28,066	4.1 %
Income tax expense	6,799	1.0 %	3,248	0.5 %
NET INCOME	35,076	4.9 %	24,818	3.7 %
Net income attributable to non-controlling interests	5,559	0.8 %	6,394	0.9 %
NET INCOME ATTRIBUTABLE TO PORTILLO'S INC.	\$ 29,517	4.2 %	\$ 18,424	2.7 %

Note: We use a 52- or 53-week fiscal year ending on the Sunday on or prior to December 31. Fiscal 2024 consisted of 52 weeks and fiscal 2023 consisted of 53 weeks. The 53rd week in fiscal 2023 included Christmas day, resulting in six additional operating days. Except as noted below, the Company's consolidated results of operations includes the 53rd week in fiscal 2023.

Revenues, Net

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, among other factors, the number of operating weeks in the period, the number of open restaurants, restaurant traffic, our menu prices, third-party delivery platform prices and product mix.

Revenues for fiscal 2024 were \$710.6 million compared to \$679.9 million for fiscal 2023, an increase of \$30.6 million or 4.5%. The increase in total revenue was primarily attributed to the opening of ten restaurants during fiscal 2024 and twelve restaurants in fiscal 2023, partially offset by a negative impact of \$13.9 million due to the additional operating week in fiscal 2023 and a decrease in our same-restaurant sales. This increase in revenues was partially offset by a same-restaurant sales decrease of 0.6%, or \$3.4 million. The same-restaurant sales decline was attributable to a 3.2% decrease in transactions, partially offset by an increase in average check of 2.6%. The higher average check was primarily driven by an approximate 4.6% increase in menu prices partially offset by product mix. To mitigate inflationary cost pressures, we implemented targeted menu price adjustments in 2024, including a 1.5% increase in January, another 1.5% increase at the end of March, and a 1.0% increase in June. Restaurants not in our Comparable Restaurant Base contributed \$48.8 million of the total year-over-year increase. For the purpose of calculating same-restaurant sales as of December 29, 2024, sales for 71 restaurants were included in the Comparable

Restaurant Base (as defined in "Key Performance Indicators and Non-GAAP Financial Measures" below) as of the end of fiscal 2024.

The following table summarizes the Company's revenue for fiscal 2024 and fiscal 2023 (in thousands):

	Fiscal Years Ended		\$ Change	% Change
	December 29, 2024	December 31, 2023		
Same-restaurant sales (71 restaurants) ⁽¹⁾⁽³⁾	\$ 598,222	\$ 601,575	\$ (3,353)	(0.6)%
Same-restaurant sales comparable week shift Impact ⁽²⁾	—	13,362	(13,362)	nm
Restaurants not yet in comparable base opened in fiscal 2024 (10 restaurants) ⁽³⁾	16,565	—	16,565	nm
Restaurants not yet in comparable base opened in fiscal 2023 (12 restaurants) ⁽³⁾	73,521	40,696	32,825	80.7 %
Restaurants not yet in comparable base opened in fiscal 2022 (0 restaurant) ⁽³⁾	9,779	10,411	(632)	(6.1)%
Other ⁽⁴⁾	12,467	13,861	(1,394)	(10.1)%
Revenues, net	\$ 710,554	\$ 679,905	\$ 30,649	4.5 %

⁽¹⁾ We use a 52- or 53-week fiscal year ending on the Sunday on or prior to December 31. Fiscal 2024 consists of 52 weeks and fiscal 2023 consisted of 53 weeks. In order to compare like-for-like periods for fiscal 2024, same-restaurant sales compares the 52 weeks from January 1, 2024 through December 29, 2024 to the 52 weeks from January 2, 2023 through December 31, 2023.

⁽²⁾ Represents the impact from shifting comparable weeks for all periods in fiscal 2023 to compare like-for-like periods. For fiscal 2023, same-restaurant sales includes sales from the 52 weeks from January 2, 2023 through December 31, 2023 rather than the 53 weeks from December 26, 2022 through December 31, 2023.

⁽³⁾ Total restaurants indicated are as of December 29, 2024. Revenue from fiscal 2022 reflects contributions from restaurants before they were added to the comparable store base. Excludes a restaurant that is owned by C&O of which Portillo's owns 50% of the equity.

⁽⁴⁾ Includes revenue from direct shipping sales and non-traditional locations.

*nm - not meaningful

Food, Beverage and Packaging Costs

Food, beverage and packaging costs include the direct costs associated with food, beverage and packaging of our menu items and third-party delivery commissions. The components of food, beverage and packaging costs are variable by nature, change with sales volume, are impacted by product and channel mix and are subject to increases or decreases in commodity costs, as well as geographic scale and proximity.

Food, beverage and packaging costs for fiscal 2024 was \$241.7 million compared to \$230.9 million for fiscal 2023, an increase of \$10.8 million or 4.7%. This increase was primarily driven by the opening of ten restaurants in fiscal 2024 and the opening of twelve restaurants in fiscal 2023 and a 4.2% increase in commodity prices, partially offset by lower third-party delivery commissions. As a percentage of revenues, net, food, beverage and packaging costs remained flat during fiscal 2024 as the increase in average check and lower third-party delivery commissions were offset by an increase in certain commodity prices.

Labor Expenses

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

Labor expenses for fiscal 2024 were \$181.1 million compared to \$173.9 million for fiscal 2023, an increase of \$7.2 million or 4.2%. This increase was primarily driven by the opening of ten restaurants in fiscal 2024 and the opening of twelve restaurants in fiscal 2023, and incremental investments to support our team members, including annual rate increases, partially offset by lower variable-based compensation. As a percentage of revenues, net, labor decreased 0.1% during fiscal 2024 primarily due to an increase in our average check and lower variable-based compensation, partially offset by the lower transactions and the aforementioned wage rate increases.

Occupancy Expenses

Occupancy expenses primarily consist of rent, property insurance and property taxes, and exclude occupancy expenses associated with unopened restaurants, which are recorded separately in pre-opening expenses.

Table of Contents

Occupancy expenses for fiscal 2024 were \$36.6 million compared to \$33.4 million for fiscal 2023, an increase of \$3.3 million or 9.8%, primarily driven by the opening of ten restaurants in fiscal 2024 and the opening of twelve restaurants in 2023. As a percentage of revenues, occupancy expenses increased 0.2% during fiscal 2024.

Other Operating Expenses

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

Other operating expenses for fiscal 2024 were \$83.0 million compared to \$76.6 million for fiscal 2023, an increase of \$6.4 million or 8.3%, primarily due to the opening of ten restaurants in fiscal 2024 and the opening of twelve restaurants in 2023 and an increase in repair and maintenance expenses, IT expenses, and utilities, partially offset by a decrease in operating supplies and advertising expenses. As a percentage of revenues, net, operating expenses increased 0.4%.

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 equity-based compensation expense. General and administrative expenses are impacted by changes in our team member count and costs related to strategic and growth initiatives.

General and administrative expenses for fiscal 2024 were \$75.1 million compared to \$78.8 million for fiscal 2023, a decrease of \$3.7 million or 4.8%. This decrease was primarily driven by lower equity and variable-based compensation and insurance expenses, partially offset by an increase in advertising expenses driven by the Chicagoland ad campaign, and professional fees and software license fees related to our ERP and human capital management ("HCM") system implementations.

Pre-Opening Expenses

Pre-opening expenses consist primarily of wages, occupancy expenses, which represent rent expense recognized during the period between the date of possession of the restaurant facility and the restaurant opening date, travel for the opening team and other supporting team members, 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 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.

Pre-opening expenses for fiscal 2024 were \$9.2 million compared to \$9.0 million for fiscal 2023, an increase of \$0.2 million or 2.4%. This increase was due to the number, timing and location of executed and planned new restaurant openings for fiscal 2024 as compared to fiscal 2023.

Depreciation and Amortization

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 comprised of recipes.

Depreciation and amortization expense for fiscal 2024 was \$27.3 million compared to \$24.3 million for fiscal 2023, an increase of \$3.0 million or 12.3%. This increase was primarily attributable to incremental depreciation of capital expenditures related to the opening of ten restaurants in fiscal 2024 and the opening of twelve restaurants in fiscal 2023.

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.

Table of Contents

Net income attributable to equity method investment for fiscal 2024 was \$1.2 million compared to \$1.4 million for fiscal 2023, a decrease of \$0.2 million or 12.3%. This decrease was primarily driven by an increase in restaurant-level operating expenses, partially offset by an increase in sales.

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, trading gains or losses on our deferred compensation plan and gains, losses on asset disposals, and asset impairment charges.

Other income, net for fiscal 2024 was \$0.3 million compared to \$1.0 million for fiscal 2023, a decrease of \$0.7 million or 69.9%. Other income, net decreased primarily due to a technology asset impairment charge.

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.

Interest expense for fiscal 2024 was \$25.6 million compared to \$27.5 million for fiscal 2023, a decrease of \$1.9 million or 6.7%. This decrease was primarily driven by a lower effective interest rate due to improved lending terms associated with our 2023 Term Loan and 2023 Revolver Facility.

Our effective interest rate was 7.53% and 8.36% as of December 29, 2024 and December 31, 2023, respectively.

Interest Income

Interest income primarily consists of interest earned on our cash, cash equivalents and restricted cash.

Interest income for fiscal 2024 was \$0.3 million compared to \$0.2 million for fiscal 2023, an increase of \$0.1 million or 45.8%. This increase was primarily driven by converting our bank accounts to interest bearing during fiscal 2023.

Tax Receivable Agreement Liability Adjustment

We are party to a Tax Receivable Agreement liability with certain members of Portillo's OpCo that provides for the payment by us of 85% of the amount of tax benefits, if any, that Portillo's Inc. actually realizes or in some cases is deemed to realize as a result of certain transactions.

The Tax Receivable Agreement liability adjustment was \$9.1 million for the fiscal year ended December 29, 2024 related to a remeasurement primarily due to activity under equity-based compensation plans and effective state tax rate changes. The Tax Receivable Agreement liability adjustment was \$3.3 million for the fiscal year ended December 31, 2023.

Loss on Debt Extinguishment

There was no loss on debt extinguishment for fiscal 2024. Loss on debt extinguishment for fiscal 2023 was \$3.5 million due to the write-off of debt discount and deferred issuance costs associated with the payoff of the 2014 Credit Agreement as described in Note 9. Debt.

Income Tax Expense

Portillo's OpCo is treated as a partnership for U.S. federal, state and local income tax purposes and is generally not subject to income taxes. Rather, any taxable income or loss generated by Portillo's OpCo is allocated to its members in relation to their respective ownership percentage of Portillo's OpCo. As of the IPO, we are subject to U.S. federal, state and local income taxes with respect to our allocable share of any taxable income or loss of Portillo's OpCo, as well as any stand-alone income or loss generated by Portillo's Inc.

Income tax expense for fiscal 2024 was \$6.8 million compared to \$3.2 million for fiscal 2023, an increase of \$3.6 million or 109.3%. Our effective income tax rate for fiscal 2024 was 16.2%, compared to 11.5% for fiscal 2023. The increase in our effective income tax rate for fiscal 2024 compared to fiscal 2023 was primarily driven by an increase in the Company's ownership interest in Portillo's OpCo, which increases its

share of taxable income of Portillo's OpCo, remeasurement of deferred tax assets due to effective state tax rate changes and recording of net operating losses in the prior year. This was partially offset by the decrease in the valuation allowance and the exercise and vesting of equity-based awards.

Net Income Attributable to Non-controlling Interests

We are the sole managing member of Portillo's OpCo. We manage and operate the business and control the strategic decisions and day-to-day operations of Portillo's OpCo and we also have a substantial financial interest in Portillo's OpCo. Accordingly, we consolidate the financial results of Portillo's OpCo, and a portion of our net income is allocated to non-controlling interests to reflect the entitlement of the pre-IPO LLC Members who retained their equity ownership in Portillo's OpCo (the "pre-IPO LLC Members"). The weighted average ownership percentages for the applicable reporting periods are used to attribute net income to Portillo's Inc. and the non-controlling interest holders.

Net income attributable to non-controlling interests for fiscal 2024 was \$5.6 million, compared to \$6.4 million for fiscal 2023. The decrease in net income attributable to non-controlling interests for fiscal 2024 was primarily due to a decrease in the non-controlling interest holders' weighted average ownership from 25.9% for fiscal 2023 to 17.0% for fiscal 2024, partially offset by an increase in net income for fiscal 2024 compared to fiscal 2023. The weighted average ownership percentage decreased due to the Secondary Offering and Redemption of LLC units as discussed in Note 1. Description Of Business of our consolidated financial statements.

Key Performance Indicators and Non-GAAP Financial Measures Overview

In addition to the GAAP measures presented in our financial statements, we use the following key performance indicators and non-GAAP financial measures to evaluate our business, measure our performance, develop financial forecasts and make strategic decisions. These key measures include same-restaurant sales, average unit volume ("AUV"), Adjusted EBITDA, Adjusted EBITDA Margin, Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin. The Company includes these 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.

	Fiscal Years Ended	
	December 29, 2024	December 31, 2023
Total Restaurants (a)	94	84
AUV (in millions) (a)	\$ 8.7	\$ 9.1
Change in same-restaurant sales (b)(c)	(0.6)%	5.7 %
Adjusted EBITDA (in thousands) (b)	\$ 104,760	\$ 102,282
Adjusted EBITDA Margin (b)	14.7 %	15.0 %
Restaurant-Level Adjusted EBITDA (in thousands) (b)	\$ 168,114	\$ 165,171
Restaurant-Level Adjusted EBITDA Margin (b)	23.7 %	24.3 %

Note: We use a 52- or 53-week fiscal year ending on the Sunday on or prior to December 31. Fiscal 2024 consisted of 52 weeks and fiscal 2023 consisted of 53 weeks. The 53rd week in fiscal 2023 included Christmas day, resulting in six additional operating days.

(a) Includes C&O, as described in Note 2. Summary Of Significant Accounting Policies in our consolidated financial statements. Total restaurants indicated are as of a point in time. AUV for fiscal 2024 and fiscal 2023 consist of 52 weeks and 53 weeks, respectively.

(b) Excludes C&O.

(c) For fiscal 2024, same-restaurant sales compares the 52 weeks from January 1, 2024 through December 29, 2024 to the 52 weeks from January 2, 2023 through December 31, 2023. For fiscal 2023, same-restaurant sales compares the 53 weeks from December 26, 2022 through December 31, 2023 to the 53 weeks from December 27, 2021 through January 1, 2023.

Key Performance Indicators

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, which is defined as the number of restaurants open for at least 24 full fiscal periods (the "Comparable Restaurant Base"). As of December 29, 2024 and December 31, 2023, there were 71 and 68 restaurants in our Comparable Restaurant Base, respectively. The Comparable Restaurant Base excludes C&O, as described in Note 2. Summary Of Significant Accounting Policies of our consolidated financial

statements.

A change in same-restaurant sales is the result of a change in restaurant transactions, average guest check, or a combination of the two. We gather daily sales data and regularly analyze the guest transaction counts and the mix of menu items sold to strategically evaluate menu pricing and demand. Measuring our same-restaurant sales growth allows management to evaluate the performance of our existing restaurant base. We believe this measure provides a consistent comparison of restaurant sales results and trends across periods within our core, established restaurant base, unaffected by results of restaurant openings and enables investors to better understand and evaluate the Company's historical and prospective operating performance.

Average Unit Volume

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

This key performance indicator allows management to assess changes in consumer spending patterns at our restaurants and the overall performance of our restaurant base.

Non-GAAP Financial Measures

To supplement the consolidated financial statements, which are prepared and presented in accordance with GAAP, we use the following non-GAAP financial measures: Adjusted EBITDA and Adjusted EBITDA Margin, and Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin. Accordingly, these measures are not required by, nor presented in accordance with GAAP, but rather are supplemental measures of operating performance of our restaurants. You should be aware that these measures are not indicative of overall results for the Company and that Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin do not accrue directly to the benefit of shareholders because of corporate-level expenses excluded from such measures. These measures and our calculations may not be comparable to similar measures reported by other companies. These measures are important measures to evaluate the performance and profitability of our restaurants, individually and in the aggregate, but also have important limitations as analytical tools and should not be considered in isolation as substitutes for analysis of our results as reported under GAAP.

Adjusted EBITDA and Adjusted EBITDA Margin

Adjusted EBITDA represents net income (loss) before depreciation and amortization, interest expense, interest income, 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. Adjusted EBITDA Margin represents Adjusted EBITDA as a percentage of revenues, net.

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.

[Table of Contents](#)

The following table reconciles net income to Adjusted EBITDA and Adjusted EBITDA margin (in thousands):

	Fiscal Years Ended	
	December 29, 2024	December 31, 2023
Net income	\$ 35,076	\$ 24,818
<i>Net income margin</i>	4.9 %	3.7 %
Depreciation and amortization	27,297	24,313
Interest expense	25,616	27,470
Interest income	(309)	(212)
Loss on debt extinguishment	—	3,465
Income tax expense	6,799	3,248
EBITDA	94,479	83,102
Deferred rent (1)	5,255	5,096
Equity-based compensation	11,151	15,542
Cloud-based software implementation costs (2)	679	401
Amortization of cloud-based software implementation costs (3)	586	—
Other loss (4)	1,184	590
Transaction-related fees and expenses (5)	575	900
Tax Receivable Agreement liability adjustment (6)	(9,149)	(3,349)
Adjusted EBITDA	\$ 104,760	\$ 102,282
<i>Adjusted EBITDA Margin (7)</i>	14.7 %	15.0 %

Note: We use a 52- or 53-week fiscal year ending on the Sunday on or prior to December 31. Fiscal 2024 consisted of 52 weeks and fiscal 2023 consisted of 53 weeks. The 53rd week in fiscal 2023 included Christmas day, resulting in six additional operating days.

(1) Represents the difference between cash rent payments and the recognition of straight-line rent expense recognized over the lease term.

(2) Represents non-capitalized third-party consulting and software licensing costs incurred in connection with the implementation of new enterprise resource planning ("ERP") and human capital management ("HCM") systems which are included within general and administrative expenses.

(3) Represents amortization of capitalized cloud-based ERP system implementation costs that are included within general and administrative expenses.

(4) Represents loss on disposal of property and equipment and a technology asset impairment charge included within other income, net.

(5) Represents certain expenses that management believes are not indicative of ongoing operations, consisting primarily of certain professional fees included within general and administrative expenses.

(6) Represents remeasurement of the Tax Receivable Agreement liability.

(7) Adjusted EBITDA Margin is defined as Adjusted EBITDA divided by Revenues, net.

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

Restaurant-Level Adjusted EBITDA is defined as revenue, less restaurant operating expenses, which include food, beverage and packaging costs, labor expenses, occupancy expenses and other operating expenses. Restaurant-Level Adjusted EBITDA excludes corporate level expenses and depreciation and amortization on restaurant property and equipment. Restaurant-Level Adjusted EBITDA Margin represents Restaurant-Level Adjusted EBITDA as a percentage of revenues, net.

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.

The following table reconciles operating income to Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin (in

thousands):

	Fiscal Years Ended	
	December 29, 2024	December 31, 2023
Operating income	\$ 58,033	\$ 55,440
Operating income margin	8.2 %	8.2 %
Plus:		
General and administrative expenses	75,089	78,835
Pre-opening expenses	9,236	9,019
Depreciation and amortization	27,297	24,313
Net income attributable to equity method investment	(1,229)	(1,401)
Other income, net	(312)	(1,035)
Restaurant-Level Adjusted EBITDA	\$ 168,114	\$ 165,171
Restaurant-Level Adjusted EBITDA Margin (1)	23.7 %	24.3 %

Note: We use a 52- or 53-week fiscal year ending on the Sunday on or prior to December 31. Fiscal 2024 consisted of 52 weeks and fiscal 2023 consisted of 53 weeks. The 53rd week in fiscal 2023 included Christmas day, resulting in six additional operating days.

(1) Restaurant-Level Adjusted EBITDA Margin is defined as Restaurant-Level Adjusted EBITDA divided by Revenues, net.

Liquidity and Capital Resources

Our primary sources of liquidity are cash from operations, cash and cash equivalents on hand, and availability under our 2023 Revolver Facility. As of December 29, 2024, we maintained cash and cash equivalents and restricted cash balance of \$22.9 million and had \$69.7 million of availability under our 2023 Revolver Facility, after giving effect to \$5.3 million in outstanding letters of credit.

Our primary requirements for liquidity are to fund our working capital needs, operating lease obligations, capital expenditures, and general Restaurant Support Center needs. 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. Our ongoing capital expenditures are principally related to opening of new restaurants, existing capital investments (both for remodels and maintenance), as well as investments in our Restaurant Support Center infrastructure. Additionally, we continue to invest in technology, including the deployment of self-service kiosks and upgrades to our IT infrastructure, to improve operational efficiency and the guest experience.

Based upon current levels of operations and anticipated growth, we expect that cash flows from operations will be sufficient to meet our needs for at least the next twelve months and the foreseeable future.

Tax Receivable Agreement

In connection with the IPO, we entered into a Tax Receivable Agreement ("TRA") with certain of our pre-IPO LLC Members, pursuant to which we will generally be required to pay 85% of the amount of cash savings, if any, in U.S. federal, state, and local income tax that we actually realize or are deemed to realize, as a result of (i) our allocable share of existing tax basis in depreciable or amortizable assets relating to LLC Units acquired in the IPO, (ii) certain favorable tax attributes acquired by the Company from the Blocker Companies (including net operating losses and the Blocker Companies' allocable share of existing tax basis), (iii) increases in our allocable share of then existing tax basis in depreciable or amortizable assets, and adjustments to the tax basis of the tangible and intangible assets, of Portillo's OpCo and its subsidiaries, as a result of (x) sales or exchanges of interests in Portillo's OpCo (including the repayment of the redeemable preferred units) in connection with the IPO and (y) future redemptions or exchanges of LLC Units by pre-IPO LLC Members for Class A common stock and (iv) certain other tax benefits related to entering into the TRA, including payments made under the TRA. See Note 19. Subsequent Events for information about a recent amendment to the TRA.

As of December 29, 2024, we estimate that our obligation for future payments under the TRA totaled \$324.6 million. Amounts payable under the TRA are contingent upon, among other things, (i) generation of future taxable income over the term of the TRA and (ii) future changes in tax laws. If we do not generate sufficient taxable income in the aggregate over the term of the TRA to utilize the tax benefits, then we would not be required to make the related TRA payments. The payments that we are required to make will generally reduce the amount of overall cash flow that might have otherwise been available to us, but we expect the cash tax savings we will realize to fund the required payments. 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 TRA, we estimate that the tax savings associated with all tax attributes described above would aggregate to approximately \$381.9 million as of December 29, 2024. Under this scenario, we would be required to pay the TRA Parties approximately 85% of such amount, or \$324.6 million, primarily over the next 15 years, declining in year 16 through year 47. During the year ended December 29, 2024, we made a TRA payment of \$4.4 million relating to tax year 2022. We expect a payment of \$7.7 million relating to tax year 2023 to be made within the next 12 months.

Summary of Cash Flows

The following table presents a summary of our cash flows from operating, investing and financing activities (in thousands):

	Fiscal Years Ended	
	December 29, 2024	December 31, 2023
Net cash provided by operating activities	\$ 98,040	\$ 70,781
Net cash used in investing activities	(88,114)	(87,837)
Net cash provided by (used in) financing activities	2,512	(16,933)
Net increase (decrease) in cash and cash equivalents and restricted cash	12,438	(33,989)
Cash and cash equivalents and restricted cash at beginning of period	10,438	44,427
Cash and cash equivalents and restricted cash at end of period	\$ 22,876	\$ 10,438

Note: We use a 52- or 53-week fiscal year ending on the Sunday on or prior to December 31. Fiscal 2024 consisted of 52 weeks and fiscal 2023 consisted of 53 weeks. The 53rd week in fiscal 2023 included Christmas day, resulting in six additional operating days.

Operating Activities

Net cash provided by operating activities for fiscal 2024 was \$98.0 million compared to net cash provided by operating activities of \$70.8 million for fiscal 2023, an increase of \$27.3 million or 38.5%. This increase was primarily driven by the change in operating assets and liabilities of \$23.6 million and higher net income of \$10.3 million, partially offset by the change in non-cash items of \$6.6 million.

The \$23.6 million change in our operating asset and liability balances was primarily driven by operating assets and liabilities being a source of net cash of \$25.7 million in fiscal 2024, compared to a source of net cash of \$2.1 million in the fiscal 2023 driven by the change in accounts payable, deferred lease incentives, other current assets, and inventories. The increase in net income for the fiscal 2024 was primarily due to higher revenue partially offset by the factors driving the aforementioned expenses as described in the consolidated results of operations for fiscal 2024 compared to fiscal 2023. The \$6.6 million change from fiscal 2023 in non-cash charges was primarily driven by lower equity-based compensation expense and the loss on debt extinguishment in the prior year, partially offset by higher depreciation and amortization and an increase in income tax expense in the current year.

Investing Activities

Net cash used in investing activities was \$88.1 million for fiscal 2024 compared to net cash used in investing activities of \$87.8 million for fiscal 2023, an increase of \$0.3 million or 0.3%. This increase was primarily due to the number of restaurant openings and builds in process during 2024 and the planned restaurant openings for 2025, partially offset by adopting a more cost effective restaurant format.

Financing Activities

Net cash provided by financing activities was \$2.5 million for fiscal 2024 compared to net cash used in financing activities of \$16.9 million for fiscal 2023, an increase of \$19.4 million or 114.8%. This increase is primarily due to the payment and borrowing of long-term debt in connection with our refinancing in fiscal 2023 as described in Note 9. Debt and higher proceeds from stock option exercises. The increase was partially offset by an increase in payments made under the TRA of \$3.6 million.

2023 Revolver Facility and Liens

On February 2, 2023, Holdings, the Borrower, the other Guarantors party thereto from time to time, each lender party thereto from time to time and Fifth Third Bank, National Association, as Administrative Agent, L/C Issuer and Swing Line Lender entered into the 2023 Credit Agreement which provides for the 2023 Term Loan in an initial aggregate principal amount of \$300.0 million and the 2023 Revolver Facility in an initial aggregate principal amount of \$100.0 million. Refer to Note 9. Debt for additional information and Note 19. Subsequent Events for information

about further amendments to the 2023 Term Loan and 2023 Revolver Facility.

Material Cash Requirements

Our material cash requirements greater than twelve months include:

Debt. Refer to Note 9. Debt to the consolidated financial statements for further information of our obligations and the timing of expected payments. Also, see Note 19. Subsequent Events for information about further amendments to the 2023 Term Loan and 2023 Revolver Facility.

Lease obligations. Refer to Note 10. Leases to the consolidated financial statements for further information of our obligations and the timing of expected payments.

Liabilities under the tax receivable agreement. Refer to Note 14. Income Taxes to the consolidated financial statements for further information of our obligations.

We may enter into purchase commitments relating to supply chain, construction, marketing and other service-related arrangements that occur in the normal course of business. Such commitments are typically short-term in nature and are not material as of December 29, 2024.

Critical Accounting Estimates

This discussion and analysis of financial condition and results of operations is based upon the Company's consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements requires the Company to make estimates, judgments, and assumptions that can have a meaningful effect on the reporting of consolidated financial statements. We describe our significant accounting policies in Note 2. Summary Of Significant Accounting Policies to the consolidated financial statements.

Critical accounting estimates are defined as those reflective of significant judgments, estimates and uncertainties, which may result in materially different results under different assumptions and conditions. Due to their inherent uncertainty, these judgments and estimates may be subject to change, which could materially impact future periods.

Liabilities Under Tax Receivable Agreement

We are a party to the TRA under which we are contractually committed to pay certain of our pre-IPO LLC Members 85% of the amount of any tax savings that we actually realize, or in some cases are deemed to realize, as a result of certain transactions. Amounts payable under the TRA are contingent upon, among other things, (i) generation of future taxable income over the term of the TRA and (ii) future changes in tax laws. If we do not generate sufficient taxable income in the aggregate over the term of the TRA to utilize the tax benefits, then we would not be required to make the related TRA payments. Therefore, we would only recognize a liability for TRA payments if we determine it is probable that we will generate sufficient future taxable income over the term of the TRA to utilize the related tax benefits. As of December 29, 2024, we recognized \$324.6 million of liabilities relating to our obligations under the TRA, after concluding that it was probable that we would have sufficient future taxable income to utilize the related tax benefits. If we determine in the future that we will not be able to fully utilize all or part of the related tax benefits, we would de-recognize the portion of the liability related to the benefits not expected to be utilized.

Additionally, we estimate the amount of TRA payments expected to be paid within the next 12 months and classify this amount as current on our consolidated balance sheet. This determination is based on our estimate of taxable income for the previous fiscal year and the timing of the anticipated payments. To the extent our estimate differs from actual results, we may be required to reclassify portions of our liabilities under the TRA between current and non-current. We expect a payment of \$7.7 million to be made within the next 12 months. See Note 19. Subsequent Events for information about a recent amendment to the TRA.

Income Taxes

We are 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 liabilities, we also will incur expenses related to our operations, plus payments under the TRA, which are expected to be significant. We intend to cause Portillo's OpCo to make cash distributions to us 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 TRA. We anticipate that we will account for the income tax effects and corresponding TRA's effects resulting from future taxable exchanges or redemptions of LLC Units of 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.

The amounts recorded for both the deferred tax assets and the liability for our obligations under the TRA were estimated at the time of the IPO and secondary offerings as a reduction to stockholders' 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 the deferred tax assets will be realized. 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. We will record a valuation allowance when necessary to reduce the carrying value of certain deferred tax assets to their respective net realizable value (if any). As of December 29, 2024, we had \$197.4 million of deferred tax assets, net of the recorded valuation allowance.

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 year ended December 29, 2024, we did not record any unrecognized tax benefits.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Commodity and Food Price Risks

We are exposed to commodity price risks. Many of the ingredients we use to prepare our food, as well as our packaging materials, are commodities or are affected by the price of other commodities. Factors that affect the price of commodities are generally outside of our control and include raw material inputs, geopolitical events, weather conditions, currency markets and global supply and demand dynamics, among other items.

In an effort to minimize the impact of fluctuations in price and availability, we monitor the primary commodities we purchase and may enter into purchasing contracts and pricing arrangements when considered to be advantageous. Structured programs within our organization exist to mitigate adverse impacts and proactively direct risk management strategies across our portfolio of key products, services and energy platforms.

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 29, 2024 and December 31, 2023, we had a total of \$313.8 million and \$309.4 million, respectively, in outstanding borrowings under our 2023 Term Loan and 2023 Revolver Facility, excluding unamortized debt discount and deferred issuance costs. See Note 9. Debt for individual balances for our 2023 Term Loan and 2023 Revolver Facility as of December 29, 2024. Based on the terms of the 2023 Credit Agreement, as of December 29, 2024, a change of one hundred basis points in the applicable interest rate would cause an increase or decrease in interest expense of approximately \$3.1 million on an annual basis.

Effects of Inflation

Inflation has the potential to impact restaurant operating expenses at all levels. Whether that pressure originates from commodity costs, labor expenses, energy or transportation, this can have a material influence on restaurant margins.

Several strategies are employed to combat the ongoing inflationary pressures, including improvement to restaurant operating efficiencies, strategic menu price increases and supplier partner engagement via pricing programs or continuous improvement initiatives. A well-balanced portfolio of varying risk management approaches related to supplier partner management assists in ensuring varying degrees of cost mitigation. These platforms vary from long-term, fixed price agreements to commodity market-based indexed pricing programs.

In addition, 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

Increases in minimum wage, health care and other benefit costs may have a material adverse effect on our labor costs. We operate in many states and localities where the minimum wage is significantly higher than the federal minimum wage.

The market for labor in the United States is competitive and has resulted in pressure on wages and may continue to do so in the future. Increases in minimum wage and market pressure may also result in increases in the wage rates paid for non-minimum wage positions. Many states and localities are also passing laws regulating employment practices and working conditions which could have a material adverse effect on our labor costs in those areas.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO FINANCIAL STATEMENTS

	Page
<u>Report of Independent Registered Public Accounting Firm (PCAOB ID No. 34)</u>	37
<u>Consolidated Balance Sheets</u>	39
<u>Consolidated Statements of Operations</u>	40
<u>Consolidated Statements of Stockholders' Equity</u>	41
<u>Consolidated Statements of Cash Flows</u>	43
<u>Notes to Consolidated Financial Statements</u>	45
<u>Note 1. Description Of Business</u>	45
<u>Note 2. Summary Of Significant Accounting Policies</u>	46
<u>Note 3. Revenue Recognition</u>	52
<u>Note 4. Inventories</u>	52
<u>Note 5. Property & Equipment, Net</u>	53
<u>Note 6. Goodwill & Intangible Assets</u>	53
<u>Note 7. Fair Value Of Financial Instruments</u>	54
<u>Note 8. Supplemental Balance Sheet Information</u>	55
<u>Note 9. Debt</u>	56
<u>Note 10. Leases</u>	58
<u>Note 11. Stockholders' Equity</u>	59
<u>Note 12. Non-Controlling Interests</u>	60
<u>Note 13. Equity-Based Compensation</u>	61
<u>Note 14. Income Taxes</u>	66
<u>Note 15. Earnings Per Share</u>	68
<u>Note 16. Contingencies</u>	69
<u>Note 17. Segment Information</u>	69
<u>Note 18. Related Party Transactions</u>	69
<u>Note 19. Subsequent Events</u>	70

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the stockholders and the Board of Directors of Portillo's Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Portillo's Inc. and subsidiaries (the "Company") as of December 29, 2024 and December 31, 2023, the related consolidated statements of operations, stockholders' and members' equity, and cash flows, for each of the three years in the period ended December 29, 2024, and the related notes and the schedule listed in the Index at Item 15 (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 29, 2024 and December 31, 2023, and the results of its operations and its cash flows for each of the three years in the period ended December 29, 2024, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 29, 2024, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 25, 2025, expressed an unqualified opinion on the Company's internal control over financial reporting.

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 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. 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. 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.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Income Taxes – Tax Receivable Agreement—Refer to Note 2 and 14 to the financial statements

Critical Audit Matter Description

On October 20, 2021, the Company completed its initial public offering in a series of transaction steps, which resulted in the Company owning a majority of PHD Group Holdings, LLC. The Company is a C-corporation holding company owning a partnership interest in PHD Group Holdings, LLC, commonly referred to as an Up-C structure. In connection with the initial public offering, the Company entered into a Tax Receivable Agreement ("TRA") and recorded a liability under the TRA. Under the TRA, the Company will be required to pay certain pre-IPO owners 85% of the amount of cash savings, if any, in U.S. federal, state, or local tax that the Company actually realizes. The payments related to the initial and subsequent exchanges are treated as additional consideration paid, which in turn increases the tax basis of the Company's investment in the Partnership. Most of this tax basis is amortizable under requisite sections of the Internal Revenue Code. The amounts payable, as well as the timing of such payments, under the TRA are dependent upon significant future events and assumptions, including among others: (i) the amount

and timing of exchanges, (ii) the characterization of the tax basis step-up, (iii) the depreciation and amortization periods that apply to the increase in tax basis, (iv) the amount and timing of taxable income the Company generates in the future and (v) the U.S. federal, state, and local income tax rates then applicable.

Given the complexity of the calculation and high volume of inputs used to estimate the TRA liability, performing audit procedures to evaluate the accuracy of the calculation and appropriateness of the inputs required a high degree of auditor judgment and an increased extent of effort, including the need to involve our income tax specialists.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the TRA liability included the following, among others:

- We tested the effectiveness of controls over management's determination of the TRA liability, including controls over significant tax judgments and estimates.
- With the assistance of our income tax specialists, our audit procedures related to the TRA liability included evaluating and assessing the following, among others:
 - We evaluated the appropriateness of management's application of the accounting for the TRA liability, and the reasonableness of the methods, inputs, and assumptions used by management to determine the TRA liability.
 - We evaluated the impact of partnership exchange transactions on the computation of the TRA liability by performing testing, on a sample basis, of exchanges, tax basis amounts and calculations related to the stepup in basis.
 - For each tax basis step-up captured by the TRA, we evaluated the characterization of the step-up for appropriateness and consistency with the TRA.
 - We tested the appropriateness of the tax rates and tax amortization utilized in the determination of the TRA liability, by agreeing to the terms in the TRA and applicable federal and state tax laws.
 - We evaluated the Company's taxable income forecast as it relates to the estimated timing and amount of utilization of the tax basis step-up captured by the TRA.
 - We tested the mathematical accuracy of the TRA liability calculation by recomputing the liability.

/s/ Deloitte & Touche LLP

Chicago, Illinois
February 25, 2025

We have served as the Company's auditor since 2014.

PORTILLO'S INC.
CONSOLIDATED BALANCE SHEETS
(In thousands, except per share data)

	December 29, 2024	December 31, 2023
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents and restricted cash	\$ 22,876	\$ 10,438
Accounts and tenant improvement receivables	14,794	14,183
Inventories	7,915	8,733
Prepaid expenses	7,066	8,565
Total current assets	52,651	41,919
Property and equipment, net	358,975	295,793
Operating lease assets	222,390	193,825
Goodwill	394,298	394,298
Trade names	223,925	223,925
Other intangible assets, net	26,098	28,911
Equity method investment	16,056	16,684
Deferred tax assets	197,409	184,701
Other assets	8,284	5,485
Total other assets	866,070	854,004
TOTAL ASSETS	\$ 1,500,086	\$ 1,385,541
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable	\$ 45,516	\$ 33,189
Current portion of long-term debt	11,250	7,500
Short-term debt	25,000	15,000
Current portion of Tax Receivable Agreement liability	7,686	4,428
Deferred revenue	7,032	7,180
Short-term lease liability	6,013	5,577
Accrued expenses	33,072	32,039
Total current liabilities	135,569	104,913
LONG-TERM LIABILITIES:		
Long-term debt, net of current portion	275,422	283,923
Tax Receivable Agreement liability	316,893	295,390
Long-term lease liability	278,540	238,414
Other long-term liabilities	3,559	2,791
Total long-term liabilities	874,414	820,518
Total liabilities	1,009,983	925,431
COMMITMENTS AND CONTINGENCIES (NOTE 16)		
STOCKHOLDERS' EQUITY:		
Preferred stock, \$0.01 par value per share, 10,000,000 shares authorized, 0.00 issued and outstanding	—	—
Class A common stock, \$0.01 par value per share, 380,000,000 shares authorized, and 63,674,579 and 55,502,375 shares issued and outstanding as of December 29, 2024 and December 31, 2023, respectively	637	555
Class B common stock, \$0.00001 par value per share, 50,000,000 shares authorized, and 10,732,800 and 17,472,926 shares issued and outstanding as of December 29, 2024 and December 31, 2023, respectively	—	—
Additional paid-in-capital	357,295	308,212
Retained earnings	43,129	13,612
Total stockholders' equity attributable to Portillo's Inc.	401,061	322,379
Non-controlling interest	89,042	137,731
Total stockholders' equity	490,103	460,110
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 1,500,086	\$ 1,385,541

See accompanying notes to consolidated financial statements.

PORTILLO'S INC
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands)

	December 29, 2024	Fiscal Years Ended	
		December 31, 2023	December 25, 2022
REVENUES, NET	\$ 710,554	\$ 679,905	\$ 587,104
COST AND EXPENSES:			
Restaurant operating expenses:			
Food, beverage and packaging costs	241,679	230,869	204,237
Labor	181,091	173,868	154,392
Occupancy	36,632	33,358	30,657
Other operating expenses	83,038	76,639	65,312
Total restaurant operating expenses	542,440	514,734	454,598
General and administrative expenses	75,089	78,835	66,892
Pre-opening expenses	9,236	9,019	4,715
Depreciation and amortization	27,297	24,313	20,907
Net income attributable to equity method investment	(1,229)	(1,401)	(1,083)
Other income, net	(312)	(1,035)	(204)
OPERATING INCOME	58,033	55,440	41,279
Interest expense	25,616	27,470	27,644
Interest income	(309)	(212)	—
Tax Receivable Agreement liability adjustment	(9,149)	(3,349)	(5,345)
Loss on debt extinguishment	—	3,465	—
INCOME BEFORE INCOME TAXES	41,875	28,066	18,980
Income tax expense	6,799	3,248	1,823
NET INCOME	35,076	24,818	17,157
Net income attributable to non-controlling interests	5,559	6,394	6,306
NET INCOME ATTRIBUTABLE TO PORTILLO'S INC.	\$ 29,517	\$ 18,424	\$ 10,851
Income per common share attributable to Portillo's Inc.:			
Basic	\$ 0.48	\$ 0.34	\$ 0.28
Diluted	\$ 0.46	\$ 0.32	\$ 0.25
Weighted-average common shares outstanding:			
Basic	61,050,437	53,806,570	38,902,259
Diluted	63,982,643	57,307,784	42,715,977

See accompanying notes to consolidated financial statements.

FISCAL YEARS ENDED DECEMBER 31, 2023 and DECEMBER 25, 2022

	Class A Common Stock		Class B Common Stock		Additional Paid-In Capital	(Accumulated Deficit) Retained Earnings	Non-controlling Interest	Total Equity
	Shares	Amount	Shares	Amount				
Balance, as of December 26, 2021	35,807,171	\$ 358	35,673,321	\$ —	\$ 186,856	\$ (15,950)	\$ 252,142	\$ 423,406
Net income	—	—	—	—	—	10,851	6,306	17,157
Adoption of Accounting Standards Codification 842 - Leases	—	—	—	—	—	287	174	461
Equity-based compensation expense	—	—	—	—	8,820	—	7,317	16,137
Activity under equity-based compensation plans	777,393	8	—	—	(606)	—	—	(598)
Redemption of LLC Units	11,836,159	118	(11,836,159)	—	(118)	—	—	—
Non-controlling interest adjustment	—	—	—	—	89,374	—	(89,374)	—
Establishment of liabilities under Tax Receivable Agreement and related changes to deferred tax assets associated with increases in tax basis	—	—	—	—	(23,662)	—	—	(23,662)
Balance, as of December 25, 2022	48,420,723	\$ 484	23,837,162	\$ —	\$ 260,664	\$ (4,812)	\$ 176,565	\$ 432,901
Net income	—	—	—	—	—	18,424	6,394	24,818
Equity-based compensation expense	—	—	—	—	11,522	—	4,020	15,542
Activity under equity-based compensation plans	717,416	7	—	—	953	—	—	960
Redemption of LLC Interests	6,364,236	64	(6,364,236)	—	(64)	—	—	—
Non-controlling interest adjustment	—	—	—	—	48,849	—	(48,849)	—
Distributions paid to non-controlling interests holders	—	—	—	—	—	—	(399)	(399)
Establishment of liabilities under Tax Receivable Agreement and related changes to deferred tax assets associated with increases in tax basis	—	—	—	—	(13,712)	—	—	(13,712)
Balance, as of December 31, 2023	55,502,375	\$ 555	17,472,926	\$ —	\$ 308,212	\$ 13,612	\$ 137,731	\$ 460,110

See accompanying notes to consolidated financial statements.

PORTILLO'S INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands, except share data)

FISCAL YEAR ENDED DECEMBER 29, 2024

	Class A Common Stock		Class B Common Stock		Additional Paid-In Capital	Retained Earnings	Non-controlling interest	Total Equity
	Shares	Amount	Shares	Amount				
Balance, as of December 31, 2023	55,502,375	\$ 555	17,472,926	\$ —	\$ 308,212	\$ 13,612	\$ 137,731	\$ 460,110
Net income	—	—	—	—	—	29,517	5,559	35,076
Equity-based compensation expense	—	—	—	—	9,257	—	1,894	11,151
Activity under equity-based compensation plans	1,432,078	15	—	—	3,452	—	—	3,467
Redemption of LLC Units	6,740,126	67	(6,740,126)	—	(67)	—	—	—
Non-controlling interest adjustment	—	—	—	—	55,304	—	(55,304)	—
Distributions paid to non-controlling interest holders	—	—	—	—	—	—	(838)	(838)
Establishment of liabilities under Tax Receivable Agreement and related changes to deferred tax assets associated with increases in tax basis	—	—	—	—	(18,863)	—	—	(18,863)
Balance, as of December 29, 2024	63,674,579	\$ 637	10,732,800	\$ —	\$ 357,295	\$ 43,129	\$ 89,042	\$ 490,103

See accompanying notes to consolidated financial statements.

PORTILLO'S INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Fiscal Years Ended		
	December 29, 2024	December 31, 2023	December 25, 2022
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income	\$ 35,076	\$ 24,818	\$ 17,157
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	27,297	24,313	20,907
Amortization of debt issuance costs and discount	873	1,001	2,751
Loss on sales of assets	528	592	398
Equity-based compensation	11,151	15,542	16,137
Deferred income tax expense	6,771	3,249	1,820
Tax Receivable Agreement liability adjustment	(9,149)	(3,349)	(5,345)
Gift card breakage	(852)	(917)	(798)
Asset impairment	657	—	—
Loss on debt extinguishment	—	3,465	—
Changes in operating assets and liabilities:			
Accounts receivables	862	(679)	191
Receivables from related parties	(46)	(82)	96
Inventories	818	(1,346)	(1,309)
Other current assets	357	(3,643)	914
Operating lease assets	8,469	7,402	6,793
Accounts payable	11,284	209	(3,621)
Accrued expenses and other liabilities	1,827	3,021	1,587
Operating lease liabilities	(3,178)	(2,033)	(2,426)
Deferred lease incentives	5,553	1,501	1,651
Other assets and liabilities	(258)	(2,283)	(14)
NET CASH PROVIDED BY OPERATING ACTIVITIES	98,040	70,781	56,889
CASH FLOWS FROM INVESTING ACTIVITIES:			
Purchase of property and equipment	(88,191)	(87,918)	(47,061)
Proceeds from the sale of property and equipment	77	81	44
NET CASH USED IN INVESTING ACTIVITIES	(88,114)	(87,837)	(47,017)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from short-term debt, net	10,000	15,000	—
Proceeds from long-term debt	—	300,000	—
Payments of long-term debt	(5,625)	(328,053)	(3,324)
Proceeds from equity offering, net of underwriting discounts	114,960	179,306	364,956
Repurchase of outstanding equity / Portillo's OpCo units	(114,960)	(179,306)	(364,956)
Distributions paid to non-controlling interest holders	(838)	(399)	—
Proceeds from stock option exercises	4,332	1,879	1,890
Employee withholding taxes related to net settled equity awards	(1,433)	(1,505)	(2,632)
Proceeds from Employee Stock Purchase Plan purchases	508	527	129
Payments of Tax Receivable Agreement liability	(4,432)	(813)	—
Payment of deferred financing costs	—	(3,569)	—
Payment of initial public offering issuance costs	—	—	(771)
NET CASH PROVIDED (USED) IN FINANCING ACTIVITIES	2,512	(16,933)	(4,708)
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS AND RESTRICTED CASH	12,438	(33,989)	5,164
CASH AND CASH EQUIVALENTS AND RESTRICTED CASH AT BEGINNING OF THE PERIOD	10,438	44,427	39,263
CASH AND CASH EQUIVALENTS AND RESTRICTED CASH AT END OF THE PERIOD	\$ 22,876	\$ 10,438	\$ 44,427

See accompanying notes to consolidated financial statements.

	December 29, 2024	Fiscal Years Ended		December 25, 2022
		December 31, 2023		
SUPPLEMENTAL CASH FLOW INFORMATION				
Interest paid	\$ 19,445	\$ 28,282	\$	23,968
Income tax paid	—	—	—	—
NON-CASH INVESTING AND FINANCING ACTIVITIES:				
Accrued capital expenditures	\$ 13,466	\$ 12,729	\$	9,796
Establishment of liabilities under Tax Receivable Agreement	38,342	51,165		101,524

See accompanying notes to consolidated financial statements.

NOTE 1. DESCRIPTION OF BUSINESS

Portillo's Inc. ("Inc.") was formed and incorporated as a Delaware corporation on June 8, 2021. Inc. was formed for the purpose of completing an initial public offering ("IPO") and related reorganization transactions in order to carry on the business of PHD Group Holdings LLC and its subsidiaries ("Portillo's OpCo"). Portillo's Inc. is the sole managing member of Portillo's OpCo, and as sole managing member, Inc. operates and controls all of the business and affairs of Portillo's OpCo and reports a non-controlling interest representing the economic interest in Portillo's OpCo held by the other members of Portillo's OpCo (the "pre-IPO LLC Members"). Unless the context otherwise requires, references to "we," "us," "our," "Portillo's," and the "Company" refer to Portillo's Inc. and its subsidiaries, including Portillo's OpCo.

The Company operates restaurants in 10 states that serve Chicago-style hot dogs and sausages, Italian beef sandwiches, char-grilled burgers, fresh chopped salads, crinkle-cut fries, homemade chocolate cake and more, along with two food production commissaries in Illinois. As of December 29, 2024 and December 31, 2023, the Company had 93 and 83 restaurants in operation, respectively. The Company also had two non-traditional locations in operation as of December 29, 2024 and December 31, 2023. These non-traditional locations include a food truck and a ghost kitchen (small kitchen with no store-front presence, used to fill online orders). Portillo's Inc., additionally has a 50% interest in a single restaurant owned by C&O Chicago, L.L.C. ("C&O"), which is excluded from the Company's restaurant count noted above. The Company's principal corporate offices are located in Oak Brook, Illinois.

Secondary Offerings and Redemption of LLC Units

In the fourth quarter of 2024, certain pre-IPO LLC Members redeemed 840,992 LLC Units in the aggregate, together with an equal number of shares of Class B common stock, for newly-issued shares of Class A common stock on a one-for-one basis, in accordance with the terms of the Second Amended and Restated LLC Agreement of Portillo's OpCo, dated as of October 20, 2021.

In the first quarter of 2024, the Company completed a secondary offering of 8,000,000 shares of the Company's Class A common stock at an offering price of \$14.37 per share ("Q1 2024 Secondary Offering"). The Company granted BofA Securities, Inc., the underwriter (the "Underwriter"), a 30-day option to purchase up to an additional 1,200,000 shares of Class A common stock. The underwriter did not exercise its overallotment option within the 30-day period. We used all of the net proceeds from the Q1 2024 Secondary Offering to purchase LLC Units and corresponding shares of Class B common stock from certain pre-IPO LLC Members and to repurchase shares of Class A common stock from the shareholders of the entities treated as corporations for U.S. tax purposes that held LLC Units prior to the Transactions ("Blocker Companies") at a price per LLC Unit or share of Class A common stock, as applicable, equal to the public offering price per share of Class A common stock, less the underwriting discounts and commissions. The proceeds from the Q1 2024 Secondary Offering were used to (i) purchase 2,167,629 existing shares of Class A common stock from the shareholders of the Blocker Companies and (ii) redeem 5,832,371 LLC Units held by the pre-IPO LLC Members. In connection with the redemption, 5,832,371 shares of Class B common stock were surrendered by the pre-IPO LLC Members and canceled and the Company received 5,832,371 newly-issued LLC Units, increasing the Company's total ownership interest in Portillo's OpCo. As a result, Portillo's did not receive any proceeds from the offering, and the total number of shares of Class A common stock and Class B common stock did not change; however, the number of outstanding shares of Class A common stock increased by the same number of the canceled shares of Class B common stock.

In the first quarter of 2023, the Company completed one secondary offering of 8,000,000 shares at an offering price of \$21.05 per share. On April 5, 2023, the Underwriter exercised its overallotment option in part, to purchase an additional 620,493 shares of the Company's Class A common stock at an offering price of \$21.05 per share.

In the third and fourth quarters of 2022, the Company completed two secondary offerings of 8,066,458 shares (including 66,458 shares sold to the underwriters pursuant to their overallotment option) and 8,000,000 shares, respectively, of the Company's Class A common stock at an offering price of \$23.75 and \$22.69, respectively, per share.

The holders of LLC Units (other than the Company) may from time to time require Portillo's OpCo to redeem all or a portion of their LLC Units (together with an equal number of shares of Class B common stock) for newly-issued shares of Class A common stock on a one-for-one basis.

As of December 29, 2024, the Company owned 85.6% of Portillo's OpCo and the pre-IPO LLC Members owned the remaining 14.4% of Portillo's OpCo.

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 ("GAAP") and include the accounts of the Company and its subsidiaries. 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

The Company operates on a 52- or 53-week fiscal year ending on the Sunday on or 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. Fiscal 2024 and 2022 each consisted of 52 weeks. Fiscal 2023 consisted of 53 weeks. The 53rd week in fiscal 2023 coincided with Christmas, resulting in six additional operating days. The fiscal periods presented in this report are fiscal years ended December 29, 2024 ("fiscal 2024"), December 31, 2023 ("fiscal 2023") and December 25, 2022 ("fiscal 2022"), respectively. Unless otherwise stated, references to years in this report relate to fiscal years.

Use of Estimates

The preparation of these consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of sales and expenses during the 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.

Accounts and Tenant Improvement Receivables

Accounts and tenant improvement receivables consist primarily of vendor rebates, tenant improvement receivables, and delivery receivables as well as receivables from related parties (Note 18. Related Party Transactions). The Company evaluates the collectability of its Accounts and tenant improvement receivables based on a variety of factors, including historical experience, current and future economic and market conditions and other factors. Based on these factors, no allowance for uncollectible accounts was recorded at December 29, 2024 or December 31, 2023.

Inventories

Inventories, 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. 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.

The Company operates two commissaries to supply the Company's restaurants with several products and ensures product consistency and quality. The commissaries derive revenue principally from the sale and distribution of food to our distributors, who, in turn, sell the food to the restaurants. This is considered under ASC 845, Non-Monetary Transactions, and the impact on the statement of operations is not material. These products are held as inventory at distributors on a short-term consignment basis. Inventories subject to these consignment arrangements are recorded on the Company's consolidated balance sheet and were \$0.8 million and \$0.9 million as of December 29, 2024 and December 31,

2023, respectively.

Equity Method Investment

The Company has a 50% interest in 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.

Long-Lived Assets and Valuation

The Company's long-lived assets include property and equipment and definite-lived intangible assets. Property and equipment are recorded at cost. Internal costs directly associated with the acquisition, development and construction of a restaurant are capitalized. Expenditures for refurbishments and improvements that significantly add to the productivity capacity or extend the useful life are capitalized, while expenditures for maintenance and repairs are expensed as incurred. Leasehold improvements are amortized over the shorter of the lease term, which generally includes option periods that are reasonably certain, or the estimated useful lives of the assets. Except for leasehold improvements, depreciation is computed over the estimated useful lives of the assets (generally ranging from three to 10 years). Upon disposal of assets, the accounts are relieved of cost and accumulated depreciation and any related gain or loss is reflected in other income, net in the Company's consolidated statements of operations.

The Company reviews its long-lived assets, including property and equipment and construction-in-progress, definite-lived intangible assets and operating lease 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. During fiscal 2024, the Company recorded a technology asset impairment charge of \$0.7 million that was included within other income, net in the Company's consolidated statements of operations. There were no asset impairment charges recorded in fiscal 2023 and fiscal 2022.

Goodwill and Indefinite-Lived Intangible Assets

Goodwill and indefinite-lived intangible assets are assessed for impairment annually in the fourth quarter 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 market capitalization approach that uses publicly available market data, including publicly traded stock prices and total shares outstanding to determine the fair value of the reporting unit. 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 trademarks (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.

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

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.

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 also offers delivery services to its customers. Delivery sales are generally fulfilled by third-party delivery partners whether ordered through the Portillo's app and website ("Dispatch Sales") or through third-party delivery partners ("Marketplace Sales"). Dispatch Sales include delivery and service fees as the Company controls the delivery. Revenue from Dispatch Sales is recognized when food is delivered to the customer. For these sales, the Company receives payment directly from the customer at the time of sale. Revenue for Marketplace Sales is recognized in the amount paid to the delivery partner by the customer for food and excludes delivery and service fees charged by the third-party delivery partner as the Company does not control the delivery. Revenue from Marketplace Sales is recognized when food is delivered to the customer. For these sales, the Company receives payment from the delivery partner subsequent to the transfer of order, which is generally paid one week in arrears. For all delivery sales of food, the Company is considered the principal and recognizes revenue on a gross basis.

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, net in the consolidated statements of operations.

Generally, revenue is recognized as promised goods or services transfer to the guest or customer in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. Revenues are recognized when payment is tendered at the point of sale as the performance obligation has been satisfied. Refer to Note 3. Revenue Recognition for additional detail.

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.

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 \$0.6 million, \$0.4 million and \$0.4 million for the years ended December 29, 2024, December 31, 2023 and December 25, 2022, respectively.

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, which are purchased and held principally for the purpose of selling them in the near term, and are classified as trading securities and carried at fair value.

Equity-Based Compensation

The Company has issued non-qualified stock options, performance-based stock options, performance stock units, restricted stock units and restricted stock awards. Equity-based compensation expense is generally measured based on the grant-date fair value of those awards and is recognized on a straight-line basis over the vesting period. Equity-based compensation expense is 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 equity-based compensation expense will be recognized at that time. We have also granted equity awards with performance vesting conditions. Equity awards with performance or market vesting conditions generally vest based on our attainment versus stated targets or criteria over a three-year performance and service period. Performance goals are determined by the Board and include

measures such as revenue and adjusted EBITDA growth. Compensation expense on stock awards subject to performance conditions, which is based on the quantity of awards we have determined are probable of vesting, is recognized over the longer of the estimated performance goal attainment period or time vesting period. Equity-based compensation expense is included within general and administrative expenses and labor in the consolidated statements of operations. Refer to Note 13. Equity-Based Compensation for additional detail.

The Company adopted an Employee Share Purchase Plan ("ESPP") in June 2022 under which qualifying employees may be granted purchase rights to the Company's common shares at not less than 85% of the market price on the purchase date, subject to Company discretion. The ESPP has a maximum of 250,000 shares of the Company's Class A common stock available for issuance. Eligible employees are able to contribute up to 15% of their gross base earnings for purchases under the ESPP through regular payroll deductions, subject to an annual maximum dollar amount. The expense incurred under the ESPP for the years ended December 29, 2024, December 31, 2023 and December 25, 2022, was immaterial. The expense is included within general and administrative expenses and labor in the consolidated statement of operations.

Advertising and Marketing Expenses

Advertising costs are expensed the first-time advertising takes place, while the costs of producing advertising are expensed during production and the costs of communicating advertising are expensed as services are received. Advertising and marketing expenses totaled \$8.0 million, \$5.9 million and \$4.0 million for the years ended December 29, 2024, December 31, 2023 and December 25, 2022, respectively. Advertising and marketing expenses included in other operating expenses in the consolidated statements of operations primarily relate to sponsorships, restaurant merchandising and charitable giving; and those expenses included in general and administrative expenses in the consolidated statements of operations primarily consist of regional advertising and branding initiatives. The year-over-year change for 2024 is primarily related to an advertising campaign in the Arizona market in the first quarter of 2024 and in the Chicagoland market in the third and fourth quarters of 2024.

Cloud-Based Software Implementation Costs

The Company has entered into cloud-based software hosting arrangements for which it incurs implementation costs. Certain costs incurred during the application development stage are capitalized and included within prepaid expenses or other assets, depending on the long or short-term nature of such costs, in line with the Company's policy on the accounting for prepaid software hosting arrangements. Costs incurred during the preliminary project stage and post-implementation stage are expensed as incurred. Capitalized cloud-based software implementation costs are amortized, beginning on the date the related software or module is ready for its intended use, on a straight-line basis over the remaining term of the hosting arrangement as a component of general and administrative expenses, the same line item as the expense for the associated hosting arrangement.

As of December 29, 2024, the Company had \$3.4 million of capitalized cloud-based software implementation costs made up of \$0.9 million recorded within prepaid expenses and \$2.5 million recorded within other assets. As of December 31, 2023, the Company had \$2.0 million of capitalized cloud-based software implementation costs made up of \$0.3 million recorded within prepaid expenses and \$1.7 million recorded within other assets related to its enterprise resource planning ("ERP") and human capital management ("HCM") systems.

Leases

The Company currently leases land for its retail restaurants and commissaries, and office space under various long-term operating lease agreements that expire on various dates through 2068. We also lease equipment, which primarily consists of restaurant equipment and copiers. We have immaterial short-term operating leases, such as those for seasonal rentals and training spaces. We evaluate the contracts to determine whether the contract involves the use of property or equipment, which is either explicitly or implicitly identified. We evaluate whether we control the use of the asset, which is determined by assessing whether we obtain substantially all economic benefits from the use of the asset, and whether we have the right to direct the use of the asset. If these criteria are met and we have identified a lease, we account for the contract under the requirements of ASC 842.

Upon the possession of a leased asset, we determine its classification as an operating or finance lease. As of December 29, 2024, all of our leases are classified as operating leases. Operating lease assets and liabilities are recognized at the lease commencement date. We make judgments regarding the probable term for each lease, which can impact the classification and accounting for a lease as operating or financing, as well as the amount of straight-line rent expense in a particular period. Generally, the leases for the Company's restaurant locations have an initial term of 10 years to 20 years and typically provide for renewal options in five-year increments, as well as rent escalations. Renewal options are generally recognized as part of the right-of-use assets and lease liabilities as it is reasonably certain at commencement date that we would

exercise the options to extend the lease. Some of our real estate leases provide for base rent, plus if applicable, additional rent based on gross sales, as defined in each lease agreement, which is considered to be variable rent. When the achievement of such sales thresholds are deemed to be probable, contingent rent is accrued in proportion to the sales recognized during the period. For operating leases that include rent holidays and rent escalation clauses, we recognize lease expense on a straight-line basis over the lease term from the date we take possession of the leased property. Lease expense incurred before a restaurant opens is recorded in pre-opening expenses in the consolidated statements of operations. Once a restaurant opens, we record the straight-line lease expense and any contingent rent, if applicable, in occupancy on the consolidated statements of operations. Many of our leases also require us to pay real estate taxes, common area maintenance costs and other occupancy costs which are included in occupancy, other operating expenses, or pre-opening expenses on the consolidated statements of operations, which are generally considered to be variable rent. For leases with a lease term of 12 months or less ("short-term operating lease"), any fixed lease payments are recognized on a straight-line basis over such term, and are not recognized on the consolidated balance sheets.

Per the ASC 842 requirements, a lessee is required to use the rate implicit in the lease when readily determinable; alternatively, it would use the incremental borrowing rate in determining the present value of future lease payments. We estimate our incremental borrowing rates corresponding to the maturities of our leases. We estimate this rate based on prevailing financial market conditions, indications for the Company's credit rating, and other benchmarks related to the Company's outstanding secured borrowings.

We expend cash for leasehold improvements to build out our leased premises. Generally, a portion of the leasehold improvements and building costs are reimbursed by our landlords as landlord incentives pursuant to agreed-upon terms in our lease agreements. If obtained, landlord incentives usually take the form of cash, full or partial credits against our future minimum or contingent rents otherwise payable by us, or a combination thereof. In most cases, the tenant improvement allowances are received after we take possession of the property, as we meet required milestones during the construction of the property. We include these amounts in the measurement of the initial operating lease liability, which are also reflected as a reduction to the initial measurement of the right-of-use asset.

Pre-Opening Expenses

Pre-opening expenses consist primarily of wages, occupancy expenses, which represent rent expense recognized during the period between the date of possession of the restaurant facility and the restaurant opening date, 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

We account for income taxes pursuant to the asset and liability method which requires the recognition of deferred income tax assets and liabilities related to the expected future tax consequences arising from temporary differences between the carrying amounts and tax bases of assets and liabilities based on enacted statutory tax rates applicable to the periods in which the temporary differences are expected to reverse. Any effects of changes in income tax rates or laws are included in income tax expense in the period of enactment. A valuation allowance is recognized if we determine it is more likely than not that all or a portion of a deferred tax asset will not be recognized. In making such determination, the Company considers all available evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, prudent and feasible tax planning strategies and recent and expected future results of operations. The assumptions utilized in determining future taxable income require significant judgment and are consistent with the plans and estimates we use to manage our business. Actual operating results in future years could differ from our current assumptions, judgments and estimates, which could have a material impact on the amount of deferred tax assets we ultimately realize.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") was signed into law. The CARES Act 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 employer federal payroll 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 federal payroll tax remittances under this provision as of December 27, 2020, of which \$2.7 million was paid during the year ended December 26, 2021 and the remaining deferred balance of \$2.7 million was paid during the year ended December 25, 2022.

Tax Receivable Agreement

The Company is party to a Tax Receivable Agreement ("TRA") with certain pre-IPO LLC Members that provides for the payment by the Company of 85% of the amount of tax benefits, if any, that Portillo's Inc. actually realizes or in some cases is deemed to realize as a result of certain transactions. We account for the TRA liability in accordance with ASC 450 - *Contingencies*. Amounts payable under the TRA are contingent upon, among other things, (i) generation of future taxable income over the term of the TRA and (ii) future changes in tax laws. If we

do not generate sufficient taxable income in the aggregate over the term of the TRA to utilize the tax benefits, then we would not be required to make the related TRA payments. Therefore, we would only recognize a liability for TRA payments if we determine it is probable that we will generate sufficient future taxable income over the term of the TRA to utilize the related tax benefits. The timing and amount of aggregate payments due under the TRA may vary based on a number of factors, including the amount and timing of taxable income generated by Portillo's OpCo each year and the applicable tax rates.

The amounts recorded for both the deferred tax assets and the liability for the Company's obligations under the TRA will be estimated at the time of any purchase or exchange as a reduction to stockholders' equity, and the effects of changes in any of the Company's estimates after this date will be included in net income or loss. Similarly, the effect of subsequent changes in the enacted tax rates will be included in net income or loss.

Earnings (Loss) Per Share

Basic earnings (loss) per share is calculated by dividing the net income (loss) attributable to common shareholders by the weighted-average number of shares outstanding.

Diluted earnings (loss) per share adjusts the basic earnings (loss) per unit attributable to shareholders and the weighted-average number of units of shares outstanding for the potential dilutive impact of shares, using the treasury-stock method. Diluted earnings (loss) per share 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.

Recently Issued Accounting Standards

In October 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2023-06, Disclosure Improvements: Codification Amendments in Response to the SEC's Disclosure Update and Simplification Initiative, which amends the disclosure or presentation requirements related to various subtopics in the FASB Accounting Standards Codification (the "Codification"). The effective date for each amendment will be the date on which the SEC's removal of that related disclosure from Regulation S-X or Regulation S-K becomes effective, with early adoption prohibited. If, by June 30, 2027, the SEC has not removed the applicable requirement from Regulation S-X or Regulation S-K, the pending content of the related amendment will be removed from the Codification and will not become effective for any entity. The Company is currently evaluating the effect of adopting this ASU.

In December 2023, the FASB issued ASU 2023-09, Income Taxes (Topic 740) Improvements to Income Tax Disclosures, which requires public entities to disclose specific categories in the rate reconciliation and provide additional information for reconciling items that meet a quantitative threshold on an annual basis. ASU 2023-09 is effective for fiscal years beginning after December 15, 2024, with early adoption permitted. The Company is currently evaluating the effect of adopting this ASU.

In November 2024, the FASB issued ASU 2024-03, Income Statement - Reporting Comprehensive Income - Expense Disaggregation Disclosures (Subtopic 220-40): Disaggregation of Income Statement Expenses, which requires disaggregation of certain expense captions into specified categories in disclosures within the footnotes to the financial statements. ASU 2024-03 is effective for fiscal years beginning after December 15, 2026, and interim periods beginning after December 15, 2027, with early adoption permitted. The Company is currently evaluating the effect of adopting this ASU.

Recently Adopted Accounting Standards

In March 2020, the FASB issued ASU 2020-04, Reference Rate Reform (Topic 848) Facilitation of the Effects of Reference Rate Reform on Financial Reporting. The pronouncement provides temporary optional expedients and exceptions to the current guidance on contract modifications and hedge accounting to ease the financial reporting burden related to the expected market transition from the London Interbank Offered Rate ("LIBOR") and other interbank offered rates to alternative reference rates. The guidance was effective upon issuance and generally can be applied to applicable contract modifications through December 31, 2022. FASB has extended the sunset date to December 31, 2024. The impact of the transition from LIBOR to alternative reference rates was not material to the Company's consolidated financial statements.

In November 2023, the FASB issued ASU 2023-07, Segment Reporting (Topic 280) Improvements to Reportable Segment Disclosures, which requires public entities to disclose information about their reportable segments' significant expenses on an interim and annual basis. ASU 2023-07 is effective for fiscal years beginning after December 15, 2023, and for interim periods within fiscal years beginning after December 15,

2024, with early adoption permitted. The Company adopted this standard during the year ended December 29, 2024. See Note 17. Segment Information in the accompanying notes to the consolidated financial statements for further detail.

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 its consolidated financial statements.

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 also offers delivery services to customers which are generally classified as either Dispatch Sales or Marketplace Sales. Refer to Note 2. Summary Of Significant Accounting Policies for additional information regarding revenue recognition for Dispatch Sales and Marketplace Sales.

The Company sells gift cards which do not have expiration dates. Refer to Note 2. Summary Of Significant Accounting Policies for additional information regarding gift card sales. The Company recognized gift card breakage of \$0.9 million for both the years ended December 29, 2024 and December 31, 2023, and \$0.8 million for the year ended December 25, 2022.

The Company's revenue related to performance obligations not yet satisfied is revenue from gift cards sold but not yet redeemed. The gift card liability is included in deferred revenue on the consolidated balance sheets as follows (in thousands):

	December 29, 2024		December 31, 2023	
Gift card liability	\$	6,875	\$	6,981

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):

	December 29, 2024		Fiscal Years Ended December 31, 2023		December 25, 2022	
Revenue recognized from gift card liability balance at the beginning of the year	\$	3,972	\$	3,822	\$	3,598

NOTE 4. INVENTORIES

Inventories consisted of the following (in thousands):

	December 29, 2024		December 31, 2023	
Raw materials	\$	5,756	\$	6,737
Work in progress		168		157
Finished goods		1,216		912
Consigned inventory		775		927
	\$	7,915	\$	8,733

NOTE 5. PROPERTY & EQUIPMENT, NET

Property and equipment, net consisted of the following (in thousands):

	December 29, 2024		December 31, 2023	
Land and land improvements	\$	24,100	\$	19,000
Buildings and improvements		5,084		—
Furniture, fixtures, and equipment		177,443		155,871
Leasehold improvements		286,003		227,080
Transportation equipment		2,042		2,881
Construction-in-progress		12,348		16,808
		507,020		421,640
Less: accumulated depreciation		(148,045)		(125,847)
	\$	358,975	\$	295,793

Depreciation expense was \$24.5 million, \$21.4 million, and \$18.0 million for the years ended December 29, 2024, December 31, 2023 and December 25, 2022, respectively, and was included in depreciation and amortization in the consolidated statements of operations.

NOTE 6. GOODWILL & INTANGIBLE ASSETS

The Company has one reporting unit for goodwill, which is evaluated for impairment annually in the fourth quarter of each fiscal year. The Company used the market approach to test goodwill. The market approach utilized publicly available market data, including publicly traded stock prices and total shares outstanding to determine the fair value of the reporting unit.

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 29, 2024, December 31, 2023 and December 25, 2022.

Intangibles, net consisted of the following (in thousands):

	As of December 29, 2024		
	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	(30,019)	26,098
	\$ 280,042	\$ (30,019)	\$ 250,023

	As of December 31, 2023		
	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	(27,206)	28,911
	<u>\$ 280,042</u>	<u>\$ (27,206)</u>	<u>\$ 252,836</u>

Amortization expense was \$2.8 million, \$2.9 million, and \$2.9 million for the years December 29, 2024, December 31, 2023 and December 25, 2022 respectively, and was included in depreciation and amortization in the consolidated statements of operations.

The estimated aggregate amortization expense related to intangible assets held at December 29, 2024 for the next five years and thereafter is as follows (in thousands):

	Estimated Amortization
2025	2,707
2026	2,707
2027	2,707
2028	2,707
2029	2,150
2030 and thereafter	13,120
	<u>\$ 26,098</u>

NOTE 7. FAIR VALUE OF FINANCIAL INSTRUMENTS

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The carrying value of the Company's cash and cash equivalents and restricted cash, accounts and tenant improvement receivables, accounts payable and all other current assets and liabilities, approximate fair values due to the short-term nature of these financial instruments.

Other assets consists of long-term prepaid expenses and a deferred compensation plan with related assets held in a rabbi trust. Other long-term liabilities consist of a deferred gain on a supplier arrangement. Long-term prepaid expenses and other long-term liabilities approximate fair values due to the nature of these financial instruments.

Deferred Compensation Plan - The Company maintains a rabbi trust to fund obligations under a deferred compensation plan. Amounts in the rabbi trust are invested in mutual funds, which are designated as trading securities 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 29, 2024 and December 31, 2023, the fair value of the mutual fund investments and deferred compensation obligations were as follows (in thousands):

	December 29, 2024		December 31, 2023	
	Level 1			
Assets - Investments designated for deferred compensation plan				
Cash/money accounts	\$	988	\$	1,083
Mutual Funds		2,208		2,181
Total assets	<u>\$</u>	<u>3,196</u>	<u>\$</u>	<u>3,264</u>

As of December 29, 2024 and December 31, 2023 we had no Level 2 or Level 3 assets.

The deferred compensation investments and 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.

Refer to Note 9. Debt for additional information relating to the fair value of the Company's outstanding debt instruments.

Assets and Liabilities Measured at Fair Value on a Non-Recurring Basis

Assets and liabilities that are measured at fair value on a non-recurring basis include property and equipment, net, operating lease assets, equity-method investment, goodwill and indefinite-lived intangible assets. These assets are measured at fair value whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. During fiscal 2024, the Company recognized an impairment charge of \$0.7 million related to a technology asset that is included within other income, net in the consolidated statement of operations. No asset impairment charges were recorded in fiscal 2023 or fiscal 2022.

NOTE 8. SUPPLEMENTAL BALANCE SHEET INFORMATION

Accounts and tenant improvement receivables consisted of the following (in thousands):

	December 29, 2024	December 31, 2023
Tenant improvement receivable	\$ 8,868	\$ 8,081
Accounts receivable	5,926	6,102
Total	<u>\$ 14,794</u>	<u>\$ 14,183</u>

Prepaid expenses consisted of the following (in thousands):

	December 29, 2024	December 31, 2023
Prepaid insurance	\$ 2,510	\$ 3,060
Prepaid occupancy	495	2,314
Other prepaid expenses	4,061	3,191
Total	<u>\$ 7,066</u>	<u>\$ 8,565</u>

Accrued expenses consisted of the following (in thousands):

	December 29, 2024	December 31, 2023
Salaries, wages, and other compensation	\$ 14,382	\$ 18,019
Rent and real estate taxes	5,784	6,551
Insurance	3,634	3,310
Interest	5,471	170
Sales and use tax	3,351	3,477
Other accrued expenses	450	512
Total	<u>\$ 33,072</u>	<u>\$ 32,039</u>

NOTE 9. DEBT

Debt consisted of the following (in thousands):

	December 29, 2024	December 31, 2023
2023 Term Loan	\$ 288,750	\$ 294,375
2023 Revolver Facility	25,000	15,000
Unamortized discount and debt issuance costs	(2,078)	(2,952)
Total debt, net	311,672	306,423
Less: Short-term debt	(25,000)	(15,000)
Less: Current portion of long-term debt	(11,250)	(7,500)
Long-term debt, net	\$ 275,422	\$ 283,923

2023 Credit Agreement

On February 2, 2023 (the "Closing Date"), PHD Intermediate LLC ("Holdings"), Portillo's Holdings LLC (the "Borrower"), the other Guarantors party thereto from time to time, each lender party thereto from time to time and Fifth Third Bank, National Association, as Administrative Agent, L/C Issuer and Swing Line Lender entered into a credit agreement ("2023 Credit Agreement") which provides for a term A loan (the "2023 Term Loan") in an initial aggregate principal amount of \$300.0 million and revolving credit commitments in an initial aggregate principal amount of \$100.0 million (the "2023 Revolver Facility"). The 2023 Term Loan and 2023 Revolver Facility are scheduled to mature on February 2, 2028. See Note 19. Subsequent Events for more information about amendments to the 2023 Term Loan and 2023 Revolver Facility entered into on January 27, 2025.

The 2023 Term Loan and the 2023 Revolver Facility will accrue interest at the forward-looking secured overnight financing rate ("SOFR") plus an applicable rate determined upon the consolidated total net rent adjusted leverage ratio, subject to a floor of 0.00% (plus a credit spread adjustment of 0.10% per annum for 1-month interest periods and 0.15% for 3-month interest periods).

As of December 29, 2024, the interest rates on the 2023 Term Loan and 2023 Revolver Facility were 7.25% and 7.17%, respectively. Pursuant to the 2023 Credit Agreement, as of December 29, 2024, the commitment fees to maintain the 2023 Revolver Facility were 0.20% and letter of credit fees were 2.50%. Commitment fees and letter of credit fees are recorded as interest expense in the consolidated statements of operations. As of December 29, 2024, the effective interest rate for the 2023 Credit Agreement was 7.53%.

As of December 31, 2023, the interest rates on the 2023 Term Loan and 2023 Revolver Facility were 8.00% and 8.23%, respectively. Pursuant to the 2023 Credit Agreement, as of December 31, 2023, the commitment fees to maintain the 2023 Revolver Facility were 0.25% and letter of credit fees were 2.75%. Commitment fees and letter of credit fees are recorded as interest expense in the consolidated statements of operations. As of December 31, 2023, the effective interest rate for the 2023 Credit Agreement was 8.36%.

The 2023 Term Loan will amortize in quarterly installments equaling an aggregate annual amount of \$7.5 million for the first two (2) years following the Closing Date, (b) \$15.0 million for the third (3rd) and fourth (4th) years following the Closing Date, and (c) \$30.0 million for the fifth (5th) year following the Closing Date, commencing on the last day of the first full fiscal quarter ended after the Closing Date, with the balance payable on the final maturity date.

As of December 29, 2024, outstanding borrowings under the 2023 Credit Agreement totaled \$313.8 million, comprised of \$288.8 million under the 2023 Term Loan, and \$25.0 million under the 2023 Revolver Facility. Letters of credit issued under the 2023 Revolver Facility totaled \$5.3 million. As a result, as of December 29, 2024, the Company had \$69.7 million available under the 2023 Revolver Facility.

As of December 31, 2023, outstanding borrowings under the 2023 Credit Agreement totaled \$309.4 million, comprised of \$294.4 million under the 2023 Term Loan, and \$15.0 million under the 2023 Revolver Facility. Letters of credit issued under the 2023 Revolver Facility totaled \$4.3 million. As a result, as of December 31, 2023, the Company had \$80.7 million available under the 2023 Revolver Facility.

2014 Credit Agreement

Holdings, the Borrower and certain of its subsidiaries entered into a credit agreement ("2014 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 "2014 Lenders"). The 2014 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 "2014 Revolving Facility" and the loans thereunder, the "2014 Revolving Loans").

On December 6, 2019, the Borrower entered a third amendment to the 2014 Credit Agreement (the "Third Amendment to 2014 Credit Agreement") whereby the aggregate principal amount of the term loans as of the effective date of the Third Amendment to 2014 Credit Agreement was \$332.4 million (the "2014 Term B-3 Loans"), and the 2014 Revolving Facility was increased to \$50.0 million. The maturity date with respect to the 2014 Term B-3 Loans was extended to September 6, 2024, and the maturity date with respect to the 2014 Revolving Loans was extended to June 6, 2024.

On February 2, 2023, the Company used proceeds from the 2023 Term Loan and 2023 Revolver Facility, along with cash on hand, to pay off the 2014 Credit Agreement in full in the amount of \$321.8 million. The 2023 Revolver Facility under the 2023 Credit Agreement replaces the \$50.0 million 2014 Revolving Facility under the 2014 Credit Agreement.

Maturities of long-term debt

Principal payments on long-term debt (excluding the Revolving Facility) outstanding at December 29, 2024 for each year through maturity are as follows (in thousands):

2025	11,250
2026	15,000
2027	22,500
2028	240,000
	\$ 288,750

Discount and Debt Issuance Costs

Pursuant to the 2023 Credit Agreement, the Company capitalized deferred financing costs and issuance discount of \$3.6 million which will be amortized over the term of the 2023 Credit Agreement.

In connection with the repayment of the 2014 Credit Agreement as described above, deferred financing costs and original issuance discount of \$3.5 million was recorded as a loss on debt extinguishment during the year ended December 31, 2023 in the consolidated statement of operations. There were no debt extinguishments during the years ended December 29, 2024 and December 25, 2022.

The Company amortized \$0.2 million, \$0.4 million and \$2.0 million of deferred financing costs during the years ended December 29, 2024, December 31, 2023 and December 25, 2022, respectively, which was included in interest expense in the consolidated statements of operations. In addition, the Company also amortized \$0.7 million, \$0.6 million and \$0.8 million in original issue discount related to the long-term debt during the years ended December 29, 2024, December 31, 2023 and December 25, 2022, respectively, which was included in interest expense in the consolidated statements of operations.

Total interest costs incurred were \$25.6 million, \$27.5 million and \$27.6 million for the years ended December 29, 2024, December 31, 2023 and December 25, 2022, respectively.

Fair Value of Debt

As of December 29, 2024 and December 31, 2023, the fair value of long-term 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.

Guarantees and Covenants

The 2023 Credit Agreement is guaranteed by all domestic subsidiaries of the Borrower (subject to customary exceptions) and secured by liens on substantially all of the assets of Holdings, the Borrower and the subsidiary guarantors (subject to customary exceptions).

The 2023 Credit Agreement also includes certain financial covenants with respect to cash interest coverage and total net rent adjusted leverage. As of December 29, 2024, the Company was in compliance with all covenants in the 2023 Credit Agreement.

NOTE 10. LEASES

A summary of operating lease right-of-use assets and liabilities is as follows (in thousands):

Operating leases	Classification	December 29, 2024	December 31, 2023
Right-of-use assets	Operating lease assets	\$ 222,390	\$ 193,825
		222,390	193,825
Current lease liabilities	Short-term operating lease liability	6,013	5,577
Non-current lease liabilities	Long-term operating lease liability	278,540	238,414
		\$ 284,553	\$ 243,991

The components of lease expense were as follows (in thousands):

Operating leases	Classification	December 29, 2024	Fiscal Years Ended December 31, 2023	December 25, 2022
Operating lease cost	Occupancy			
	Other operating expenses			
	General and administrative expenses			
	Pre-opening expenses	\$ 32,542	\$ 28,861	\$ 25,735
Short-term operating lease cost	Occupancy			
	Other operating expenses			
	General and administrative expenses			
	Pre-opening expenses	1,813	1,069	698
Variable lease cost	Occupancy			
	Other operating expenses	3,894	3,714	3,604
	General and administrative expenses			
		\$ 38,249	\$ 33,644	\$ 30,037

A summary of lease terms and discount rates for operating leases is as follows:

Operating leases	December 29, 2024	December 31, 2023
Weighted-average remaining lease term (years):	25.6	25.5
Weighted-average discount rate:	9.2 %	9.6 %

Supplemental cash flow information related to leases is as follows (in thousands):

	December 29, 2024	Fiscal Years Ended December 31, 2023	December 25, 2022
Cash paid for amounts included in the measurement of lease liabilities:			
Operating cash flows for operating leases	\$ 27,223	\$ 23,478	\$ 21,476
Operating lease assets obtained in exchange for lease liabilities:			
Operating leases	39,650	33,176	10,682

As of December 29, 2024, the maturity analysis of the lease liabilities consisted of the following (in thousands):

Year Ending	Operating Leases
2025	\$ 29,128
2026	29,194
2027	29,013
2028	29,146
2029	29,425
Thereafter	682,466
Total lease payments	828,372
Less: imputed interest	(543,819)
Total operating lease liabilities	\$ 284,553

As of December 29, 2024, operating lease payments include \$493.9 million related to options to extend lease terms that are reasonably certain of being exercised and exclude \$100.6 million of legally binding minimum payments for leases signed but not yet commenced.

NOTE 11. STOCKHOLDERS' EQUITY

Amended and Restated Certificate of Incorporation

In connection with the IPO, we amended and restated our certificate of incorporation to, among other things, provide for the (i) authorization of 380,000,000 shares of Class A common stock, par value \$0.01 per share; (ii) authorization of 50,000,000 shares of Class B common stock, par value \$0.00001; (iii) authorization of 10,000,000 shares of preferred stock, par value \$0.01 per share; and (iv) provides that our Board will be elected annually to serve until the next annual meeting of shareholders or until their successors are duly elected and qualified.

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 shareholders are entitled to vote generally, including the election or removal 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.

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 shareholders. 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.

Amended and Restated LLC Agreement

In connection with the IPO, we amended and restated the limited liability company agreement of Portillo's OpCo ("LLC Agreement") to, among other things, convert all outstanding equity interests into LLC Units.

The LLC Agreement also provides that holders of LLC Units may, from time to time, redeem all or a portion of their LLC Units for newly-issued shares of Class A common stock on a one-for-one basis. Upon receipt of a redemption request, we may, instead, elect to effect a direct exchange of LLC Units directly with the holder. In connection with any redemption or exchange, we will receive a corresponding number of LLC

Units, increasing our total ownership interest. Additionally, an equivalent number of shares of Class B common stock will be surrendered and canceled.

The LLC Agreement also requires that Portillo's OpCo, at all times, maintain (i) a one-to-one ratio between the number of outstanding shares of Class A common stock and the number of LLC Units owned by us and (ii) a one-to-one ratio between the number of shares of Class B common stock owned by the pre-IPO LLC Members and the number of LLC Units owned by the pre-IPO LLC Members.

Redemption of LLC Units

In the fourth quarter of 2024, certain pre-IPO LLC Members redeemed 840,992 LLC Units in the aggregate for newly-issued shares of Class A common stock on a one-for-one basis, in accordance with the terms of the Second Amended and Restated LLC Agreement of Portillo's OpCo, dated as of October 20, 2021.

In the first quarter of 2024, the Company completed a secondary offering of 8,000,000 shares of the Company's Class A common stock at an offering price of \$14.37 per share.

In the first quarter of 2023, the Company completed a secondary offering of 8,000,000 shares of the Company's Class A common stock at an offering price of \$21.05 per share. On April 5, 2023, the Underwriter exercised its overallocation option in part, to purchase an additional 620,493 shares of the Company's Class A common stock at an offering price of \$21.05 per share.

In the third and fourth quarters of 2022, the Company completed two secondary offerings of 8,066,458 shares (including 66,458 shares sold to the underwriters pursuant to their overallocation option) and 8,000,000 shares, respectively, of the Company's Class A common stock at an offering price of \$23.75 and \$22.69, respectively, per share.

See Note 1. Description Of Business for additional information on secondary offerings and redemption of LLC Units.

As of December 29, 2024, the Company owned 85.6% of Portillo's OpCo and the pre-IPO LLC Members owned the remaining 14.4% of Portillo's OpCo. As of December 29, 2024, shareholders of the Blocker Companies and pre-IPO LLC Members owned 3,755,165 shares of Class A common stock and 10,732,800 shares of Class B common stock, respectively.

Equity-Based Compensation Plan Activity

We received an aggregate of 1,432,078, 717,416, and 777,393 LLC Units in connection with the activity under our equity-based compensation plans during the years ended December 29, 2024, December 31, 2023, and December 25, 2022, respectively, related to the exercise of stock options, vested restricted stock awards and restricted stock units, and employee stock purchase plan purchases. See Note 13. Equity-Based Compensation for additional information.

NOTE 12. NON-CONTROLLING INTERESTS

We are the sole managing member of Portillo's OpCo, and as a result, consolidate the financial results of Portillo's OpCo. We report a non-controlling interest to reflect the entitlement of the pre-IPO LLC Members who retained their equity ownership in Portillo's OpCo (the "pre-IPO LLC Members"). Changes in our ownership interest in Portillo's OpCo while we retain our controlling interest in Portillo's OpCo will be accounted for as equity transactions. As such, future redemptions or direct exchanges of LLC Units in Portillo's OpCo by the pre-IPO LLC members will result in a change in ownership and reduce the amount recorded as non-controlling interest and increase additional paid-in capital.

The following table summarizes the LLC interest ownership by Portillo's Inc. and pre-IPO LLC members:

	December 29, 2024		December 31, 2023	
	LLC Units	Ownership %	LLC Units	Ownership %
Portillo's Inc.	63,674,579	85.6 %	55,502,375	76.1 %
pre-IPO LLC Members	10,732,800	14.4 %	17,472,926	23.9 %
Total	74,407,379	100.0 %	72,975,301	100.0 %

The weighted average ownership percentages for the applicable reporting periods are used to attribute net income to Portillo's Inc. and the pre-IPO LLC Members. The pre-IPO LLC Members' weighted average ownership percentage for the years ended December 29, 2024, December 31, 2023 and December 25, 2022 was 17.0%, 25.9% and 45.8% respectively.

The following table summarizes the effects of changes in ownership in Portillo's OpCo on the Company's equity (in thousands):

	Fiscal Years Ended		
	December 29, 2024	December 31, 2023	December 25, 2022
Net income attributable to Portillo's Inc.	\$ 29,517	\$ 18,424	\$ 10,851
Activity under equity-based compensation plans	3,452	953	(606)
Non-controlling interest adjustment	55,304	48,849	89,374
Redemption of LLC Units	(67)	(64)	(118)
Establishment of liabilities under Tax Receivable Agreement and related changes to deferred tax assets associated with increases in tax basis	(18,863)	(13,712)	(23,662)
Total effect of changes in ownership interest on equity attributable to Portillo's Inc.	\$ 69,343	\$ 54,450	\$ 75,839

NOTE 13. EQUITY-BASED COMPENSATION

2021 Equity Incentive Plan

In connection with the IPO, the Company adopted the 2021 Equity Incentive Plan (the "2021 Plan"). The 2021 Plan is administered and interpreted by the Company's Board, including the authority to select participants 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 types of awards available under the 2021 Plan include stock options (both incentive and non-qualified), stock appreciation rights ("SARs"), restricted stock awards ("RSAs"), restricted stock units ("RSUs"), and stock-based awards. Employees, officers, non-employee directors or any natural person who is a consultant or other personal service provider to the Company or any of its subsidiaries or affiliates are eligible to participate in the 2021 Plan. All awards granted to participants under the 2021 Plan will be represented by an award agreement. Approximately 7.1 million shares of Class A common stock were authorized for awards under the 2021 Plan.

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. The fair value of RSUs is determined using the Company's closing stock price on the date of grant. Outstanding time-based RSUs generally vest equally over periods ranging from one to three years on each of the anniversaries of the date of grant subject to continued service on such date.

Activity for the Company's RSUs was as follows:

	Restricted Stock Units (in thousands)	Weighted-average grant date fair value per share
Non-vested, December 31, 2023	536	\$ 20.23
Granted	755	12.14
Vested	(349)	19.85
Forfeited	(139)	15.80
Non-vested, December 29, 2024	804	\$ 13.55

As of December 29, 2024, there was \$7.0 million of total unrecognized compensation cost related to unvested restricted stock units, which is expected to vest over a weighted-average period of 2.0 years.

Restricted Stock Awards

On December 23, 2022, the Company granted 57,870 restricted stock awards ("RSAs") to certain of its executive officers in recognition of their work and accomplishments in 2022. The RSAs vested immediately upon grant with certain transfer restrictions. RSAs surrendered to fulfill withholding tax obligations were not subject to any transfer restrictions, and 50% of the balance of the underlying shares were subject to a one-year holding requirement, and the balance of underlying shares was subject to a two-year holding requirement. The fair value of the RSAs surrendered was determined using Portillo's closing stock price on the date of grant, which was \$17.19. The fair value of the awards with post-vesting restrictions was determined using the Black-Scholes option pricing model and the weighted average assumptions were as follows:

	2022
Fair value	\$14.98
Stock price	\$17.19
Risk-free interest rate	4.45%
Expected life (years)	1.5
Annualized equity volatility	34.4%

No RSAs were issued during the years ended December 29, 2024 and December 31, 2023.

Performance Stock Options

The Company has granted performance stock options ("PSOs") to certain executive officers that will be eligible to vest in three (3) tranches based on stock performance conditions (i) one-third (1/3rd) of the PSOs will vest on the third anniversary of the IPO if the 20-day volume-weighted average price ("VWAP") for a share of common stock is \$30.00 per share (1.5 times the IPO price) measured over any twenty (20) consecutive trading day period commencing on the second anniversary of the IPO and ending on the last trading day immediately preceding the third anniversary of the IPO; (ii) one-third (1/3rd) of the PSOs will vest on the fourth anniversary of the IPO if the 20-day VWAP for a share of common stock is \$40.00 per share (2 times the IPO price) measured over any twenty (20) consecutive trading day period commencing on the third anniversary of the IPO and ending on the last trading day immediately preceding the fourth anniversary of the IPO; and (iii) one-third (1/3rd) of the PSOs will vest on the fifth anniversary of the IPO if the 20-day VWAP for a share of common stock is \$50.00 per share (2.5 times the IPO price) measured over any twenty (20) consecutive trading day period commencing on the fourth anniversary of the IPO and ending on the last trading day immediately preceding the fifth anniversary of IPO. All PSOs are subject to continued service at each tranche date and if any tranches fail to vest, the unvested portion of such PSOs will be forfeited and will not be eligible to vest in subsequent years. The awards granted are exercisable within a 10-year period from the date of grant. The first tranche of PSOs was forfeited in fiscal 2024 as the performance condition was not satisfied by the third anniversary of the IPO.

The grant date fair value of these awards was determined using a Monte-Carlo simulation model. The fair value and weighted average assumptions used to estimate the fair value of these PSOs were as follows:

	2024	2023	2022
Fair value	\$0.12	\$2.30	\$7.93
Stock price	\$12.17	\$17.86	\$22.19
Risk-free interest rate	5.10%	4.96%	3.37%
Expected life (years)	1.5	2.1	3.2
Annualized equity volatility	33.4%	37.7%	51.9%

Activity for the Company's PSOs was as follows:

	PSOs (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Term (Years)	Aggregate Intrinsic Value
Outstanding-December 31, 2023	1,812	\$ 20.02		
Granted	625	12.17		
Exercised	—	—		
Forfeited	(1,060)	18.47		
Expired	—	—		
Outstanding-December 29, 2024	1,377	17.65	7.7	—
Exercisable-December 29, 2024	—	—	—	—
Vested and expected to vest-December 29, 2024	1,287	\$ 17.65	7.7	\$ —

As of December 29, 2024, there was \$2.2 million of total unrecognized compensation cost related to unvested PSOs, which is expected to be recognized over a weighted average period of 1.4 years.

Stock Options

During the year ended December 29, 2024, the Company granted 311,042 stock options under the 2021 Plan, to its President and Chief Executive Officer. The stock options vest on the fourth anniversary of the award and are exercisable within a 10-year period from the date of grant.

Activity for the Stock Options was as follows:

	Stock Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Term (Years)	Aggregate Intrinsic Value
Outstanding-December 31, 2023	—	\$ —		
Granted	311	11.94		
Exercised	—	—		
Forfeited	—	—		
Expired	—	—		
Outstanding-December 29, 2024	311	11.94	9.4	—
Exercisable-December 29, 2024	—	—	—	—
Expected to vest-December 29, 2024	262	\$ 11.94	9.4	\$ —

The Company estimates the fair value of stock options 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 stock option. The assumptions used to estimate the fair value of stock options granted during the year ended December 29, 2024 were as follows:

	2024
Fair value of stock option	\$6.43
Stock Price	\$11.94
Risk-free interest rate	4.58%
Expected life (years)	6.3
Volatility	49.4%

As of December 29, 2024, there was \$1.5 million of total unrecognized compensation cost related to unvested Stock Options, which is expected to be recognized over a weighted average period of 3.3 years.

Performance Stock Units

During the year ended December 29, 2024, the Company granted performance stock units ("PSUs") to its executive officers under the 2021 Plan. The fair value of these awards was determined using the Company's closing stock price on the date of the grants. These PSUs will vest after the fiscal year ending December 27, 2026 based on continued service and the achievement of performance metrics. The amount of awards that can be earned ranges from 0% to 200% of the number of performance stock units granted, based on the achievement of approved financial goals tied to the cumulative growth of revenue and Adjusted EBITDA over the fiscal years 2024 to 2026. Compensation expense related to the performance equity units is recognized using a straight-line method over the vesting period based on the most probable outcome of the performance conditions. The cumulative effect on current and prior periods of a change in attainment is recognized in general and administrative expenses in the consolidated statements of operations in the period of change. As of December 29, 2024, management calculated an attainment rate equal to 0% of the number of target shares granted based on actual attainment of the internal metrics.

Activity for the Company's PSUs was as follows:

	PSUs (in thousands)	Weighted Average Grant Date Fair Value
Non-vested, December 31, 2023	—	\$ —
Granted	335	11.82
Exercised	—	
Forfeited	(44)	11.94
Vested	—	
Non-vested, December 29, 2024	291	\$ 11.81
Expected to vest-December 29, 2024*	—	\$ 11.81

*The expected to vest total above represents outstanding base PSUs, adjusted for expected attainment amounts in line with current and future estimated performance levels as described above.

As of December 29, 2024, there was no unrecognized compensation cost related to unvested PSUs based on the aforementioned attainment rate. The PSUs have a weighted average remaining period of 2.0 years.

2014 Equity Incentive Plan

Prior to the IPO, the Company had granted stock options under its 2014 Equity Incentive Plan, as amended (the "2014 Plan"). The 2014 Plan permitted 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. Prior to the IPO, the 2014 Plan gave broad powers to the Company's board of managers for its administration and interpretation, 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. Under the 2014 Plan, the number of shares and exercise price of each option were determined by the board of managers, or a committee designated by the board of managers. The awards granted were generally exercisable within a 10-year period from the date of grant.

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 10-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 upon achievement of a specified internal rate of return and a minimum multiple of invested capital. In connection with the IPO, the performance condition was waived and all such options became subject to time-based vesting only.

Following the IPO, no further options will be granted under the 2014 Plan.

Activity under the 2014 Plan was as follows:

	Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Term (Years)	Aggregate Intrinsic Value
Outstanding-December 31, 2023	5,261	\$ 4.67		
Granted	—	—		
Exercised	(1,108)	3.91		
Forfeited	(35)	4.76		
Expired	—	—		
Outstanding-December 29, 2024	4,118	\$ 4.87	3.3	\$ 16,908
Exercisable-December 29, 2024	4,010	\$ 4.86	3.2	\$ 16,535
Vested and expected to vest-December 29, 2024	4,114	\$ 4.87	3.3	\$ 16,893

As of December 29, 2024, there was \$0.6 million of total unrecognized compensation cost related to unvested options under the 2014 plan, which is expected to be recognized over a weighted average period of 1.1 years.

Equity-Based Compensation Expense

Equity-based compensation expense is calculated based on equity 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 equity-based compensation expense will be recognized at that time.

Equity-based compensation expense included in the Company's consolidated statements of operations was as follows (in thousands):

	Fiscal Years Ended		
	December 29, 2024	December 31, 2023	December 25, 2022
Labor	\$ 1,902	\$ 1,647	\$ 1,448
General and administrative expenses	9,249	13,895	14,689
Total equity-based compensation expense	\$ 11,151	\$ 15,542	\$ 16,137

The Company's Chief Operating Officer, Mr. Derrick Pratt, departed from his role, effective June 30, 2024. In accordance with the Company's Senior Executive Severance Plan, Mr. Pratt's pre-IPO nonqualified stock options and his RSUs, both of which were scheduled to vest later in 2024, vested in the second quarter of 2024. The pre-IPO Options will remain exercisable through the 10th anniversary of the original grant date of September 14, 2020. The primary modification was to extend the permitted time for which the options could be exercised subsequent to termination, from 90 days post-termination to the 10th anniversary of the original grant date. All other equity grants were forfeited. The Company recorded a \$0.2 million charge to equity-based compensation expense during the second quarter of 2024, to reflect the incremental value related to the modifications described herein.

Employee Stock Purchase Plan

During the fiscal year ended December 29, 2024, the Company issued 46,959 shares under the Employee Stock Purchase Plan ("ESPP"). The shares issued under the ESPP are net of shares withheld for taxes. As of December 29, 2024, 163,607 shares remained available for issuance under the ESPP. The expense incurred under the ESPP for the fiscal years ended December 29, 2024, December 31, 2023 and December 25, 2022, was immaterial. The expense is included within general and administrative expenses and labor in the consolidated statement of operations.

NOTE 14. INCOME TAXES

We are the sole managing member of Portillo's OpCo, and consolidate the financial results of Portillo's OpCo. Portillo's OpCo is treated as a partnership for U.S. federal and most applicable state and local income tax purposes. As a partnership, Portillo's OpCo is generally not subject to U.S. federal and certain state and local income taxes. Any taxable income or loss generated by Portillo's OpCo is passed through to and included in the taxable income or loss of its members, including us, based upon the respective member's ownership percentage in Portillo's OpCo. Beginning in Fiscal 2021, we are subject to U.S. federal income taxes, in addition to state and local income taxes with respect to our allocable share of any taxable income or loss of Portillo's OpCo subsequent to the IPO and Transactions, as well as any stand-alone income or loss generated by Portillo's Inc.

Income Tax Expense

The components of income tax expense are as follows (in thousands):

	December 29, 2024		Fiscal Years Ended December 31, 2023		December 25, 2022	
Current income taxes:						
Federal	\$	—	\$	—	\$	—
State and local		28		(1)		3
Total current income taxes		28		(1)		3
Deferred income taxes:						
Federal		3,767		3,750		(178)
State and local		3,004		(501)		1,998
Total deferred income taxes		6,771		3,249		1,820
Income tax expense	\$	6,799	\$	3,248	\$	1,823

Reconciliations of income tax expense computed at the U.S. federal statutory income tax rate to the recognized income tax expense and the U.S. statutory income tax rate to our effective tax rates are as follows (in thousands):

	December 29, 2024		Fiscal Years Ended December 31, 2023		December 25, 2022		
Expected U.S. federal income taxes at statutory rate	\$	8,794	21.0 %	\$	5,894	21.0 %	
State and local income taxes, net of federal benefit		4,602	11.0 %		(55)	(0.2)%	
Non-deductible expenses		657	1.6 %		433	1.5 %	
Non-controlling interest		(1,167)	(2.8)%		(1,343)	(4.8)%	
LLC flow-through structure		(4,004)	(9.6)%		468	1.7 %	
Change in valuation allowance		(2,050)	(4.9)%		(2,149)	(7.7)%	
Other		(33)	(0.1)%		—	—%	
Income tax expense	\$	6,799	16.2 %	\$	3,248	11.5 %	
					\$	1,823	9.6 %

Our effective income tax rates for the years ended December 29, 2024, December 31, 2023 and December 25, 2022 were 16.2%, 11.5% and 9.6%, respectively. The change in our effective income tax rate from the year ended December 29, 2024 to the year ended December 31, 2023 was primarily driven by an increase in the Company's ownership interest in Portillo's OpCo, which increases its share of taxable income (loss) of Portillo's OpCo, partially offset by the decrease in the valuation allowance. The Company's annual effective tax rate for the year ended December 29, 2024, December 31, 2023 and December 25, 2022 differs from the statutory rate of 21% primarily because the Company is not liable for income taxes on the portion of OpCo's earnings that are attributable to non-controlling interests, deferred tax adjustments, impacts from equity-based award activity and the change in valuation allowance.

Deferred Tax Assets

The components of deferred tax assets and liabilities are as follows (in thousands):

	December 29, 2024	December 31, 2023
Deferred tax assets:		
Investment in partnership	\$ 63,906	\$ 73,626
Tax Receivable Agreement	78,462	71,536
Net operating loss carryforwards	47,005	38,652
Other assets	15,186	10,087
Total gross deferred tax assets	204,559	193,901
Valuation allowance	(7,150)	(9,200)
Net deferred tax assets	\$ 197,409	\$ 184,701

As described in Note 1. Description of Business and Note 11. Stockholders' Equity, we acquired LLC Units in connection with the IPO and Transactions and Secondary Offerings. During the years ended December 29, 2024 and December 31, 2023, we recognized a deferred tax asset in the amount of \$63.9 million and \$73.6 million, respectively, associated with the basis difference in our investment in Portillo's OpCo from acquiring these LLC Units.

During the years ended December 29, 2024 and December 31, 2023, we also recognized deferred tax assets in the amount of \$78.5 million and \$71.5 million, respectively, related to additional tax basis increases generated from expected future payments under the TRA and related deductions for imputed interest on such payments.

We evaluate the realizability of our deferred tax assets on a quarterly basis and establish valuation allowances when it is more likely than not that all or a portion of a deferred tax asset may not be realized. During the years ended December 29, 2024 and December 31, 2023, the Company recognized deferred tax assets of \$63.9 million and \$73.6 million, respectively, associated with the basis difference in its investment in Portillo's OpCo from acquiring these LLC Units. However, a portion of the total basis difference will only reverse upon the eventual sale of its interest in Portillo's OpCo, which we expect would result in a capital loss which we do not expect to be able to utilize. As of December 29, 2024 and December 31, 2023, the Company recorded a valuation allowance in the amount of \$7.2 million and \$9.2 million, respectively, against the deferred tax asset.

As of December 29, 2024 and December 31, 2023, the Company had federal and state net operating loss carry forwards of \$47.0 million and \$38.7 million, respectively, available to reduce future taxable income, if any. Federal losses that arose prior to 2018 will begin to expire in 2034. Federal losses generated after 2017 will be carried forward indefinitely. The majority of state losses will begin to expire in 2034 and future periods.

Unrecognized Tax Benefits

The Company recorded no unrecognized tax benefits as of December 29, 2024 and December 31, 2023. Portillo's Inc. was formed in June 2021 and did not engage in any operations prior to the IPO and Transactions. Portillo's has filed all income tax returns for tax years through 2023. These returns are subject to examination by taxing authorities for U.S. federal and state income tax purposes. Additionally, although Portillo's OpCo is treated as a partnership for U.S. federal and state income taxes purposes, it is still required to file an annual U.S. Return of Partnership Income, which is subject to examination by the Internal Revenue Service ("IRS"). As of December 29, 2024, there are no ongoing U.S. federal, state or local income tax return examinations.

Tax Receivable Agreement

Pursuant to the Company's election under section 754 of the Internal Revenue Code (the "Code"), the Company expects to obtain an increase in its share of the tax basis in the net assets of Portillo's OpCo when LLC Units are exchanged by other members. The Company intends to treat any exchanges of LLC Units as direct purchases of LLC Units for U.S. federal income tax purposes. These increases in tax basis may reduce the amounts that would otherwise be paid in the future to the U.S. federal, state and local authorities. These increases may also decrease gains (or increase losses) on future dispositions of certain assets to the extent tax basis is allocated to those assets. Also, see Note 19. Subsequent Events for information about amendments to the Tax Receivable Agreement.

In the fourth quarter of 2024, in connection with the pre-IPO LLC Members unit redemption previously discussed in Note 1. Description of

Business, 840,992 LLC Units were redeemed for newly-issued shares of Class A common stock. As a result, an increase in the tax basis of net assets of Portillo's OpCo subject to the provisions of the TRA was recorded. The Company recorded a deferred tax asset of \$1.7 million and an additional TRA liability of \$4.3 million.

In the first quarter of 2024, in connection with the Q1 2024 Secondary Offering previously discussed in Note 1. Description Of Business, 5,832,371 LLC Units were redeemed by the pre-IPO LLC Members for newly-issued shares of Class A common stock. As a result, an increase in the tax basis of net assets of Portillo's OpCo subject to the provisions of the TRA was recorded. The Company recorded a deferred tax asset of \$17.8 million and an additional TRA liability of \$33.7 million.

In the first quarter of 2023, in connection with the secondary offering previously discussed in Note 1. Description Of Business, 5,893,600 LLC Units were redeemed by the pre-IPO LLC Members for newly-issued shares of Class A common stock, resulting in an increase in the tax basis of net assets of Portillo's OpCo subject to the provisions of the TRA. The Company recorded a deferred tax asset of \$34.9 million and an additional TRA liability of \$47.4 million.

As of December 29, 2024, we estimate that our obligation for future payments under the TRA totaled \$324.6 million. The Company made payments of \$4.4 million under the TRA during the year ended December 29, 2024 relating to tax year 2021 and we expect a payment of \$7.7 million relating to tax year 2022 to be made within the next 12 months. Refer to Note 2. Summary Of Significant Accounting Policies for additional information on the TRA.

NOTE 15. EARNINGS PER SHARE

Basic net earnings per share of Class A Common Stock is computed by dividing net income attributable to Portillo's Inc. by the weighted-average number of Class A common stock outstanding.

Diluted earnings per share is computed by dividing net income attributable to Portillo's Inc. by the weighted-average number of dilutive securities, using the treasury stock method.

The computations of basic and diluted earnings per share for the years ended December 29, 2024, December 31, 2023 and December 25, 2022 are as follows (in thousands):

	December 29, 2024	Fiscal Years Ended	
		December 31, 2023	December 25, 2022
Net income	\$ 35,076	\$ 24,818	\$ 17,157
Net income attributable to non-controlling interests	5,559	6,394	6,306
Net income attributable to Portillo's Inc.	<u>\$ 29,517</u>	<u>\$ 18,424</u>	<u>\$ 10,851</u>
Shares:			
Weighted-average number of common shares outstanding-basic	61,050	53,807	38,902
Dilutive unit awards	2,932	3,501	3,814
Weighted-average number of common shares outstanding-diluted	63,983	57,308	42,716
Basic net income per share	\$ 0.48	\$ 0.34	\$ 0.28
Diluted net income per share	\$ 0.46	\$ 0.32	\$ 0.25

Shares of the Company's Class B Common Stock do not participate in the earnings or losses of Portillo's Inc. and are therefore not participating securities. As such, separate presentation of basic and diluted earnings per share of Class B Common Stock under the two-class method has not been presented.

The following outstanding shares were excluded from the calculation of diluted earnings per share because they would be antidilutive (in thousands):

	Fiscal Years Ended		
	December 29, 2024	December 31, 2023	December 25, 2022
Performance Stock Options ⁽¹⁾	1,377	1,812	1,807
Performance Stock Units ⁽¹⁾	291	—	—
Restricted Stock Units	137	5	—
Stock Options	315	—	—
Total shares excluded from diluted earnings per share	<u>2,120</u>	<u>1,817</u>	<u>1,807</u>

⁽¹⁾ Number of securities outstanding excluded from the computation of diluted earnings per share of Class A common stock because the performance conditions associated with these awards were not met assuming the end of the reporting period was the end of the performance period.

NOTE 16. 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.

As of December 29, 2024 and December 31, 2023, the Company recorded no loss contingencies.

NOTE 17. SEGMENT INFORMATION

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.

The CODM allocates resources and assesses performance of the Company based on net income (loss), as reported on the Consolidated Statement of Operations, which as the segment measure of profit and loss that is closest to GAAP, is the required segment measure. Net income was \$35.1 million, \$24.8 million, and \$17.2 million for the fiscal years ended December 29, 2024, December 31, 2023, and December 25, 2022, respectively. In addition to net income (loss), the CODM also reviews operating income (loss), restaurant-level adjusted EBITDA and adjusted EBITDA.

The CODM reviews these measures (i) to evaluate the Company's operating results and the effectiveness of business strategies, (ii) internally as benchmarks to compare the Company's performance to its competitors and (iii) as factors in evaluating management's performance when determining incentive compensation. Additionally, the Company believes these measures are important to evaluate the performance and profitability of our restaurants, individually and in the aggregate.

The CODM does not review segment assets and segment expenses at a level different than what is reported in the Company's Consolidated Balance Sheet and Consolidated Statement of Operations. Additionally, the CODM regularly receives information about the Company's capital expenditures which are reported in the Company's Consolidated Statement of Cash Flows as Purchase of property and equipment under investing activities.

No guest accounts for 10% or more of our revenues.

NOTE 18. RELATED PARTY TRANSACTIONS

As of both December 29, 2024 and December 31, 2023, the related parties' receivables balance consisted of \$0.3 million, due from C&O, which is included in accounts and tenant improvement receivables in the consolidated balance sheet.

Olo, Inc.

Noah Glass, a member of the Company's Board, is the founder and CEO of Olo, Inc. ("Olo"), a platform the Company uses in connection with our mobile ordering application and delivery.

The Company incurred the following Olo-related costs for the fiscal years ended December 29, 2024, December 31, 2023, and December 25, 2022 (in thousands):

	Fiscal Years Ended		
	December 29, 2024	December 31, 2023	December 25, 2022
Food, beverage and packaging costs	\$ 1,996	\$ 2,236	\$ 2,008
Other operating expenses	477	423	443
Total Olo-related costs	\$ 2,473	\$ 2,659	\$ 2,451

As of both December 29, 2024 and December 31, 2023, \$0.4 million were payable to Olo and were included in accounts payable in the consolidated balance sheets.

Tax Receivable Agreement

We are party to a TRA with certain members of Portillo's OpCo that provides for the payment by us of 85% of the amount of tax benefits, if any, that Portillo's Inc. actually realizes or in some cases is deemed to realize as a result of certain transactions. For the fiscal year ended December 29, 2024 and fiscal year ended December 31, 2023, the Company made TRA payments of \$4.4 million relating to tax year 2022 and \$0.8 million relating to tax year 2021. We expect a payment of \$7.7 million relating to tax year 2023 to be paid within the next 12 months.

(in thousands)	Fiscal Years Ended	
	December 29, 2024	December 31, 2023
Current portion of Tax Receivable Agreement liability	\$ 7,686	\$ 4,428
Tax Receivable Agreement liability	316,893	295,390

Berkshire Partners LLC

In connection with the secondary offering previously discussed in Note 1. Description Of Business, we purchased LLC Units and shares of Class A common stock using the proceeds of the secondary offering at a price equal to the public offering price less the underwriting discounts and commissions from certain pre-IPO LLC Members and shareholders of the Blocker Companies, including from funds affiliated with Berkshire Partners LLC, which is our controlling shareholder that beneficially owns approximately 18.8% of the Company as of December 29, 2024.

NOTE 19. SUBSEQUENT EVENTS

Management evaluated events occurring subsequent to December 29, 2024 and other than as noted below determined that no material recognizable subsequent events occurred.

2025 Credit Agreement Closing

On January 27, 2025 (the "2025 Credit Agreement Closing Date"), Holdings, the Borrower, the other Guarantors party thereto, the Lenders from time to time party thereto and Fifth Third Bank, National Association, as Administrative Agent, the L/C Issuer and the Swing Line Lender entered into an amendment (the "Amendment") to the 2023 Credit Agreement (as amended by the Amendment and as may be amended, restated, supplemented or otherwise modified from time to time thereafter, the "2025 Credit Agreement"). Capitalized terms used but not defined in this Note 19 have the meaning ascribed to such terms in the Amendment or the 2025 Credit Agreement, as applicable.

The Amendment provides for, among other things, (i) a \$250 million term loan A facility (the "2025 Term Loan Facility") and (ii) revolving credit commitments in an initial aggregate principal amount of \$150 million (the "2025 Revolving Credit Facility" and, together with the Term Loan Facility, the "2025 Facilities"), the proceeds of which will be used to refinance indebtedness under the 2023 Credit Agreement, for general

corporate purposes and working capital needs and for other activities permitted under the 2025 Credit Agreement.

The loans under each of the 2025 Facilities mature on January 27, 2030. The 2025 Facilities are guaranteed, subject to customary exceptions, by all of the Borrower's wholly-owned domestic restricted subsidiaries and Holdings, and are secured by a lien on substantially all of the Borrower's assets, including fixed assets and intangibles, and the assets of the Guarantors, in each case, subject to customary exceptions. The Borrower may, upon notice to the Administrative Agent by the Borrower, at any time or from time to time voluntarily prepay the 2025 Term Loan Facility or the 2025 Revolver Facility in whole or in part without premium or penalty.

The 2025 Term Loan Facility is subject to amortization of principal, payable in quarterly installments on the last day of each fiscal quarter, commencing on the last day of the first full fiscal quarter after the Closing Date (the "Initial Amortization Date"), equal to (i) for the first two years following the 2025 Credit Agreement Closing Date, \$6.3 million of the original principal amount of the term loans, (ii) for the third and fourth years following the 2025 Credit Agreement Closing Date, \$12.5 million of the original principal amount of the term loans and (iii) for the fifth year following the 2025 Credit Agreement Closing Date, \$25.0 million of the original principal amount of the term loans. The remaining initial aggregate advances under the Term Loan Facility are payable at the maturity of the 2025 Term Loan Facility.

Each Facility bears interest at a rate per annum equal to, (i) in the case of Base Rate Loans, an applicable rate based on a grid ranging from 1.00% to 1.75% or, (ii) in the case of Tranche Rate Loans, an applicable rate based on a grid ranging from 2.00% to 2.75%, in each case, based on the Consolidated Total Net Rent Adjusted Leverage. In addition, the Borrower will pay (i) an unused commitment fee of between 0.20% and 0.25% on the undrawn commitments under the 2025 Revolving Credit Facility and (ii) Letter of Credit fees of between 2.00% and 2.75% on outstanding Letters of Credit, in each case, also based on the Consolidated Total Net Rent Adjusted Leverage.

The 2025 Credit Agreement contains customary representations and warranties, events of default, reporting and other affirmative covenants and negative covenants, including limitations on indebtedness, liens, investments, negative pledges, dividends, junior financings and other fundamental changes. Failure to comply with these covenants and restrictions could result in an event of default under the 2025 Credit Agreement. In such an event, all amounts outstanding under the 2025 Credit Agreement, together with any accrued interest, could then be declared immediately due and payable.

2025 Tax Receivable Agreement Amendment

On January 24, 2025, we entered into an Amendment to the Tax Receivable Agreement (the "Amendment") with PHD Group Holdings, LLC and the TRA Party Representative, as defined in the agreement. The Amendment replaces the LIBOR based interest rate with a Term Secured Overnight Financing Rate ("SOFR") based rate.

New Director

On January 9, 2025, the Board elected Jack Hartung to serve on the Company's board of directors, (the "Board"), effective immediately. In connection with his appointment, Mr. Hartung was appointed to serve on the Audit Committee of the Board.

Schedule II: Valuation and Qualifying Accounts

Deferred tax asset valuation allowance (in thousands):	Balance at beginning of period	Additions		Reductions	Balance at end of period
		Charged to costs and expenses	Charged to other accounts		
Fiscal year ended December 29, 2024	\$ 9,200	\$ 1,190	\$ —	\$ 3,240	\$ 7,150
Fiscal year ended December 31, 2023	\$ 11,349	\$ 1,239	\$ —	\$ 3,388	\$ 9,200
Fiscal year ended December 25, 2022	\$ 38,415	\$ 2,277	\$ —	\$ 29,343	\$ 11,349

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURES

None.

ITEM 9A. CONTROLS AND PROCEDURES

EVALUATION OF DISCLOSURE CONTROLS AND PROCEDURES

Under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of such date. Our disclosure controls and procedures are designed to ensure that information required to be disclosed in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, to allow for timely decisions regarding required disclosure.

CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING

There were no changes to our internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) that occurred during the quarter ended December 29, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

MANAGEMENT'S ANNUAL REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

The management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f).

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, management conducted an assessment of the effectiveness of the Company's internal control over financial reporting as of December 29, 2024 based on the framework established in Internal Control—Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this assessment, management has determined that the Company's internal control over financial reporting was effective as of December 29, 2024.

Our independent registered public accounting firm, Deloitte & Touche LLP, has issued an attestation report on the effectiveness of our internal control over financial reporting as of December 29, 2024, as stated in their report herein.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the stockholders and the Board of Directors of Portillo's Inc.

Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of Portillo's Inc. and subsidiaries (the "Company") as of December 29, 2024, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 29, 2024, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 29, 2024, of the Company and our report dated February 25, 2025, expressed an unqualified opinion on those financial statements.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the 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 effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Deloitte & Touche LLP

Chicago, Illinois
February 25, 2025

ITEM 9B. OTHER INFORMATION

During the quarter ended December 29, 2024, no director or officer of the Company adopted, modified or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408(a) of Regulation S-K.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

See the information in the Company's 2025 Proxy Statement set forth under the captions "Corporate Governance - 'Board and Committee Structure,' 'Key Areas of Board Oversight – Risk Oversight,' 'Corporate Governance,' and 'Shareholder Engagement and Communication with the Board'," "Compensation Discussion & Analysis – Executive Officers," and "Other Matters -- Delinquent Section 16(a) Reports," if applicable, which information is incorporated herein by reference.

The Company has adopted insider trading policy policies and procedures that govern the purchase, sale, and/or other dispositions of our securities (and related derivative securities) by directors, officers and employees and other covered persons, which we believe are reasonably designed to promote compliance with insider trading laws, rules and regulations and listing standards applicable to the Company. A copy of the Company's policies are filed as Exhibit 19.1 to this Annual Report on Form 10-K.

See the information about our code of business conduct and the disclosure of any amendments to or waivers from such code see Part I, Item 1, "Business" of this document, which information is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION

See the information in the 2025 Proxy Statement set forth under the captions "Compensation Discussion & Analysis", including the subsection "Compensation Committee Report" and "Corporate Governance – Compensation Interlocks and Insider Participation," which information is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

See the information in the 2025 Proxy Statement set forth under the caption "Other Matters," including the subsections "Securities Ownership of Certain Beneficial Owners and Management" and "Equity Compensation Plans Table," which information is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

See the information in the 2025 Proxy Statement set forth under the caption "Certain Relationships and Related Party Transactions" and "Board Composition – Director Independence", which information is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information about aggregate fees billed to us by our principal accountant, Deloitte & Touche will be presented in the 2025 Proxy Statement set forth under the caption "Fees Paid to Independent Registered Public Accounting Firm" which information is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this report:

(1) Financial Statements

	Page
<u>Report of Independent Registered Public Accounting Firm (PCAOB ID No. 34)</u>	<u>37</u>
<u>Consolidated Balance Sheets</u>	<u>39</u>
<u>Consolidated Statements of Operations</u>	<u>40</u>
<u>Consolidated Statements of Stockholders' Equity</u>	<u>41</u>
<u>Consolidated Statements of Cash Flows</u>	<u>43</u>
<u>Notes to Consolidated Financial Statements</u>	<u>45</u>

(2) Financial Statement Schedules

	Page
<u>Schedule II: Valuation and Qualifying Accounts</u>	<u>72</u>

All other financial statement schedules are omitted since they are not required or are not applicable, or the required information is included in the Consolidated Financial Statements or notes thereto.

(3) Exhibits

The exhibits listed on the accompanying Exhibit Index are filed or incorporated by reference as part of this report and such Exhibit Index is incorporated herein by reference.

ITEM 16. FORM 10-K SUMMARY

None.

Exhibit Index

Exhibit Number	Description	Filed Herewith
<u>3.1</u>	<u>Amended and Restated Certificate of Incorporation of Portillo's Inc. (incorporated by reference to the Company's Form 10-Q filed on November 18, 2021).</u>	
<u>3.2</u>	<u>Amended and Restated Bylaws of Portillo's Inc. (incorporated by reference to the Company's Form 10-Q filed on November 18, 2021).</u>	
<u>4.1</u>	<u>Description of Capital Stock (incorporated by reference to the Company's Form 10-K filed on March 10, 2022).</u>	
<u>10.1</u>	<u>† Employment Agreement between PHD Group Holdings LLC and Susan Shelton, entered into as of August 1, 2014 (incorporated by reference to the Company's Form 10-Q filed on May 7, 2024).</u>	
<u>10.2</u>	<u>† Derrick Pratt Separation Agreement and Release (incorporated by reference to the Company's Form 10-Q filed on August 6, 2024).</u>	
<u>10.5</u>	<u>† Form of 2024 Performance Stock Unit Award Agreement under Portillo's Inc. 2021 Equity Incentive Plan (incorporated by reference to the Company's Form 10-Q filed on May 7, 2024).</u>	
<u>10.6</u>	<u>† Form of 2024 Stock Option Award Agreement under Portillo's Inc. 2021 Equity Incentive Plan (incorporated by reference to the Company's Form 10-Q filed on May 7, 2024).</u>	
<u>10.7</u>	<u>† Senior Executive Severance Plan (incorporated by reference to the Company's Form 10-Q filed on May 7, 2024).</u>	
<u>10.8</u>	<u>† Portillo's Inc. 2021 Equity Incentive Plan (incorporated by reference to the Company's Form 10-Q filed on November 18, 2021).</u>	
<u>10.9</u>	<u>Registration Rights Agreement, dated as of October 21, 2021, by and among Portillo's Inc. and the other parties hereto (incorporated by reference to the Company's Form 10-K filed on March 10, 2022).</u>	
<u>10.10</u>	<u>† Form of Restricted Stock Unit Award Agreement under Portillo's Inc. 2021 Equity Incentive Plan (incorporated by reference to the Company's Form 10-Q filed on November 18, 2021).</u>	
<u>10.11</u>	<u>† Form of Option Award Agreement under Portillo's Inc. 2021 Equity Incentive Plan (incorporated by reference to the Company's Form 10-Q filed on November 18, 2021).</u>	
<u>10.12</u>	<u>Form of 2021 Executive Officer and Director Indemnification Agreement for Portillo's Inc. (incorporated by reference to the Company's Registration Statement on Form S-1 filed on October 6, 2021).</u>	
<u>10.13</u>	<u>† Employment Agreement between PHD Group Holdings LLC and Michael Osanloo, entered into as of August 3, 2018 (incorporated by reference to the Company's Registration Statement on Form S-1 filed on September 27, 2021).</u>	
<u>10.14</u>	<u>† Employment Agreement between PHD Group Holdings LLC and Sherri Abruscato, entered into as of August 1, 2014 (incorporated by reference to the Company's Registration Statement on Form S-1 filed on September 27, 2021).</u>	
<u>10.15</u>	<u>† Letter Agreement between PHD Group Holdings LLC and Michelle Hook entered into as of November 14, 2020 (incorporated by reference to the Company's Registration Statement on Form S-1 filed on September 27, 2021).</u>	
<u>10.16</u>	<u>† Letter Agreement between PHD Group Holdings LLC and Jill Waite entered into as of May 22, 2019 (incorporated by reference to the Company's Registration Statement on Form S-1 filed on September 27, 2021).</u>	
<u>10.17</u>	<u>Tax Receivable Agreement among Portillo's Inc. and the Parties named therein (incorporated by reference to the Company's Form 10-Q filed on November 18, 2021).</u>	
<u>10.18</u>	<u>Second Amended and Restated LLC Agreement of PHD Group Holdings LLC (incorporated by reference to the Company's Form 10-Q filed on November 18, 2021).</u>	
<u>10.19</u>	<u>† Portillo's Inc. Employee Stock Purchase Plan (incorporated by reference to the Company's Form 10-Q filed on August 4, 2022).</u>	
<u>10.20</u>	<u>Form of Stock and Unit Purchase Agreement by and among Portillo's Inc. and the parties named therein (incorporated by reference to the Company's Registration Statement on S-1 filed on August 8, 2022)</u>	
<u>10.21</u>	<u>† Form of Restricted Stock Award Agreement under Portillo's Inc. 2021 Equity Incentive Plan (incorporated by reference to the Company's Form 10-K filed on March 2, 2023).</u>	

Table of Contents

	<u>Credit Agreement, dated as of February 2, 2023, by and among PHD Intermediate LLC, Portillo's Holdings, LLC, the Subsidiaries of the Borrower Party, Fifth Third Bank, National Association as Administrative Agent, L/C Issuer and Swing Line Lender and the other lenders party thereto (incorporated by reference to the Company's Current Report on Form 8-K filed on February 6, 2023).</u>	
10.22		
	<u>Credit Agreement Amendment, dated as of January 27, 2025 (certain schedules omitted as permitted by Item 601(b)(2) of Regulation S-K and will be supplementally provided to the SEC upon request).</u>	*
10.23		
10.24	<u>Amendment to Tax Receivable Agreement, dated as of January 24, 2025.</u>	*
19.1	<u>Portillo's Inc. Insider Trading Compliance Policy (incorporated by reference to the Company's Form 10-K filed on February 27, 2024).</u>	
21	<u>Subsidiaries of Portillo's Inc.</u>	*
23.1	<u>Consent of Independent Registered Public Accounting Firm</u>	*
31.1	<u>Certification of the Principal Executive Officer pursuant to Securities Exchange Act Rules 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>	*
31.2	<u>Certification of the Principal Financial Officer pursuant to Securities Exchange Act Rules 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>	*
32.1	<u>Certifications of the Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u>	#
97	† <u>Portillo's Inc. Incentive-Based Compensation Recovery Policy (incorporated by reference to the Company's Form 10-K filed on February 27, 2024).</u>	
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document	*
101.SCH	XBRL Taxonomy Extension Schema Document	*
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document	*
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document	*
101.LAB	XBRL Taxonomy Extension Label Linkbase Document	*
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	*
104	Cover page Interactive Data File - the cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document	*

* Filed Herewith
Furnished Herewith
† Indicates a management contract or compensatory plan or agreement

SIGNATURES

Pursuant to the requirements of Section 13 or 15 (d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: February 25, 2025

Portillo's Inc.
 (Registrant)
 By: /s/ Michelle Hook
 Michelle Hook
 Chief Financial Officer and Treasurer
 (Principal Financial Officer and Principal Accounting Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Michael Osanloo</u> Michael Osanloo	President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	February 25, 2025
<u>/s/ Michelle Hook</u> Michelle Hook	Chief Financial Officer and Treasurer <i>(Principal Financial Officer and Principal Accounting Officer)</i>	February 25, 2025
<u>/s/ Michael A. Miles, Jr.</u> Michael A. Miles, Jr.	Chairman of the Board of Directors	February 25, 2025
<u>/s/ Ann Bordelon</u> Ann Bordelon	Director	February 25, 2025
<u>/s/ Paulette R. Dodson</u> Paulette R. Dodson	Director	February 25, 2025
<u>/s/ Noah Glass</u> Noah Glass	Director	February 25, 2025
<u>/s/ Gerard J. Hart</u> Gerard J. Hart	Director	February 25, 2025
<u>/s/ Jack R. Hartung</u> Jack R. Hartung	Director	February 25, 2025
<u>/s/ Joshua A. Lutzker</u> Joshua A. Lutzker	Director	February 25, 2025

FIRST AMENDMENT TO CREDIT AGREEMENT

THIS FIRST AMENDMENT TO CREDIT AGREEMENT (this "**Agreement**") is entered into as of January 27, 2025 (the "**First Amendment Effective Date**") by and among PORTILLO'S HOLDINGS, LLC, a Delaware limited liability company (the "**Borrower**"), PHD INTERMEDIATE LLC, a Delaware limited liability company ("**Holdings**"), the other Guarantors party hereto, the Lenders party hereto, Fifth Third Bank, National Association, as the administrative agent (in such capacity, the "**Administrative Agent**"), the L/C Issuer, and the Swing Line Lender. All capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Existing Credit Agreement (as defined below) or the Amended Credit Agreement (as defined below), as applicable.

WITNESSETH:

WHEREAS, the Borrower, Holdings, the other Loan Parties, the Lenders from time to time party thereto, and Fifth Third Bank, National Association, as the Administrative Agent, the L/C Issuer, and the Swing Line Lender are parties to that certain Credit Agreement dated as of February 2, 2023 (as amended, restated, supplemented or otherwise modified from time to time, the "**Existing Credit Agreement**");

WHEREAS, the Loan Parties have requested that the Administrative Agent and the Lenders amend certain provisions of the Existing Credit Agreement; and

WHEREAS, such Lenders have agreed to amend the Existing Credit Agreement as set forth below and on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

1. **Amendments to Existing Credit Agreement.** Subject to the terms and conditions herein, (a) the Existing Credit Agreement (other than the schedules and exhibits thereto) is amended in its entirety to read in the form of such Credit Agreement attached hereto as **Annex A** (the Existing Credit Agreement, as so amended, the "**Amended Credit Agreement**"), (b) Schedule II, 1.01A, 7.01(b), 7.03(b), 7.08 and 7.09 of the Existing Credit Agreement is each hereby amended and restated in its entirety to read in the form attached hereto as such corresponding schedule and (c) Schedule 6.18 of the Existing Credit Agreement is hereby deleted in its entirety and each such reference to Schedule 6.18 is amended to read as "[Reserved]". Except as set forth in the immediately preceding sentence, the schedules and exhibits to the Existing Credit Agreement are not modified or otherwise affected hereby.

2. **Reallocation.** Each Lender party hereto hereby agrees that, subject to the terms and conditions set forth in this Agreement and in the Amended Credit Agreement, upon giving effect to this Agreement, (a) its Revolving Credit Commitment (if any) is set forth opposite its name on **Schedule 1.01A** attached hereto under the caption "Revolving Credit Commitment", and (b) its Term A Commitment (as defined in the Amended Credit Agreement) (if any) is set forth opposite its name on **Schedule 1.01A** attached hereto under the caption "Term A Commitment". On the First Amendment Effective Date, upon giving effect to this Agreement, (i) the Borrower, each Revolving Credit Lender (as defined in the Amended Credit Agreement) and the Administrative Agent shall, subject to the terms and conditions of this Agreement and the Amended Credit Agreement, effect such assignments, prepayments, borrowings and reallocations as are necessary to effectuate the modifications contemplated in this Agreement, in each case such that, after giving effect thereto, each Revolving Credit Lender will hold its respective Pro Rata Share of the aggregate Revolving Credit Commitments and the Outstanding Amount of all Revolving Credit Loans (it being understood that some or all of the Revolving Credit Loans outstanding under the Existing Credit Agreement immediately prior to the effectiveness of this Agreement may remain outstanding under the Amended Credit Agreement upon the effectiveness of this Agreement) and (ii) each Term Lender will hold its respective Pro Rata Share of the aggregate Term A Commitments and the Outstanding Amount of all Term A Loans (it being understood that some or all of the Term A Loans outstanding under the Existing Credit Agreement immediately prior to the effectiveness of this Agreement may remain outstanding under the Amended Credit Agreement upon the effectiveness of this Agreement).

3. **Conditions.** This Agreement shall be effective on the date hereof upon the satisfaction of the following conditions:

(a) The Administrative Agent shall have received counterparts of this Agreement, which collectively shall have been duly executed on behalf of the Borrower, the other Loan Parties, the Administrative Agent, the Lenders, the L/C Issuer, and the Swing Line Lender.

(b) The Administrative Agent shall have received 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 First Amendment Effective Date.

(c) The Administrative Agent shall have received 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.

(d) The Administrative Agent shall have received a certificate from a Responsible Officer of the Borrower certifying as to the representations set forth in [Section 4\(b\)](#).

(e) The Administrative Agent shall have received a solvency certificate from the chief financial officer, chief accounting officer or other officer with duties of the Borrower (after giving effect to this Agreement) substantially in the form Solvency Certificate delivered on the Closing Date.

(f) The Administrative Agent shall have received an opinion from Weil, Gotshal & Manges LLP, counsel to the Loan Parties, in customary form.

(g) The Administrative Agent shall have received a duly executed Committed Loan Notice with respect to the Credit Extension to occur on the First Amendment Effective Date (if any).

(h) The Administrative Agent shall have received, at least two (2) days prior to the First Amendment Effective Date, (i) 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 First Amendment Effective Date and (ii) if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification for the Borrower, in each case, that has been requested by the Administrative Agent or any Lender in writing at least ten (10) Business Days prior to the First Amendment Effective Date.

(i) The Borrower shall have repaid a portion of the Term A Loans outstanding under the Existing Credit Agreement immediately prior to the First Amendment Effective Date (which such repayment may be made using Revolving Credit Loans on the First Amendment Effective Date) in an amount equal to the difference between the aggregate principal amount of the Term A Loans outstanding immediately prior to the First Amendment Effective Date and the aggregate principal amount of the Term A Commitments on the First Amendment Effective Date.

(j) The Borrower shall have paid all accrued interest and fees outstanding under the Existing Credit Agreement immediately prior to the First Amendment Effective Date (which such accrued interest and fees may be paid using Revolving Credit Loans on the First Amendment Effective Date).

(k) The Borrower shall have paid to the Administrative Agent all fees and expenses due from the Borrower (including the reasonable out-of-pocket fees and expenses of counsel for the Administrative Agent), or arrangements reasonably acceptable to the Administrative Agent shall have been made for the payment thereof substantially contemporaneously with the consummation of this Agreement.

Without limiting the generality of the provisions of Section 9.03 of the Existing Credit Agreement, for purposes of determining compliance with the conditions specified in this [Section 3](#), each of the Lenders, the L/C Issuer, and the Swing Line 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 such Person unless the Administrative Agent shall have received notice from such Lender prior to the proposed First Amendment Effective Date specifying its objection thereto

4. **Representations and Warranties of Loan Parties.** Each Loan Party hereby represents and warrants to the Administrative Agent and each Lender, as of the date hereof:

(a) the execution, delivery and performance by each Loan Party of this Agreement have been duly authorized by all necessary action and this Agreement and the Amended Credit Agreement is a legal, valid and binding obligation of such Loan Party enforceable against such Loan Party in accordance with their respective terms, except as enforceability may be limited by Debtor Relief Laws and by general principles of equity principles of good faith and fair dealing; and

(b) upon the effectiveness of this Agreement, (i) all of the representations and warranties contained in the Amended Credit Agreement and in the other Loan Documents are true and correct in all material respects on and as of the date hereof as if made on the date hereof, except to the extent that any such representation or warranty expressly relates to an earlier date, in which event such representations and warranties shall have been true and correct in all material respects as of such earlier date; *provided, however*, that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language are be true and correct (after giving effect to any qualification therein) in all respects on such respective dates, and (ii) no Default exists or would result from any Credit Extension on the date hereof or from the application of the proceeds therefrom.

5. **No Modification.** Except as expressly set forth herein, nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Loan Documents or constitute a course of conduct or dealing among the parties. Except as expressly stated herein, the Administrative Agent and Lenders reserve all rights, privileges and remedies under the Loan Documents. Except as amended or consented to hereby, the Loan Documents remain unmodified and in full force and effect. All references in the Loan Documents to the "Credit Agreement" shall be deemed to be references to the Amended Credit Agreement. This Agreement shall constitute a Loan Document.

6. **Counterparts; Electronic Signatures.** 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. The Administrative Agent may also require that any 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 this Agreement or signature delivered by telecopier, .pdf or other electronic imaging means. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this consent letter are be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which are of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof 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 U.S. state laws based on the Uniform Electronic Transactions Act or any similar non-U.S. laws governing electronic signatures that are applicable to any non-U.S. party.

7. **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided* that none of the Loan Parties may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of each Lender (except as permitted by Section 7.04 of the Amended Credit Agreement).

8. **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

9. **Submission to Jurisdiction; Waiver of Venue; Waiver of Jury Trial.** The terms of Sections 10.15(b) and 10.16 of the Amended Credit Agreement with respect to submission to jurisdiction, waiver of venue and waiver of jury trial are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

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 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. Captions. The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

12. Reaffirmation. Each of the Loan Parties, as debtor, grantor, pledgor, guarantor, assignor, or in other any other similar capacity in which such Person grants liens or security interests in its property or otherwise acts as accommodation party or guarantor, as the case may be, hereby (a) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under each of the Loan Documents to which it is a party (after giving effect hereto) and (b) to the extent such Person granted liens on or security interests in any of its property pursuant to any such Loan Document as security for or otherwise guaranteed the Obligations under or with respect to the Loan Documents, ratifies and reaffirms such guarantee and grant of security interests and liens and confirms and agrees that such security interests and liens hereafter secure all of the Obligations as amended hereby. Each of the Loan Parties consents to this Agreement and acknowledges that each of the Loan Documents remains in full force and effect and is hereby ratified and reaffirmed. Except as expressly provided herein, the execution of this Agreement shall not operate as a waiver of any right, power or remedy of the Administrative Agent or Lenders, constitute a waiver of any provision of any of the Loan Documents or serve to effect a novation of the Obligations.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement as of the date set forth above.

BORROWER: PORTILLO'S HOLDINGS, LLC,
a Delaware limited liability company

By: /s/ Michelle Hook
Name: Michelle Hook
Title: Chief Financial Officer

HOLDINGS: PHD INTERMEDIATE LLC,
a Delaware limited liability company

By: /s/ Michelle Hook
Name: Michelle Hook
Title: Chief Financial Officer

GUARANTORS: PHD CARD SERVICES, LLC,
a Florida limited liability company

By: /s/ Christine DeCicco
Name: Christine DeCicco
Title: Chief Financial Officer

PORTILLO'S HOT DOGS, LLC,
a Delaware limited liability company

By: /s/ Michelle Hook
Name: Michelle Hook
Title: Chief Financial Officer

ADMINISTRATIVE AGENT AND LENDERS: FIFTH THIRD BANK, NATIONAL ASSOCIATION, as the Administrative Agent, the L/C Issuer, the Swing Line Lender and a Lender

By: /s/ Jeff P. Poe
Name: Jeff P. Poe
Title: Managing Director

PORILLO'S HOLDINGS, LLC
FIRST AMENDMENT TO CREDIT AGREEMENT

BANK OF AMERICA, N.A., as a Lender

By: /s/ Anthony Luppino
Name: Anthony Luppino
Title: Senior Vice President

PORTILLO'S HOLDINGS, LLC
FIRST AMENDMENT TO CREDIT AGREEMENT

MUFG BANK, LTD., as a Lender

By: /s/ Matt Kochan
Name: Matt Kochan
Title: Managing Director

PORTELLO'S HOLDINGS, LLC
FIRST AMENDMENT TO CREDIT AGREEMENT

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as a Lender

By: /s/ Todd Alcantara
Name: Todd Alcantara
Title: Managing Director

PORTELLO'S HOLDINGS, LLC
FIRST AMENDMENT TO CREDIT AGREEMENT

FLAGSTAR BANK, N.A., as a Lender

By: /s/ Jason Swift
Name: Jason Swift
Title: Vice President

PORTELLO'S HOLDINGS, LLC
FIRST AMENDMENT TO CREDIT AGREEMENT

CADENCE BANK, as a Lender

By: /s/ Vance Waldron
Name: Vance Waldron
Title: Senior Vice President

PORTILLO'S HOLDINGS, LLC
FIRST AMENDMENT TO CREDIT AGREEMENT

FIRST MERCHANTS BANK, as a Lender

By: /s/ Brian Shanahan
Name: Brian Shanahan
Title: Vice President

PORTELLO'S HOLDINGS, LLC
FIRST AMENDMENT TO CREDIT AGREEMENT

FIRST HORIZON BANK, as a Lender

By: /s/ Robert J. Klinko

Name: Robert J. Klinko

Title: It's Authorized Signatory

PORTELLO'S HOLDINGS, LLC
FIRST AMENDMENT TO CREDIT AGREEMENT

CROSSFIRST BANK, as a Lender

By: /s/ Bobby R. Oliver, Jr.
Name: Bobby R. Oliver, Jr.
Title: Executive Director

PORTELLO'S HOLDINGS, LLC
FIRST AMENDMENT TO CREDIT AGREEMENT

SMBC MANUBANK, as a Lender

By: /s/ Luis Gomez
Name: Luis Gomez
Title: Vice President

PORTELLO'S HOLDINGS, LLC
FIRST AMENDMENT TO CREDIT AGREEMENT

ANNEX A TO FIRST AMENDMENT

DEAL CUSIP: 73641VAJ2
REVOLVER CUSIP: 73641VAK9
TERM LOAN CUSIP: 73641VAL7

CREDIT AGREEMENT

Dated as of February 2, 2023
(as amended by that certain First Amendment)

among

PHD INTERMEDIATE LLC,
as Holdings,

PORTILLO'S HOLDINGS, LLC,
as the Borrower,

THE SUBSIDIARIES OF THE BORROWER PARTY HERETO FROM TIME TO TIME,
as Subsidiary Guarantors,

FIFTH THIRD BANK, NATIONAL ASSOCIATION,
as Administrative Agent, L/C Issuer and Swing Line Lender,

FLAGSTAR BANK, N.A.,
as Documentation Agent,

and

THE OTHER LENDERS PARTY HERETO FROM TIME TO TIME

FIFTH THIRD BANK, NATIONAL ASSOCIATION,
BOFA SECURITIES, INC.,
MUFG BANK, LTD.

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Joint Lead Arrangers and Joint Bookrunners

TABLE OF CONTENTS

ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS	1
Section 1.01 Defined Terms	1
Section 1.02 Other Interpretive Provisions	52
Section 1.03 Accounting Terms	53
Section 1.04 Rounding	54
Section 1.05 References to Agreements, Laws, Etc	54
Section 1.06 Times of Day	54
Section 1.07 Timing of Payment of Performance	54
Section 1.08 Letter of Credit Amount	54
Section 1.09 Pro Forma Calculations	54
Section 1.10 Currency Generally	57
ARTICLE II. THE COMMITMENTS AND CREDIT EXTENSIONS	57
Section 2.01 The Loans	57
Section 2.02 Borrowings, Conversions and Continuations of Loans	58
Section 2.03 Letters of Credit	60
Section 2.04 Swing Line Loans	71
Section 2.05 Prepayments	74
Section 2.06 Termination or Reduction of Commitments	76
Section 2.07 Repayment of Loans	77
Section 2.08 Interest	79
Section 2.09 Fees	79
Section 2.10 Computation of Interest and Fees	80
Section 2.11 Evidence of Indebtedness	80
Section 2.12 Payments Generally	81
Section 2.13 Sharing of Payments	82
Section 2.14 Incremental Credit Extensions	83
Section 2.15 [Reserved]	87
Section 2.16 Extension of Term Loans; Extension of Revolving Credit Loans	87
Section 2.17 Defaulting Lenders	90
ARTICLE III. TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY	92
Section 3.01 Taxes	92
Section 3.02 Illegality	95
Section 3.03 Unavailability of Deposits or Inability to Ascertain, or Inadequacy of, SOFR or Successor Rates	96
Section 3.04 Increased Cost and Reduced Return; Capital Adequacy	98
Section 3.05 Funding Losses	98
Section 3.06 Matters Applicable to All Requests for Compensation	99
Section 3.07 Replacement of Lenders under Certain Circumstances	100
Section 3.08 Survival	102

ARTICLE IV. CONDITIONS PRECEDENT TO CREDIT EXTENSIONS	102
Section 4.01 Conditions to Initial Credit Extension	102
Section 4.02 Conditions to All Credit Extensions	103
ARTICLE V. REPRESENTATIONS AND WARRANTIES	104
Section 5.01 Existence, Qualification and Power; Compliance with Laws	104
Section 5.02 Authorization; No Contravention	104
Section 5.03 Governmental Authorization; Other Consents	104
Section 5.04 Binding Effect	105
Section 5.05 Financial Statements; No Material Adverse Effect	105
Section 5.06 Litigation	105
Section 5.07 Ownership of Property, Liens	106
Section 5.08 Environmental Matters	106
Section 5.09 Taxes	106
Section 5.10 ERISA Compliance	106
Section 5.11 Subsidiaries; Equity Interests	107
Section 5.12 Margin Regulations; Investment Company Act	107
Section 5.13 Disclosure	107
Section 5.14 Labor Matters	107
Section 5.15 Intellectual Property; Licenses, Etc	108
Section 5.16 Solvency	108
Section 5.17 Subordination of Junior Financing	108
Section 5.18 USA Patriot Act, Anti-Corruption Laws and Sanctions	108
Section 5.19 Security Documents	109
ARTICLE VI. AFFIRMATIVE COVENANTS	109
Section 6.01 Financial Statements	109
Section 6.02 Certificates; Other Information	111
Section 6.03 Notices	112
Section 6.04 Payment of Taxes	112
Section 6.05 Preservation of Existence, Etc	112
Section 6.06 Maintenance of Properties	113
Section 6.07 Maintenance of Insurance	113
Section 6.08 Compliance with Laws	113
Section 6.09 Books and Records	113
Section 6.10 Inspection Rights	113
Section 6.11 Additional Collateral; Additional Guarantors	114
Section 6.12 Compliance with Environmental Laws	115
Section 6.13 Further Assurances	115
Section 6.14 [Reserved]	115
Section 6.15 [Reserved]	116
Section 6.16 Use of Proceeds	116
Section 6.17 [Reserved]	116
Section 6.18 [Reserved]	116
Section 6.19 Anti-Corruption Laws; Sanctions	116

ARTICLE VII. NEGATIVE COVENANTS	116
Section 7.01 Liens	116
Section 7.02 [Reserved]	120
Section 7.03 Indebtedness	120
Section 7.04 Fundamental Changes	123
Section 7.05 Dispositions	124
Section 7.06 Restricted Payments	126
Section 7.07 Change in Nature of Business	130
Section 7.08 Transactions with Affiliates	130
Section 7.09 Burdensome Agreements	131
Section 7.10 [Reserved]	133
Section 7.11 Financial Covenants	133
Section 7.12 Accounting Changes	133
Section 7.13 Prepayments, Etc. of Junior Financing	133
Section 7.14 Permitted Activities	134
Section 7.15 Anti-Corruption Laws and Sanctions	135
ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES	135
Section 8.01 Events of Default	135
Section 8.02 Remedies Upon Event of Default	137
Section 8.03 Application of Funds	137
Section 8.04 [Reserved]	138
ARTICLE IX. ADMINISTRATIVE AGENT	139
Section 9.01 Appointment and Authority	139
Section 9.02 Rights as a Lender	139
Section 9.03 Exculpatory Provisions	139
Section 9.04 Reliance by Administrative Agent	141
Section 9.05 Delegation of Duties	141
Section 9.06 Resignation of Administrative Agent	141
Section 9.07 Non-Reliance on Administrative Agent, Arranger and Other Lenders	143
Section 9.08 No Other Duties, Etc	144
Section 9.09 Administrative Agent May File Proofs of Claim	144
Section 9.10 Collateral and Guaranty Matters	145
Section 9.11 Secured Treasury Service Agreements and Secured Hedge Agreements	146
Section 9.12 Withholding Tax Indemnity	146
Section 9.13 Certain ERISA Matters	146
Section 9.14 Acknowledgments Regarding Erroneous Payments	147
ARTICLE X. MISCELLANEOUS	148
Section 10.01 Amendments, Etc	148
Section 10.02 Notices and Other Communications; Facsimile Copies	151
Section 10.03 No Waiver; Cumulative Remedies	153
Section 10.04 Attorney Costs and Expenses	154

Section 10.05 Indemnification by the Borrower	155
Section 10.06 Payments Set Aside	156
Section 10.07 Successors and Assigns	156
Section 10.08 Confidentiality	161
Section 10.09 Setoff	162
Section 10.10 Interest Rate Limitation	162
Section 10.11 Counterparts; Electronic Execution of Assignments and Certain Other Documents	163
Section 10.12 Integration; Termination	163
Section 10.13 Survival of Representations and Warranties	163
Section 10.14 Severability	164
Section 10.15 GOVERNING LAW	164
Section 10.16 WAIVER OF RIGHT TO TRIAL BY JURY	165
Section 10.17 Binding Effect	165
Section 10.18 USA Patriot Act	165
Section 10.19 No Advisory or Fiduciary Responsibility	165
Section 10.20 INTERCREDITOR AGREEMENTS	166
Section 10.21 Acknowledgment and Consent to Bail-In of Affected Financial Institutions	166
Section 10.22 Acknowledgment Regarding Any Supported QFCs	167
ARTICLE XI. GUARANTEE	168
Section 11.01 The Guarantee	168
Section 11.02 Obligations Unconditional	168
Section 11.03 Reinstatement	169
Section 11.04 Subrogation; Subordination	169
Section 11.05 Remedies	170
Section 11.06 Instrument for the Payment of Money	170
Section 11.07 Continuing Guarantee	170
Section 11.08 General Limitation on Guarantee Obligations	170
Section 11.09 Release of Guarantors	170
Section 11.10 Right of Contribution	171
Section 11.11 Keepwell	171

SCHEDULES

I	Guarantors
II	Existing Investments
1.01A	Commitments
5.11	Material Subsidiaries
6.18	[Reserved]
7.01(b)	Existing Liens
7.03(b)	Existing Indebtedness
7.08	Existing Transactions with Affiliates
7.09	Existing Restrictions
10.02	Administrative Agent's Office, Certain Addresses for Notices

EXHIBITS

Form of

A	Committed Loan Notice
B	Swing Line Loan Notice
C	Note
D	Compliance Certificate
E	Assignment and Assumption
F	[Reserved]
G	Intercompany Note
H	United States Tax Compliance Certificate

CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of February 2, 2023, among PHD INTERMEDIATE LLC, a Delaware limited liability company (“**Holdings**”), PORTILLO’S HOLDINGS, LLC, a Delaware limited liability company (the “**Borrower**”), the other Guarantors party hereto from time to time, each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”) and FIFTH THIRD BANK, NATIONAL ASSOCIATION, as Administrative Agent, L/C Issuer and Swing Line Lender.

PRELIMINARY STATEMENTS

The Borrower has requested that the Lenders extend credit to the Borrower in the form of (i) Term A Loans (as this and other capitalized terms used in these preliminary statements are defined in Section 1.01 below) on the First Amendment Effective Date in an initial aggregate principal amount of \$250,000,000 and (ii) Initial Revolving Credit Commitments in an initial aggregate principal amount of \$150,000,000. 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.

Substantially concurrently with the occurrence of the Closing Date, all outstanding indebtedness for borrowed money of the Borrower and its subsidiaries under that certain First Lien Credit Agreement, dated as of August 1, 2014, among, *inter alios*, Holdings, the Borrower, the subsidiary guarantors party thereto, the lenders party thereto and UBS AG, Stamford Branch, as administrative agent, will be repaid, redeemed, discharged, refinanced, replaced or terminated and in each case, the liens and guarantees in support thereof shall be released or terminated (the “**Closing Date Refinancing**”).

The proceeds of the Term A Loans (as defined in this Agreement immediately prior the First Amendment), together with the proceeds of the Initial Revolving Borrowing will be used by the Borrower to pay the Transaction Expenses and to fund the Closing Date Refinancing.

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 Debtor-In-Possession Financing**” means any debtor-in-possession or similar financing (a) incurred by Holdings, the Borrower or a Subsidiary of the Borrower following a voluntary petition by Holdings, the Borrower or any of its Subsidiaries under or in connection with any Debtor Relief Law and (b) approved pursuant to an order of an applicable court under any Debtor Relief Law.

“**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 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 Subsidiary of, such specified Person, and

(b) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person provided such Lien is existing at the time such asset is acquired and is not incurred in connection with or in contemplation of the acquisition of such asset.

“**Acquisition**” has the meaning set forth in the definition of “Investments”

“**Additional Lender**” means any Person that is not an existing Lender and has agreed to provide Incremental Commitments pursuant to Section 2.14.

“**Administrative Agent**” means Fifth Third, 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.

“**Affected Financial Institution**” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“**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 possession 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.

“**Agent Parties**” has the meaning specified in Section 10.02(b).

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” means this 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 Tranche Rate or Base Rate floor, or otherwise.

“**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 Rate**” means a percentage per annum equal to (a) until delivery of financial statements for the first fiscal quarter ending after the First Amendment Effective Date pursuant to Section 6.01, (i) for Tranche Rate Loans and Letter of Credit fees, 2.25%, (ii) for Base Rate Loans, 1.25%

and (iii) for commitment fees, 0.20% and (b) thereafter, the following percentages per annum, based upon the Consolidated Total Net Rent Adjusted Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

Pricing Level	Consolidated Total Net Rent Adjusted Leverage	Tranche Rate Loans and Letter of Credit fees	Base Rate Loans	Commitment Fees
1	$\geq 4.50:1.00$	2.75%	1.75%	0.25%
2	$< 4.50:1.00$ and $\geq 4.00:1.00$	2.50%	1.50%	0.20%
3	$< 4.00:1.00$ and $\geq 3.00:1.00$	2.25%	1.25%	0.20%
4	$< 3.00:1.00$	2.00%	1.00%	0.20%

Any increase or decrease in the Applicable Rate pursuant to clause (b) above resulting from a change in the Consolidated Total Net Rent Adjusted 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 Lenders have so elected, "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) or (f) 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 L/C Issuer 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 (a) with respect to this Agreement, Fifth Third, BofA Securities, Inc., MUFG Bank, Ltd. and Wells Fargo Bank, National Association, each in its capacity as a joint lead arranger and a joint bookrunner under this Agreement, (b) with respect to the First Amendment, Fifth Third, BofA Securities, Inc., MUFG Bank, Ltd. and Wells Fargo Bank, National Association, each in its capacity as joint lead arranger and a joint bookrunner under the First Amendment and (c) with respect to any amendment, consent or waiver to this Agreement, the Person(s) identified as lead arranger(s) and bookrunner(s) on the cover page to such amendment, consent or waiver.

"**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 hereto.

“**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.

“**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 Resolution Authority in respect of any liability of an Affected Financial Institution.

“**Bail-In Legislation**” means, (a) 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, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part 1 of the United Kingdom Banking Act 2009 (as amended from time to time) and any other Law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms, or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**Base Rate**” means for any day, the rate per annum equal to the greatest of: (a) the rate of interest announced by Fifth Third Bank from time to time as its “prime rate” as in effect on such day, with any change in the Base Rate resulting from a change in said prime rate to be effective as of the date of the relevant change in said prime rate (it being acknowledged that such rate may not be the Fifth Third Bank’s best or lowest rate), (b) the sum of (i) the Federal Funds Rate, *plus* (ii) 0.50% and (c) the sum of (i) the Term SOFR that would be applicable to a Tranche Rate Loan with a 1 month Interest Period advanced on such day (or if such day is not a Business Day, the immediately preceding Business Day), *plus* (ii) 1.00%; *provided*, that, in no event shall the Base Rate be less than the Index Floor.

“**Base Rate Loan**” means a Loan that bears interest based on the Base Rate.

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**beneficially own**” means to possess beneficial ownership as determined pursuant to Rules 13d-3 and 13d-5 under the Exchange Act.

“**Benefit Plan**” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“**Berkshire**” 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.

“**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.

“**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.

“**Borrower**” has the meaning specified in the introductory paragraph to this Agreement.

“**Borrower Materials**” has the meaning specified in Section 6.01.

“**Borrowing**” means a Revolving Credit Borrowing, a Swing Line Borrowing, or a Term Borrowing, as the context may require.

“**Business Day**” means (a) with respect to all notices and determinations, including Interest Payment Dates, in connection with the Tranche Rate, any day that commercial banks in New York, New York are required by Law to be open for business and that is a U.S. Government Securities Business Day, which means any day other than a Saturday, Sunday, or day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities and (b) in all cases, any day (other than a Saturday or Sunday) on which commercial banks in New York, New York or Cincinnati, Ohio are required by Law to be open for business.

“**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 its 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 its 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 Subsidiary of the Borrower:

- (a) (1) Dollars, pound sterling, Canadian dollars, yen or euros or any national currency of any Participating Member State of the EMU; and
 - (1) in the case of any Foreign Subsidiary that is a Subsidiary of the Borrower or any jurisdiction in which the Borrower and its 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 Subsidiary of the Borrower organized in such jurisdiction;

(k) Investments, classified in accordance with GAAP as current assets of the Borrower or any Subsidiary of the Borrower, 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 of the Borrower 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 of the Borrower 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.

"Casualty Event" means any event that gives rise to the receipt by the Borrower or any Subsidiary of the Borrower of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or Real Property (including any improvements thereon) and, in the case of such insurance proceeds, 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 (directly or indirectly through one or more entities that are “disregarded entities” for federal income tax purposes) 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.

“**Change of Control**” shall be deemed to occur if:

(a) any person (other than a Permitted Holder) or 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 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; or

(b) a “**change of control**” (or similar event) shall occur in any document pertaining to any Incremental Equivalent Debt or 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 Obligations, 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, if Holdings were subject to Section 7.01, nonconsensual Liens permitted under Section 7.01 and Liens permitted under Sections 7.01(a), (bb) (solely to the extent the Obligations shall be secured on a *pari passu* or senior basis with such Liens) 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 February 2, 2023.

“**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 (the “**Treasury Regulations**”).

“**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 (i) Holdings and each Subsidiary of the Borrower that is a wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) including on the Closing Date those that are listed on Schedule I hereto and (ii) the Borrower shall be a Guarantor in respect of obligations of its Subsidiaries under Secured Hedge Agreements and Secured Treasury Services Agreements (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 Subsidiary of the Borrower 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 in each case directly owned by the Borrower or any Subsidiary Guarantor of (A) each Subsidiary of the Borrower that is a CFC Holdco, and (B) each Subsidiary of the Borrower that is a Foreign Subsidiary that is a CFC; and

(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 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, 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.

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 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, 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, any Intercreditor Agreement (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 Tranche 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.

"**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 hereto.

"**Conforming Changes**" means, with respect to the use, administration of, or any conventions associated with the Tranche Rate or any proposed Successor Rate, as applicable, any changes to the terms of this Agreement related to the timing, frequency, and methodology of determining rates and making payments of interest, including changes to the definition of Business Day, lookback periods or observation shift, prepayments, and borrowing, conversion, or continuation notices, and other technical, administrative, or operational matters, as may be appropriate, in the discretion of the Administrative Agent, in consultation with the Borrower, to reflect the adoption and implementation of such applicable rate and to permit the administration thereof by the Administrative Agent, in consultation with the Borrower, in an operationally feasible manner and, to the extent feasible, consistent with market practice.

“**Consolidated Cash Interest Coverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated EBITDAR for such Test Period to (b) the sum of (i) Consolidated Interest Expense for such Test Period plus (ii) Consolidated Cash Rental Expense for such Test Period.

“**Consolidated Cash Rental Expense**” means, for any Test Period, (a) all rental expense of the Borrower and its Subsidiaries paid or payable in cash during such Test Period, determined on a consolidated basis in accordance with GAAP, incurred under any rental agreement or lease with respect to real property, other than (i) obligations in respect of any Capitalized Leases, (ii) in the case of Unit Locations that are part of a multi-tenant retail complex, common maintenance charges, property taxes and insurance costs and similar amounts passed through to the tenant on a proportional basis and (iii) any insurance costs that would otherwise be included in cash rental expense, minus (b) any rental income received during such Test Period under any rental agreement (including in respect of subleases) or license agreements with respect to real property.

“**Consolidated EBITDA**” means, for any period, the Consolidated Net Income for such period, plus:

(a) without duplication and, except with respect to clauses (vi) and (ix), 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 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, 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) (1) duplicative running costs, (2) relocation costs or expenses, (3) integration costs, (4) transition costs, (5) site acquisition costs, pre-opening costs and opening costs provided that the aggregate amount of costs added back pursuant to this clause (iv)(A)(5) for any single restaurant during the term of this Agreement shall not exceed \$675,000, (6) closing and consolidation costs for up to two restaurants in any period of four consecutive fiscal quarters, (7) signing, retention and completion bonuses, (8) (i) to the extent incurred on or before February 2, 2025, costs associated with preparations for and implementation of compliance with the requirements of the Sarbanes-Oxley Act of 2002 and other Public Company Costs and (ii) to the extent incurred thereafter, non-recurring costs associated with preparations for and implementation of compliance with the requirements of the Sarbanes-Oxley Act of 2002 and other non-recurring Public Company Costs, (9) costs incurred in connection with any strategic initiatives, (10) costs incurred in connection with acquisitions and non-recurring product and intellectual property development, (11) 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), (12) severance and other restructuring charges representing cash items (including restructuring costs related to acquisitions and excess pension charges but excluding costs related to closing and consolidation of restaurants), and (13) litigation settlements or losses and related expenses; provided that the aggregate amount of adjustments and addbacks to Consolidated EBITDA (or the components thereof) pursuant to this clause (a)(iv)(A) (other than clauses (a)(iv)(A)(5), (a)(iv)(A)(6) and (a)(iv)(A)(8)(ii)), clause (a)(vi), clause (a)(vii) and Section 1.09(c) shall not exceed 5.0% of Consolidated EBITDA for such period (calculated after giving effect to such adjustments and addbacks),

(B) non-cash 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,

(C) Transaction Expenses, provided that the aggregate amount of costs added back pursuant to this clause (a)(iv)(C) during the term of this Agreement shall not exceed \$10,000,000 and

(D) Transaction fees and expenses in connection with the First Amendment, provided that the aggregate amount of such costs added back pursuant to this clause (a)(iv)(D) during the term of this Agreement shall not exceed \$2,000,000.

(v) any Equity Funded Employee Plan Costs,

(vi) cost savings, operating expense reductions and cost 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 eighteen (18) months after such 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 cost synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and cost 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 (A) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Borrower, (B) no cost savings, operating expense reductions and cost synergies shall be added back pursuant to this clause (vi) 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 and (C) the aggregate amount of adjustments and addbacks to Consolidated EBITDA (or the components thereof) pursuant to clause (a)(iv)(A) (other than clauses (a)(iv)(A)(5), (a)(iv)(A)(6) and (a)(iv)(A)(8)(ii)), this clause (a)(vi), clause (a)(vii) and Section 1.09(c) shall not exceed 5.0% of Consolidated EBITDA for such period (calculated after giving effect to such adjustments and addbacks),

(vii) extraordinary, unusual or non-recurring charges, expenses or losses; provided that the aggregate amount of adjustments and addbacks to Consolidated EBITDA (or the components thereof) pursuant to clause (a)(iv)(A) (other than clauses (a)(iv)(A)(5), (a)(iv)(A)(6) and (a)(iv)(A)(8)(ii)), clause (a)(vi), this clause (a)(vii) and

Section 1.09(c) shall not exceed 5.0% of Consolidated EBITDA for such period (calculated after giving effect to such adjustments and addbacks),

(viii) any expense or net loss from asset retirement obligations, disposed, abandoned or discontinued operations (excluding (x) held-for-sale discontinued operations until actually disposed of, and (y) costs related to closing and consolidation of restaurants),

(ix) 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,

(x) 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 (x) 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,

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); *provided* that, for the avoidance of doubt, any gain representing the reversal of any non-cash charge referred to in clause (a)(x) (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), and (iii) extraordinary, unusual or non-recurring income or gains;

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.

“**Consolidated EBITDAR**” means, for any Test Period, an amount equal to (without duplication) (a) Consolidated EBITDA for such Test Period plus (b) Consolidated Cash Rental Expense 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 Subsidiaries, determined on a consolidated basis in accordance with GAAP, with respect to all outstanding Indebtedness of the Borrower and its 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 Indebtedness 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,

(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) [reserved], and

(k) [reserved].

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 its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; *provided, however*, that, without duplication:

(a) [reserved],

(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 by any direct and indirect parent thereof and 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) [reserved],

(e) [reserved],

(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 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 its Subsidiaries 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, and

(m) the income (or loss) of any Person accrued prior to the date it becomes a 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 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).

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 its Subsidiaries), as a result of 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 Total Net Debt**" means, as of any date of determination, (a) the aggregate principal amount of Indebtedness of the Borrower and its 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 other purchase money Indebtedness, debt obligations evidenced by promissory notes or similar instruments, obligations in respect of drawn letters of credit, deferred purchase price obligations (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 30 days after becoming due and payable and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business) and all Guarantees of Indebtedness of such type that is owed by a Person that is not the Borrower or a Subsidiary of the Borrower, 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 its 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), and Section 7.01(gg)); *provided* that Consolidated Total Net Debt shall not include Indebtedness in respect of (i) undrawn letters of credit and (ii) [reserved]; it being understood, for the avoidance of doubt, that obligations under Swap Contracts do not constitute Consolidated Total Net Debt.

"**Consolidated Total Net Rent Adjusted Leverage Ratio**" means, with respect to any Test Period, the ratio of (a) the sum of (i) Consolidated Total Net Debt as of the last day of such Test Period plus (ii) the product of (A) Consolidated Cash Rental Expense for such Test Period and (B) eight to (b) Consolidated EBITDAR for such Test Period.

"**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.

“**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.”

“**Covered Entity**” means any of the following: (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“**Credit Extension**” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“**Daily Simple SOFR**” means, for any day (a “**SOFR Rate Day**”), a rate of interest per annum equal to the greater of (a) SOFR for the day (such day “*t*”) that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website and (b) the Index Floor. If by 5:00 pm on the second (2nd) U.S. Government Securities Business Day immediately following any day “*t*”, the SOFR in respect of such day “*t*” has not been published on the SOFR Administrator’s Website and a Tranche Rate Replacement Date with respect to Daily Simple SOFR has not occurred, then SOFR for such day “*t*” will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator’s Website; provided, that, any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to Borrower.

“**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.

“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 Tranche 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.

“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.

“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, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, (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 (unless such writing or public statement is based on such Lender’s good faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) has not been satisfied), (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, (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (iv) become the subject of a Bail-in Action; 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 L/C Issuer, the Swing Line Lender and each Lender.

“Disposition” or **“Dispose”** means the sale, transfer, license, lease or other disposition (including any Sale Leaseback Transaction and any sale or issuance of Equity Interests in a Subsidiary of the Borrower) 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 Secured 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 L/C Issuer or deemed reissued under another agreement reasonably acceptable to the 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 Secured 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 L/C Issuer or deemed reissued under another agreement reasonably acceptable to the 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 its 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 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, as of any date, 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 to the Administrative Agent (by no later than two (2) Business Days prior to the effective date of such designation) 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 from time to time to the Administrative Agent writing (by no later than two (2) Business Days prior to the effective date of such designation) or (b) reasonably identifiable as an Affiliate thereof on the basis of its legal name; *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 or Commitment under this Agreement. The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to provide the Disqualified Institutions List to each Lender (and each prospective assignee of a Lender) requesting the same. 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.

“**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.

“**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.

“**Engagement Letter**” means Engagement Letter, dated as of November 16, 2022, among the Borrower and Fifth Third.

“**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 Subsidiaries of the Borrower 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 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, or net cash proceeds of an issuance of Qualified Equity Interests of, any direct or indirect parent of the Borrower and, in each case, contributed to the Borrower (other than any amount used to make an Investment pursuant to clause (9) of the definition of “Permitted Investments”).

“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.

“**Event of Default**” has the meaning specified in Section 8.01.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Excluded Assets**” means (i) any fee owned Real Property 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 \$5,000,000, (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 and (B) Equity Interests in any non-wholly owned Subsidiaries and any entities which do not constitute Subsidiaries, but only to the extent that (x) the Organization Documents or other agreements with equity holders of such non-wholly owned Subsidiaries of the Borrower 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 Subsidiary of the Borrower 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 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) [reserved], (g) any special purpose securitization vehicle (or similar entity), including any 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 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 (k) 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).

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured

by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes 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 on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 3.07) or (ii) such Lender changes its 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 became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e)(ii) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“**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 Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental, treaty or convention among Governmental Authorities implementing such sections of the Code.

“**FCPA**” has the meaning set forth in Section 5.18(b).

“**Federal Funds Rate**” means, for any day, the rate per annum equal to the rates on overnight Federal funds transactions with members of the Federal Reserve System (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time), as published by the Federal Reserve Bank of New York 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.

“**Fifth Third**” means Fifth Third Bank, National Association, acting in its individual capacity, and its successors and assigns.

“**Financial Covenants**” has the meaning specified in Section 7.11(b).

“**First Amendment**” means, that certain First Amendment to Credit Agreement, dated as of the First Amendment Effective Date, by and among the Borrower, Holdings, the Guarantors party thereto, the Lenders party thereto, the Administrative Agent, the L/C Issuer, and the Swing Line Lender.

“**First Amendment Effective Date**” means, January 27, 2025.

“**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 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.

“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 (a) Holdings, (b) each Subsidiary of the Borrower that is a party hereto on the Closing Date, (c) each Subsidiary of the Borrower that shall have become a Guarantor pursuant to

Section 6.11. For avoidance of doubt, the Borrower in its sole discretion may cause any Domestic Subsidiary of the Borrower that is not required to become a Guarantor to Guarantee the Obligations by causing such Domestic Subsidiary of the Borrower to execute a joinder to this Agreement in form and substance reasonably satisfactory to the Administrative Agent, and any such Subsidiary of the Borrower shall be a Guarantor, Loan Party and Subsidiary Guarantor hereunder for all purposes. In addition, the Borrower shall be a Guarantor in respect of obligations of its Subsidiaries under Secured Hedge Agreements and Secured Treasury Services Agreements.

“**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 and that is a Lender, the Administrative Agent or an Affiliate of a Lender or the Administrative Agent on the Closing Date or at the time it enters into such Secured Hedge Agreement, in its capacity as a party thereto and that 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).

“**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 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 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; 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 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. 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 (a) Taxes, other than Excluded 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 and (b) to the extent not otherwise described in (a), Other Taxes.

“**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.

“**Index Floor**” means a rate of interest equal to 0.00% per annum.

“**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 \$30 million; *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.

“**Initial Revolving Credit Commitment**” means, as to each Revolving Credit Lender, its Revolving Credit Commitment as of the Closing Date, as increased pursuant to the First Amendment and as may be further increased from time to time pursuant to an Incremental Revolving Credit Commitment. The aggregate amount of Initial Revolving Credit Commitments on the First Amendment Effective Date is \$150,000,000.

“**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 Agreement**” means, with respect to any Indebtedness, any intercreditor or subordination agreement, as applicable, the terms of which are reasonably acceptable to the Borrower and the Administrative Agent.

“**Interest Coverage Covenant**” has the meaning specified in Section 7.11(b).

“**Interest Payment Date**” means, (a) as to any Tranche 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 Tranche 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 Tranche Rate Loan, the period commencing on the date such Tranche Rate Loan is disbursed or converted to or continued as a Tranche Rate Loan and ending on the date one or three months thereafter (or with respect to the initial Interest Period for any Tranche Rate

Loan beginning on the Closing Date or the First Amendment Effective Date, such other period of time acceptable to the Administrative Agent), in each case, subject to availability; *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.

“Investment” means, as to any Person, all investments by such Person in other Persons (including Affiliates) in the form of (a) 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), (b) purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person or (c) purchases or other acquisitions of assets constituting a business unit, line of business or division of, or all or substantially all of the Equity Interests of, another Person (each, an “Acquisition”). 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 its Subsidiaries 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 or any Incremental 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 each of (a) Fifth Third, in its capacity as the issuer of Letters of Credit hereunder, and (b) any successor issuer of Letters of Credit hereunder. The term “L/C Issuer” when used with respect to a Letter of Credit or the L/C Obligations relating to a Letter of Credit shall refer to the L/C Issuer that issued such Letter of Credit.

“**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.

“**LCT Election**” has the meaning specified in Section 1.09(e).

“**LCT Test Date**” has the meaning specified in Section 1.09(e).

“**Lender**” has the meaning specified in the introductory paragraph to this Agreement and, as the context requires, includes the 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 standby letter of credit and if the L/C Issuer agrees in its sole discretion to issue a commercial letter of credit, each such commercial letter of credit, in each case, issued hereunder.

“**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 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 Revolving Credit Commitments.

“**Letter of Credit Sublimit**” means an amount equal to the lesser of (a) \$20,000,000 (as may be adjusted pursuant to Section 2.14(e)(ii)(C)) and (b) the aggregate amount of the Revolving Credit Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Commitments.

“**Leverage Covenant**” has the meaning specified in Section 7.11(a).

“**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.

“**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 Incremental Amendment or Extension Amendment, (v) each Letter of Credit Application, (vi) any Intercreditor Agreement, (vii) the Solvency Certificate and (viii) each Compliance Certificate.

“**Loan Parties**” means, collectively, the Borrower and each Guarantor.

“**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 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 that, on a consolidated basis with such Domestic Subsidiary’s Subsidiaries, (a) has total assets at the last day of the most recently ended Test Period equal to or greater than 2.5% of the consolidated total assets of the Borrower and its Subsidiaries at such date or (b) accounted for equal to or greater than 2.5% of Consolidated EBITDA for the most recently ended Test Period; 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) on a consolidated basis with such Subsidiaries’ Subsidiaries, (i) have total assets at the last day of the most recently ended Test Period equal to or greater than 5.0% of the consolidated total assets of the Borrower and its Subsidiaries at such date or (ii) accounted for equal to or greater than 5.0% of Consolidated EBITDA for the most recently ended Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such Test Period are required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (A) 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 (B) 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 that, on a consolidated basis with such Foreign Subsidiary’s Subsidiaries, (a) has total assets at the last day of the most recently ended Test Period equal to or greater than 2.5% of the consolidated total assets of the Borrower and its Subsidiaries at such date or (b) accounted for equal to or greater than 2.5% of Consolidated EBITDA for the most recently ended Test Period; 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) on a consolidated basis with such Subsidiaries’ Subsidiaries, (i) have total assets at the last day of the most recently ended Test Period equal to or greater than 5.0% of the consolidated total assets of the Borrower and its Subsidiaries at such date or (ii) accounted for equal to or greater than 5.0% of Consolidated EBITDA for the most recently ended Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such Test Period are required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (A) 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 (B) comply with the provisions of the definition of “Collateral and Guarantee Requirement.”

“**Material Subsidiary**” means any Material Domestic Subsidiary or any Material Foreign Subsidiary.

“**Maturity Date**” means (i) with respect to the Term A Loans, the fifth anniversary of the First Amendment Effective Date; (ii) with respect to the Initial Revolving Credit Commitments, the fifth anniversary of the First Amendment Effective 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, and (iv) with respect to any Incremental Term 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.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor thereto.

“**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 its 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 Subsidiary of the Borrower, 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 Subsidiary of the Borrower 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 its 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 (other than current assets) useful in the business of the Borrower or its 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 its 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 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 to the Borrower.

“**Obligations**” means all (x) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party and its 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 its 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 the Borrower or any of its Subsidiaries arising under any Secured Hedge Agreement or any Secured Treasury Services Agreement. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and of their 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, commitment 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.

“**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 Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**” means any and all present or future stamp, court or documentary, recording, filing or similar Taxes and any other excise, property, intangible or mortgage recording Taxes, imposed by any Governmental Authority, which arise from any payment made under, from the execution, delivery,

performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.07).

“**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, the L/C Issuer, or the Swing Line Lender, as applicable, in accordance with banking industry rules on interbank compensation.

“**Parent**” means Portillo’s, Inc., a Delaware corporation.

“**Participant**” has the meaning specified in Section 10.07(e).

“**Participant Register**” has the meaning specified in Section 10.07(e).

“**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”.

“**Permitted Holder**” means Berkshire and/or the Parent.

“**Permitted Investments**” means:

(1) any Investment in the Borrower or any of its Subsidiaries; *provided* that the aggregate outstanding amount of Investments by the Borrower and Subsidiary Guarantors in Non-Loan Parties shall not exceed the greater of (x) \$25,000,000 and (y) 30.0% of Consolidated EBITDA (with the amount of each Investment and Consolidated EBITDA being measured at the

time each such Investment is made 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 Subsidiaries consisting of an Acquisition, provided that:
 - (v) the Target is engaged in a business permitted pursuant to Section 7.07;
 - (iv) (w) such Acquisition is not hostile;
 - (v) (x) no Event of Default has occurred and is continuing at the consummation of such Acquisition; and
 - (vi) (y) after giving Pro Forma Effect to such Investment, the Borrower shall be in compliance with the Financial Covenants; and
 - (vii) (z) that after giving effect to any such Investment, the aggregate consideration provided by the Borrower and Subsidiary Guarantors for Investments in Non-Loan Parties pursuant to this clause (3) shall not exceed the greater of (i) \$25,000,000 and (ii) 30.0% of Consolidated EBITDA with the amount of each Investment and Consolidated EBITDA (with Consolidated EBITDA being calculated at the time of such Investment is made);

and, in each case, any Investment held by such Target; *provided*, that such Investment was not acquired by such Target in contemplation of such Acquisition;

- (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 First Amendment Effective Date or made pursuant to binding commitments in effect on the First Amendment Effective 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 First Amendment Effective 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 First Amendment Effective Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) to the extent disclosed on Schedule II or (b) as otherwise permitted under this Agreement;

- (6) any Investment acquired by the Borrower or any of its 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 its Subsidiaries 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 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) [Reserved];
 - (9) Investments the payment for which consists of Equity Interests (other than Disqualified Equity Interests) of any direct or indirect parent companies of the Borrower;
 - (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 of its Subsidiaries) and the creation of Liens on the assets of the Borrower or any Subsidiary in compliance with Section 7.01;
 - (11) [Reserved];
 - (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 in each case in the ordinary course of business;
 - (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) \$25,000,000 and (ii) 25.0% of Consolidated EBITDA (with the amount of each Investment and Consolidated EBITDA 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) [Reserved];
 - (15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants and members of management not in excess of \$1,000,000 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 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 Subsidiary 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 any direct or indirect parent of the Borrower, 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;
- (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; and
- (26) other Investments so long as the Consolidated Total Net Rent Adjusted Leverage Ratio as of the end of the most recently ended Test Period preceding the date on which such

Investment is made does not exceed 5.25:1.00, determined on a Pro Forma Basis giving effect to such Investment.

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 (26) 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 (26) 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 Ratio Debt” means Indebtedness (including Acquired Indebtedness) incurred or assumed by the Borrower and any Subsidiary if and to the extent the Consolidated Total Net Rent Adjusted Leverage Ratio as of the end of the most recently ended Test Period preceding the date on which such Indebtedness is incurred or assumed does not exceed 5.25:1.00, 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 Latest Maturity Date 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, together with the aggregate amount of Indebtedness of Non-Loan Parties incurred pursuant to Section 7.03(g) then outstanding, would exceed the greater of (x) \$25,000,000 and (y) 25.0% of Consolidated EBITDA, in each case determined at the such time of incurrence.

“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, secured only by assets securing the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended and 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). 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.

“**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.

“**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.

“**PTE**” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**Public Company Costs**” means charges in connection with any registration statements or relating to compliance with the provisions of the Securities Act and the Exchange Act (or similar regulations applicable in other listing jurisdictions), including any reporting obligations thereunder, charges associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes Oxley Act of 2002 (or similar non-U.S. regulations) and the rules and regulations promulgated in connection therewith (or similar regulations applicable in other listing jurisdictions), the rules of national securities exchange companies with listed equity, directors’ compensation, fees and expense reimbursement, charges relating to investor relations, shareholder meetings and reports to shareholders, directors’ and officers’ insurance and other executive charges, legal and other professional fees, and listing fees.

“**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.

“**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.

“**Recipient**” means (a) the Administrative Agent or (b) any Lender, as applicable.

“**Register**” has the meaning set forth in Section 10.07(d).

“**Related Indemnified Person**” of the Administrative Agent, a Lender or an Arranger 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.

“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.

“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.

“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.

“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.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Restricted Cash” means cash and Cash Equivalents which are listed as “Restricted” on the consolidated balance sheet of the Borrower and its 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 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 Subsidiary’s stockholders, partners or members (or the equivalent Persons thereof) and (ii) any Restricted Investment.

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of Tranche 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 or (iii) 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 or Extension 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 or any loan under any Extended Revolving Credit Commitments, as the context may require.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“Sale Leaseback Transaction” means any transaction or series of related transactions pursuant to which the Borrower or any of the 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.

“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 or the U.S. Department of State, (b) the

European Union or Her Majesty's Treasury of the United Kingdom or (c) the United Nations Security Council.

"**Sanctioned Person**" means, at any time, any Person (a) listed in any Sanctions-related list of designated Persons with whom transacting business is prohibited by such Sanctions, (b) located, organized or resident in a country or territory that is, or whose government is, the subject of comprehensive Sanctions (which include as of the date of this agreement Cuba, Iran, North Korea, Syria, and Crimea), or (c) majority-owned or otherwise controlled (as determined by applicable law) by any Person, or more than one Person on an aggregated basis, that is a Sanctioned Person.

"**SEC**" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"**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.

"**Scheduled Unavailability Date**" has the meaning ascribed to it in Section 3.03(b) of this Agreement.

"**Secured Parties**" means, collectively, the Administrative Agent, the Lenders, the Hedge Banks, the Treasury Services Banks and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

"**Secured Treasury Services Agreement**" means any Treasury Services Agreement entered into between the Borrower or any Subsidiary of the Borrower and any Treasury Services Bank.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Security Agreement**" means the Security Agreement dated as of the date hereof among the Loan Parties and the Administrative Agent.

"**Security Agreement Supplement**" has the meaning specified in the Security Agreement.

"**Senior Representative**" means, with respect to any series of Incremental Equivalent 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**" means, a rate per annum equal to the secured overnight financing rate published by the SOFR Administrator on the SOFR Administrator's Website.

"**SOFR Administrator**" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"**SOFR Administrator's Website**" means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"**SOFR Rate Day**" has the meaning specified in the definition of "Daily Simple SOFR" in [Section 1.01](#).

“**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 Junior Financing Obligations**” means any obligations in respect of any Junior Financing in respect of which the Borrower or any Subsidiary Guarantor is an obligor in a principal amount in excess of the Threshold Amount.

“**Specified Transaction**” means (a) the Transactions, (b) any Investment that results in a Person becoming a Subsidiary of the Borrower, (c) [reserved], (d) a Sale Leaseback Transaction, (e) any Permitted Acquisition, (f) any Disposition that results in a Subsidiary of the Borrower 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 Subsidiary of the Borrower, in each case whether by merger, consolidation, amalgamation or otherwise or (g) 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 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.”

“**Spread Adjustment**” means a mathematical or other adjustment to an alternate benchmark rate selected pursuant to Section 3.03(b) of this Agreement and such adjustment may be positive, negative, or zero subject to the specific Spread Adjustments set forth in Section 3.03(b).

“**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 of its Subsidiaries 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).

"**Successor Rate**" means any successor index rate determined pursuant to Section 3.03(b) from time to time, including any applicable Spread Adjustment.

"**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 Fifth Third, 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 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) \$20,000,000 (as may be adjusted pursuant to Section 2.14(e)(ii)) and (b) the aggregate amount of the Revolving Credit Commitments. The Swing Line Sublimit is part of, and not in addition to, the Revolving Credit Commitments.

“**Target**” means the Person or property acquired in an Acquisition.

“**Tax Distribution**” has the meaning specified in Section 7.06(h)(iii).

“**Tax Group**” has the meaning specified in Section 7.06(h)(iii).

“**Tax Receivable Agreement**” means that certain Tax Receivable Agreement, dated as of October 20, 2021 entered into by and between the Parent and certain other parties thereto in connection with the initial public offering of the Parent.

“**Taxes**” means all present or future taxes, duties, levies, imposts, assessments, deductions, withholdings (including backup withholding), fees or other charges imposed by any Governmental Authority including interest, penalties and additions to tax.

“**Term A Commitment**” means, as to each Term Lender, its obligation to make a Term A 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 A 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 A Commitments on the First Amendment Effective Date is \$250,000,000.

“**Term A Loans**” means the term loans made by the Lenders on the First Amendment Effective 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 Tranche 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, or (iii) an Extension. The amount of each Term Lender’s Commitment is set forth in Schedule 1.01A under the caption “Term A Commitment” or in the Assignment and Assumption, Incremental Amendment or Extension 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 A Loan or Incremental 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 SOFR**” means, with respect to a Tranche Rate Loan for any Interest Period, the forward-looking SOFR rate administered by CME Group, Inc. (or other administrator selected by the Administrative Agent) and published on the applicable Bloomberg LP screen page (or such other commercially available source providing such quotations as may be selected by the Administrative Agent), fixed by the administrator thereof two (2) Business Days prior to the commencement of the applicable Interest Period (provided, however, that if Term SOFR is not published for such Business Day, then Term SOFR shall be determined by reference to the immediately preceding Business Day on which such rate is published), all as determined by Administrative Agent in accordance with the Agreement.

“**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 \$15,000,000.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“**Tranche Rate**” means, with respect to any Interest Period, the greater of (a) the Index Floor and (b) Term SOFR relating to quotations for 1 or 3 months as selected by Borrower in its Committed Loan Notice, or as otherwise set pursuant to the terms of this Agreement, as applicable. Each determination by the Administrative Agent of the Tranche Rate shall be conclusive and binding in the absence of manifest error.

“**Tranche Rate Loans**” means any Borrowings that accrue interest by reference to the Tranche Rate for an Interest Period elected by Borrower in accordance with Section 2.08(a) of this Agreement and the other terms of the Agreement.

“**Tranche Rate Replacement Date**” has the meaning ascribed to it in Section 3.03(b) of this Agreement.

“**Transaction Expenses**” means any fees or expenses incurred or paid by the Borrower in connection with the Transactions (including expenses in connection with close-out fees in connection with the termination of hedging transactions, if any), this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

“**Transactions**” means, collectively, (a) the funding of the Term A Loans (as defined in this Agreement immediately prior the First Amendment) 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, (b) the Closing Date Refinancing and (c) the payment of Transaction Expenses.

“**Transferred Guarantor**” has the meaning specified in Section 11.09.

“**Treasury Regulations**” has the meaning set forth in the definition of “Code”.

“**Treasury Services Agreement**” means any agreement to provide treasury or cash management services, including deposit accounts, overnight draft, credit cards, debit cards, p-cards (including purchasing cards and commercial cards), funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services.

“**Treasury Services Bank**” means any Person which is a party to a Secured Treasury Services Agreement and that is a Lender, the Administrative Agent or an Affiliate of a Lender or the Administrative Agent on the Closing Date or at the time it enters into such Secured Treasury Services Agreement, in its capacity as a party thereto 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.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a Tranche Rate Loan.

“**UK Financial Institution**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“**UK Resolution Authority**” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“**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.

“**Unit Location**” means, collectively, the property comprising the restaurant locations or on which the Borrower or any of its Subsidiaries intends to build out a restaurant.

“**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(c)(ii).

“**Unreimbursed Amount**” has the meaning set forth in Section 2.03(c)(i).

“**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.

“**U.S. Government Securities Business Day**” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“**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.

“**Withholding Agent**” means any Loan Party and the Administrative Agent.

“**Write-Down and Conversion Powers**” means, (a) 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, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

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.

(j) Any reference in this Agreement or any other Loan Document to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity), and to the extent any covenant in any Loan Document is applicable to such limited liability company immediately prior to such division, such covenant shall apply to any Person resulting from such division immediately after such division. For the avoidance of doubt, any Person resulting from such division shall be subject, as applicable, to the Collateral and Guarantee Requirement and Section 6.11.

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 anything to the contrary herein, all accounting or financial terms used herein shall be construed, and all financial computations pursuant hereto shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar effect) to value any Indebtedness or other liabilities of Holdings, the Borrower or any Subsidiary at “fair value”, as defined therein.

Any lease of the Borrower and its Subsidiaries that would be characterized as an operating lease under GAAP in effect on December 31, 2017 (whether such lease is entered into before or after such date) shall not constitute Indebtedness, Attributable Indebtedness or a Capitalized Lease Obligation under this Agreement or any other Loan Document as a result of any changes in GAAP after such date.

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 Letter of Credit Amount.

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

Section 1.09 Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Consolidated Total Net Rent Adjusted Leverage Ratio, the Consolidated Cash Interest Coverage Ratio and compliance with covenants determined by reference to Consolidated EBITDA, 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," and (ii) 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," and (ii) 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, 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 and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Test Period any Person that subsequently became a Subsidiary of the Borrower or was merged, amalgamated or consolidated with or into the Borrower or any of its 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 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 cost 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 cost 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 cost synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and cost 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 eighteen (18) months after the date of such Specified Transaction, (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 and (D) the aggregate amount of adjustments and addbacks to Consolidated EBITDA (or the components thereof) pursuant to clause (a)(iv)(A) (other than clauses (a)(iv)(A)(5), (a)(iv)(A)(6) and (a)(iv)(A)(8)(ii)) of the definition of "Consolidated EBITDA", clause (a)(vi) of the definition of "Consolidated EBITDA", clause (a)(vii) of the definition of "Consolidated EBITDA" and this Section 1.09(c) shall not exceed 5.0% of Consolidated EBITDA for such period (calculated after giving effect to such adjustments and addbacks).

(d) In the event that the Borrower or any of its Subsidiaries 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 Covenants) which requires the calculation of any financial ratio or test, including the Consolidated Total Net Rent Adjusted 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 Consolidated EBITDA);

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 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 (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 its Subsidiaries may designate.

(g) Notwithstanding anything to the contrary herein, for purposes of determining compliance with any provision of this Agreement which requires compliance on a *pro forma* basis with any financial covenant set forth in Section 7.11 prior to delivery of the financial statements required pursuant to Section 6.01(a) for the fiscal year ending on or around December 31, 2024, the Loan Parties shall be deemed to be in compliance on a *pro forma* basis so long as the Consolidated Total Net Rent Adjusted Leverage Ratio is not greater than 5.25:1.00 and the Consolidated Cash Interest Coverage Ratio is not less than 1.75:1.00.

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 Consolidated Total Net Rent Adjusted 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 First Amendment Effective Date a term loan denominated in Dollars in an aggregate amount not to exceed the amount of such Term Lender's Term A Commitment by (A) converting some or all of its Term A Loans (as defined in this Agreement immediately prior to the effectiveness of the First Amendment) outstanding immediately prior to the First Amendment Effective Date and/or (B) advancing borrowings of Term A Loans on the First Amendment Effective Date; and (ii) subject to the terms and conditions set forth in any Incremental Amendment, each Incremental Term Lender party thereto severally agrees to make Incremental Term Loans on the date specified therein in an aggregate amount not to exceed the amount of such Incremental Term Lender's

Incremental Term Commitment as set forth therein. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Loans or Tranche 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 Revolving Credit Exposure of such Revolving Credit Lender does not exceed such Revolving Credit Lender's 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 Tranche 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 Tranche Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than (1) 1:00 p.m. three (3) Business Days prior to the requested date of any Borrowing or continuation of Tranche Rate Loans or any conversion of Base Rate Loans to Tranche 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 and the First Amendment Effective 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 Tranche 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 Tranche 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 Tranche Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Tranche 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 Tranche Rate Loans, 12:00 noon 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 Commitments, 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 Commitments, 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 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, and second, to the Borrower as provided above.

(c) Except as otherwise provided herein, a Tranche Rate Loan may be continued or converted only on the last day of an Interest Period for such Tranche 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 Tranche Rate Loans.

(d) The determination of the Tranche Rate by the Administrative Agent shall be conclusive in the absence of manifest error.

(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 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) the L/C Issuer agrees, in reliance upon the agreements 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 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 Subsidiary of the Borrower 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 Revolving Credit Lenders severally agree to participate in Letters of Credit issued pursuant to this Section 2.03; *provided* that the L/C Issuer shall not 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 Revolving Credit Lender would exceed such Lender's 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. Notwithstanding anything contained herein to the contrary, Letter of Credit Applications (as defined below) by the Borrower and communications by the Administrative Agent and the L/C Issuer may be made and transmitted pursuant to electronic codes and security measures mutually agreed upon and established by and among the Borrower and the L/C Issuer. The Borrower hereby authorizes the L/C Issuer and the Administrative Agent to accept, act upon, and treat as genuine and original (but without any obligation of the L/C Issuer or the Administrative Agent to do any of the foregoing) applications, authorizations, and other requests regardless of the manner communicated, including those sent or communicated via overnight courier, certified or non-certified mail, fax, email, electronic code, or phone, so long as the Administrative Agent does not have actual knowledge that a particular application, authorization, or other request is not authorized by the Borrower.

(i) The 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 the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or direct that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in

particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date (for which the 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 the L/C Issuer and Required Lenders have approved of such expiration date;

(C) the expiry date of such requested Letter of Credit would occur after the Maturity Date applicable to the Revolving Credit Commitments, unless (1) the L/C Issuer and each Appropriate Lender have 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 the 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;

(E) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is in an initial amount less than \$100,000; and

(F) any Revolving Credit Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements reasonably satisfactory to it and the Borrower to eliminate the 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.

(ii) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the 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.

(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 the 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 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 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 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 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 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 L/C Issuer may reasonably request.

(ii) Promptly after receipt of any Letter of Credit Application, the 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, the L/C Issuer will provide the Administrative Agent with a copy thereof. Upon receipt by the 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, the 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 Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the 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 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 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 L/C Issuer, the Borrower shall not be required to make a specific request to the 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 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 L/C Issuer, not later than the Maturity Date applicable to the Revolving Credit Commitments; *provided* that the L/C Issuer shall not permit any such extension if (A) the 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 Revolving Credit Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied.

(iv) The Borrower is responsible for preparing or approving the text of each Letter of Credit as submitted to and as issued by the L/C Issuer and as received by the beneficiary, notwithstanding any drafting recommendations or forms provided by the L/C Issuer. The L/C Issuer's recommendation or drafting of text or the L/C Issuer's use or non-use or refusal to use text submitted by the Borrower shall not affect the Borrower's ultimate responsibility. The Borrower is responsible for the L/C Issuer's failure to apply, or to observe standard practice as applied to, Letter of Credit terms or conditions, and for terms or conditions that (A) are erroneous, ambiguous, inconsistent, insufficient, ineffective, or illegal, (B) require the L/C Issuer to respond to a demand in fewer than three Business Days, or (C) require or allow the Borrower to sign, issue, or present a document. Notwithstanding anything to the contrary in this Agreement, the L/C Issuer's obligation to issue, amend, or extend the expiration date of a Letter of Credit is subject to its review and approval of the proposed terms of the Letter of Credit (and any amendment thereof) in its sole discretion. The Borrower represents and warrants to the L/C Issuer that the Borrower is familiar with, and understands, applicable law, rule or regulation and letter of credit practice. If requested by the L/C Issuer, the Borrower will execute, deliver, and submit a letter of credit application and reimbursement agreement on the L/C Issuer's standard forms in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any such letter of credit application or reimbursement agreement, the terms and conditions of this Agreement will control, for so long as the Borrower and the L/C Issuer are subject thereto.

(v) The Borrower will notify the L/C Issuer in writing no later than five (5) Business Days after the Borrower first becomes aware of any objection the Borrower may have to the L/C Issuer's issuance or amendment of a Letter of Credit, the L/C Issuer's acceptance or rejection of a presentation under any Letter of Credit, or any other action or inaction taken or proposed to be taken by the L/C Issuer under or in connection with this Agreement or any other agreement, document, or instrument relating hereto; provided, however, that if the L/C Issuer reasonably believes that it is obligated to take any action, including, but not limited to, the payment on a Letter of Credit in a period of time less than five (5) Business Days, the L/C Issuer is allowed to take such action without liability to the Borrower. The Borrower's failure to give timely and specific notice of objection shall automatically waive the Borrower's objection, authorize or ratify the L/C Issuer's action or inaction, and absolutely preclude the Borrower from raising the objection as a defense or claim against the L/C Issuer (or any Indemnitee). If the L/C Issuer approaches the Borrower for a waiver of discrepancies in a presentation, then the Borrower must respond within five (5) Business Days. The L/C Issuer may treat the Borrower's failure to respond as a waiver of the indicated discrepancies, but need not itself accept the Borrower's implied or express waiver of discrepancies as binding on the L/C Issuer. The Borrower's acceptance or retention of any documents presented under or in connection with a Letter of Credit (including, but not limited to, originals or copies of documents sent directly to the Borrower) or of any property for which payment is supported by any Letter of Credit shall ratify the L/C Issuer's honor of the relevant presentation and absolutely preclude the Borrower from raising a defense or claim against the L/C Issuer (or any Indemnitee) with respect to such honor.

(vi) Promptly after issuance of any Letter of Credit or any amendment to a Letter of Credit, the 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 L/C Issuer shall notify promptly the Borrower and the Administrative Agent thereof. Not later than 1:00 P.M. (x) on the first Business Day following receipt by the Borrower of notice of a drawing if such notice is received prior to 10:00 a.m. or (ii) two Business Days following receipt by the Borrower of notice of a drawing if such notice is not received prior to the specified time in clause (x) (each such date, an "**Honor Date**"), the Borrower shall reimburse the 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 L/C Issuer on such amount at the rate applicable to Base Rate Loans under the applicable Revolving Credit Commitments (without duplication of interest payable on L/C Borrowings). If the Borrower fails to so reimburse the 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 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 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 the 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.

(i) Each Appropriate Lender (including any Lender acting as the L/C Issuer) shall upon any notice pursuant to Section 2.03(c)(i) make funds (in Same Day Funds) available to the Administrative Agent for the account of the L/C Issuer in Dollars in 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 Revolving Credit Commitments to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer.

(ii) 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 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 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.

(iii) Until each Appropriate Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the 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 L/C Issuer.

(iv) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse the 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 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 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 L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(v) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the 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), the 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 the L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect. A certificate of the L/C Issuer submitted to any 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 the L/C Issuer has made a payment under any Letter of Credit and has received from any 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 the 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 the L/C Issuer pursuant to Section 2.03(e)(i) is required to be returned under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Appropriate Lender shall pay to the Administrative Agent for the account of the 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 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 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 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 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;

(vi) the fact that a Default or an Event of Default has occurred and is continuing;

(vii) any bankruptcy, insolvency, receivership, reorganization, or similar proceeding discharging or otherwise affecting the Borrower or any of its Affiliates;

(viii) the Borrower's claims, rights, or remedies against any of its Affiliates;

(ix) any loss or damage to any Collateral; or

(x) 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 the 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 the 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 Issuer.*

(i) Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the 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 Issuer, any Agent Party nor any of the respective correspondents, participants or assignees of the 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 Required Lenders, 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 Issuer, any Agent Party, nor any of the respective correspondents, participants or assignees of the L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (xiv) of Section 2.03(e); provided that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the L/C Issuer, and the 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 the L/C Issuer's willful misconduct or gross negligence or the 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, the 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 the L/C Issuer shall not 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. Without limitation of the generality of the foregoing, for the Borrower's account, the L/C Issuer may at any time provide in the Letter of Credit or otherwise agree to do or do the following:

(A) send the Letter of Credit via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") network and bind the Borrower directly and as an indemnifier to the rules applicable to SWIFT messages (including, but not limited to, rules obligating the Borrower or the L/C Issuer to pay bank charges);

(B) assert, waive, or, with any necessary consent from the beneficiary or other person or entity, amend any provision in the Letter of Credit or applicable practice that primarily concerns issuer operations including, but not limited to, (A) identification of the Letter of Credit

in any presentation, (B) marking of the Letter of Credit to reflect a transfer, payment, or other action, (C) specification of the business days and hours, manner, and place for the Lender receiving a presentation, effecting honor, and giving notice of dishonor under the Letter of Credit, (D) duration of the period(s) for examination, approaching the Borrower for a waiver, or sending a notice of refusal, (E) disposition of the beneficiary's documents after dishonor or while approaching the Borrower for a waiver, and (F) replacement of a lost Letter of Credit or recognition of a successor beneficiary;

(C) discount an accepted draft or deferred payment undertaking incurred under the Letter of Credit, at the request of the beneficiary or other third party, without affecting the amount or due date of the Borrower's obligations to reimburse or pay fees to the L/C Issuer;

(D) select any branch, bank office, or L/C Issuer affiliate or any other bank or financial institution or affiliate for issuing, advising, transferring, confirming, and/or nominating bank or person or entity under the law and practice of the place where it acts (if the Letter of Credit permits advice, transfer, confirmation, and/or nomination) to act under contract with the L/C Issuer as a letter of credit processing agent for the L/C Issuer in the L/C Issuer's issuance of the Letter of Credit or processing of demands or in any other action that the Lender is required or permitted to take under the Letter of Credit;

(E) honor any presentation that substantially complies with the terms and conditions of the Letter of Credit, whether or not the Letter of Credit requires strict compliance (including, but not limited to, honor of a draft that is non-negotiable or informal, honor up to the amount available under the Letter of Credit of a demand claiming more than that amount, honor of a draft or other document that lacks a reference to the Letter of Credit, honor of a presentation of documents that include inconsistent extraneous data, and allowance of a grace period of one business day for timing requirements under the Letter of Credit); and

(F) provide for or submit to arbitration, mediation, DOCDEX (the ICC Banking Commission's informal dispute resolution service), or the like for the resolution of some or all disputes with the beneficiary or other person or entity.

(ii) If the beneficiary or another person or entity claims that the L/C Issuer has wrongfully repudiated or dishonored a Letter of Credit, then the L/C Issuer shall have the right to defend or settle the claim, with or without joining the Borrower in any proceeding or negotiation and without regard to whether the claimant asserts that the L/C Issuer is precluded from relying on a valid defense. The Borrower shall have the obligation to mitigate damages and, if the L/C Issuer pays or settles a claim then Borrower will reimburse, indemnify, account for any benefits, and cooperate with the L/C Issuer as subrogee. The L/C Issuer's actions in one or more instances shall not waive its right, with or without notice to the Borrower, to use its discretion differently in other similar instances and shall not establish a course of conduct on which the Borrower may rely in any other instances under the same or other Letter of Credit.

(iii) In furtherance and not in limitation of the foregoing, to the fullest extent permitted by law, rule or regulation, none of the Administrative Agent, the L/C Issuer, or any Lender shall be responsible for: (A) the form, validity, sufficiency, accuracy, genuineness, or legal effect of any document issued by any party in connection with the application for and issuance of any Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent, or forged; (B) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason; (C) failure of the beneficiary of any Letter of Credit to comply fully and strictly with the conditions required in order to demand payment under such Letter of Credit; (D) errors, omissions, interruptions, or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, or otherwise, whether or not they may be in cipher; (E) errors

in interpretation of technical terms; (F) any loss or delay in the transmission or otherwise of any document required in order to make a payment under any Letter of Credit or guaranty thereof or of the proceeds thereof; (G) the credit of the proceeds of any drawing under any Letter of Credit or guaranty thereof; and (H) any consequences arising from causes beyond the control of the Administrative Agent, the L/C Issuer, or any Lender. None of the above shall affect, impair, or prevent the vesting of any of the Administrative Agent's, the L/C Issuer's, or any Lender's rights or powers hereunder or under this Agreement.

(iv) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Section 9.03 of this Agreement with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Letter of Credit documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Section 9.03 of this Agreement included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(v) The Borrower, the Administrative Agent, and Lenders each agree that, in the absence of gross negligence or willful misconduct on the part of the L/C Issuer (as finally determined by a court of competent jurisdiction), the L/C Issuer will be deemed to have exercised care in determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof.

(g) *Cash Collateral.* (i) If, as of the Maturity Date applicable to the Revolving Credit Commitments, 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 Required Lenders, 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, then in each case the Borrower shall Cash Collateralize the then Outstanding Amount of all the (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 such Maturity Date, as the case may be), and shall do so not later than 2:00 p.m. 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 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 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 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 Issuer and the 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 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.*

(i) With respect to each standby Letter of Credit, the Borrower shall pay to the Administrative Agent for the account of each 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; *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 Maturity Date applicable to the Revolving Credit Commitments 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.

(ii) With respect to each commercial Letter of Credit, a the Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Pro Rata Share or other applicable share provided for under this Agreement a Letter of Credit fee in an amount equal to the Applicable Rate on the stated amount of such Letter of Credit, which fee shall be payable (as more specifically determined pursuant to the applicable Loan Documents with respect to such Letter of Credit and otherwise as determined by the Administrative Agent in accordance with the Loan Documents and the Administrative Agent's loan systems and procedures periodically in effect) in advance either on the date of issuance of such Letter of Credit or on the date on which the first draw under such Letter of Credit is made (as determined by the Administrative Agent at the time of issuance of the applicable Letter of Credit).

(i) *Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer.* The Borrower shall pay directly to the 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. 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 Maturity Date applicable to the Revolving Credit Commitments and thereafter on demand. In addition, the Borrower shall pay directly to the 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 the 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) *Rules of Practice.* Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued by it, (i) the ISP shall apply to each Letter of Credit and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (as amended, supplemented, restated, and/or republished from time to time, the “UCP”) shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrower for, and the L/C Issuer’s rights and remedies against the Borrower shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the laws, rules or regulations or any order of a jurisdiction where the L/C Issuer, the beneficiary, or any advising, transferring, confirming, or nominated bank or person or entity is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the International Chamber of Commerce Banking Commission, the Bankers Association for Finance and Trade, or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such laws or practice rules.

(l) [Reserved]

(m) *Provisions Related to Extended Revolving Credit Commitments.* If the Maturity Date in respect of any Revolving Credit Commitments occurs prior to the expiry date of any Letter of Credit, then (i) if one or more other 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 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 Revolving Credit Lenders pursuant to) the non-terminating Revolving Credit Commitments up to an aggregate amount not to exceed the aggregate principal amount of the unutilized 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 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 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 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) [Reserved]

(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 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 Revolving Credit Commitments (taking into account the Maturity Date of any 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 Revolving Credit Commitments shall not exceed the aggregate Revolving Credit Commitments, and (ii) the Revolving Credit Exposure of any Revolving Credit Lender shall not exceed such Revolving Credit Lender's Revolving Credit Commitment; *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 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 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 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 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 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 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 Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each 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 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 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 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 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 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 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 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 Revolving Credit Commitments (the "**Expiring Credit Commitment**") at a time when other 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 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; *provided* that (1) such notice must be received by the Administrative Agent not later than 11:30 a.m. (A) three (3) Business Days prior to any date of prepayment of Tranche Rate Loans (unless otherwise agreed by the Administrative Agent) and (B) on the date of prepayment of Base Rate Loans; (2) any prepayment of Tranche 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 Tranche 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.

(i) 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.

(ii) 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.

(iii) 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).

(b) *Mandatory.*

(i) [Reserved].

(ii) If (1) the Borrower or any 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), (p), (q), (s) or (t) or (2) any Casualty Event occurs, which results in the realization or receipt by the Borrower or a Subsidiary of the Borrower 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 Subsidiary of the Borrower 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.

(iii) If the Borrower or any Subsidiary of the Borrower 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 Subsidiary of the Borrower of such Net Proceeds.

(iv) [Reserved].

(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 this Section 2.05(b) (A) shall be applied ratably to each Class of Term Loans then outstanding, (B) shall be applied with respect to each such Class for which prepayments will be made to the scheduled installments of principal on a pro rata basis 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, any Incremental 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.

(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**") are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Proceeds 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 is permitted under the applicable local law, such repatriation will be promptly effected and an amount equal to such repatriated Net Proceeds 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 attributable to Foreign Subsidiaries would have material adverse tax consequences (as determined in good faith by the Borrower) with respect to such Net Proceeds, such Net Proceeds 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) 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, together with, in the case of any such prepayment of a Tranche Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Tranche Rate Loan pursuant to Section 3.05.

(i) So long as no Event of Default shall have occurred and be continuing, if any prepayment of Tranche Rate Loans is required to be made under this Section 2.05, 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 Tranche 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 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 A Commitment of each Term Lender shall be automatically and permanently reduced to \$0 upon the funding of Term A Loans to be made by it on the First Amendment Effective Date. The Term Commitment of each Term Lender with respect to Incremental Term Loans 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 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 each day in the table set forth below under the caption "Loan Installment Date" (each such date being referred to as a "**Loan Installment Date**"), the applicable percentage in the table set forth below under the caption "Amortization Percentage" of the original principal amount of the Term A Loans outstanding on the First Amendment Effective 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 (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:

<u>Loan Installment Date</u>	<u>Amortization Percentage</u>
June 30, 2025	0.625%
September 30, 2025	0.625%
December 31, 2025	0.625%
March 31, 2026	0.625%
June 30, 2026	0.625%
September 30, 2026	0.625%
December 31, 2026	0.625%
March 31, 2027	0.625%
June 30, 2027	1.25%
September 30, 2027	1.25%
December 31, 2027	1.25%
March 31, 2028	1.25%
June 30, 2028	1.25%
September 30, 2028	1.25%
December 31, 2028	1.25%
March 31, 2029	1.25%
June 30, 2029	2.50%
September 30, 2029	2.50%
December 31, 2029	2.50%

(b)

(i) 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 or Extended 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 or Extended Term Loans, and (B) any increase to payments to the extent and as required pursuant to the terms of any applicable Incremental Amendment or Extension Amendment.

(c) *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.

(d) *Swing Line Loans.* The Borrower shall repay the aggregate principal amount of each Swing Line Loan on the earlier to occur of (i) a date between one (1) and five (5) Business Days after such Loan is made and (ii) the Latest Maturity Date for the Revolving Credit Commitments.

Section 2.08 Interest.

(a) Subject to the provisions of Section 2.08(b), (i) each Tranche Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Tranche 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) or (f), 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.

(d) In connection with the use or administration of the Tranche Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of the Tranche Rate.

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. For the avoidance of doubt, the Outstanding Amount of Swing Line Loans shall not be counted towards or considered usage of the Revolving Credit Loans for purposes of determining the commitment fee. 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 Arrangers, the Administrative Agent and the Lenders such fees as shall have been separately agreed upon in writing (including without limitation pursuant to the Engagement 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 Administrative Agent).

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 Term SOFR 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 Tranche 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.

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 (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 Incremental Revolving Credit Commitments, 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 shall make its Commitment available to the Borrower in an amount equal to its Incremental Revolving Credit Commitment and (B) each Incremental Revolving Credit Lender shall become a Lender hereunder with respect to the Incremental Revolving Credit Commitment and the Revolving Credit Loans 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 the Administrative Agent, the Swing Line Lender and the 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.

(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, in connection with any Incremental Term Commitments the primary purpose of which is to finance a Permitted Acquisition that is a Limited Condition Transaction, (x) a limitation of the condition set forth in Section 4.02(i) to customary “specified representations” and (y) a limitation of the condition set forth in Section 4.02(ii) to any Event of Default under Section 8.01(a) or (f);

(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)) or, in each case, such lesser amount as approved by the Administrative Agent;

(iii) the aggregate principal amount of Incremental Term Loans made and Incremental Revolving Credit Commitments established under this Section 2.14 shall not exceed the greater of (i) \$100,000,000 and (ii) 100% of Consolidated EBITDA;

(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; and

(v) after giving effect to any such Incremental Commitments (and, in the case of an Incremental Revolving Credit Commitment, assuming a full draw on such Incremental Revolving Credit Commitments, but excluding the proceeds of such Incremental Commitments from netting in the calculation of Consolidated Total Net Rent Adjusted Leverage Ratio), the Consolidated Total Net Rent Adjusted Leverage Ratio shall not exceed 5.25:1.00; *provided*, that if such Incremental Commitments are being incurred in connection with a Limited Condition Transaction and an LCT Election is made, the date of determination of whether this condition is satisfied shall be the LCT Test Date.

(e) *Required Terms.* The terms, provisions and documentation of the Incremental Term Loans and Incremental Term Commitments of any Class shall be as agreed between the Borrower and the applicable Incremental Term Lenders providing such Incremental Term Commitments, and except as otherwise set forth herein, to the extent not identical to any Class of Term Loans existing on the Incremental Facility Closing Date, shall be consistent with clause (i) below or otherwise reasonably satisfactory to the Administrative Agent; *provided* that in the case of a Term Loan Increase, the terms, provisions and documentation of such Term Loan Increase shall be identical (other than with respect to upfront fees, OID or similar fees) to the Term Loans being increased, in each case, as existing on the Incremental Facility Closing Date. The terms, provisions and documentation of an Incremental Revolving Credit Commitment shall be identical (other than with respect to upfront fees or similar fees) to the 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* in right of payment with the Obligations, (II) shall be incurred by the Borrower and guaranteed by the Guarantors and (III) shall be secured by the Collateral and shall rank *pari passu* in right of security with the Obligations,

(B) as of the Incremental Amendment Date, shall not have a final scheduled maturity date earlier than the Maturity Date of the Term A Loans or any Extended Term Loans as to which the Term A 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 A Loans,

(D) shall have an Applicable Rate, and subject to clauses (e)(i)(B) and (e)(i)(C) above, final maturity and amortization determined by the Borrower and the applicable Incremental Term Lenders; *provided* the Applicable Rate, final maturity and amortization for a Term Loan Increase shall be the Applicable Rate, final maturity 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 in any voluntary or mandatory prepayments of Term Loans hereunder.

(ii) the Incremental Revolving Credit Commitments:

(A) (I) shall rank *pari passu* in right of payment with the Obligations, (II) shall be incurred by the Borrower and guaranteed by the Guarantors and (III) shall be secured by the Collateral and shall rank *pari passu* in right of security with the Obligations,

(B) [reserved],

(C) on the Incremental Facility Closing Date all Swing Line Loans and Letters of Credit shall be participated on a pro rata basis by all Revolving Credit Lenders in accordance with their percentage of the Revolving Credit Commitments existing after giving effect to such Incremental Revolving Credit Commitments, *provided*, that in connection with such election the Swing Line Lender or the L/C Issuer 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 Revolving Credit Commitments,

- (D) [reserved],
- (E) [reserved], and
- (F) shall have fees determined by the Borrower and the applicable Incremental Revolving Credit Commitment arranger(s).

(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 the L/C Issuer. The Incremental Amendment may, without the consent of any other Loan Party 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. 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 of Incremental Revolving Credit Commitments 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 Revolving Credit 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 *pari passu* 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), in each case issued in a public offering, Rule 144A or other private placement or bridge in lieu of the foregoing, or *pari passu* 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 Term Commitments (the **“Incremental Equivalent Debt”**); *provided that* (i) 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, the Consolidated Total Net Rent Adjusted Leverage Ratio does not exceed 5.25:1.00 (excluding the proceeds of such Incremental Equivalent Debt from netting in the calculation of Consolidated Total Net

Rent Adjusted Leverage Ratio), (ii) no Default or Event of Default shall have occurred and be continuing, provided that in the case of any Incremental Equivalent Debt the primary purpose of which is to finance a Permitted Acquisition that is a Limited Condition Transaction, this condition shall be no Event of Default under Section 8.01(a) or (f) shall have occurred and be continuing, (iii) the borrower and guarantors of such Incremental Equivalent Debt shall be Loan Parties, (iv) if such Incremental Equivalent Debt is (a) secured, then such Incremental Equivalent Debt shall be secured by only assets constituting Collateral and shall be subject to an Intercreditor Agreement, or (b) 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), (v)(A) with respect to Incremental Equivalent Debt that is secured on a pari passu basis with the Obligations, such Incremental Equivalent Debt shall have a final maturity date which is no earlier than the then Latest Maturity Date and (B) with respect to Incremental Equivalent Debt that is secured on a junior basis with the Obligations or is unsecured, such Incremental Equivalent Debt shall have a maturity date which is no earlier than 91 days after the then Latest Maturity Date and (vi)(A) with respect to Incremental Equivalent Debt that is secured on a pari passu basis with the Obligations, such Incremental Equivalent Debt shall have a Weighted Average Life to Maturity which is equal to or greater than the Weighted Average Life to Maturity of the Term A Loans and (b) with respect to Incremental Equivalent Debt that is secured on a junior basis with the Obligations or is unsecured, such Incremental Equivalent Debt shall have a Weighted Average Life to Maturity which is equal to or greater than the Weighted Average Life to Maturity of the Term A Loans plus 91 days, (vii)(a) with respect to Incremental Equivalent Debt that is secured on a junior basis with the Obligations, 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 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 (viii) 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 Loans and Commitments (except for covenants or other provisions (a) conformed (or added) in the Loan Documents, for the benefit of the Lenders, 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).

(i) This Section 2.14 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

Section 2.15 [Reserved].

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 hereunder which have more than three (3) 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 A Loans, unless such optional prepayment is accompanied by a pro rata optional prepayment of the Term A 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, 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 hereunder which have more than three (3) 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 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 Revolving Credit Commitment of that Non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Loans of that Non-Defaulting Lender under such Revolving Credit Commitments.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, Swing Line Lender and the 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) Any and all payments made by or on account of any obligation of any Loan Party (the term Loan Party under Article III being deemed to include any Subsidiary for whose account a Letter of Credit is issued) under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by any applicable Law. If a Withholding Agent shall be required by any applicable Laws (as determined in the good faith discretion of an applicable Withholding Agent) to deduct or withhold any Taxes from or in respect of any sum payable under any Loan Document, then (i) if such Tax is an Indemnified Tax, the sum payable by the applicable Loan Party shall be increased as necessary so that after making all such required deductions or withholdings (including such deductions or withholdings applicable to additional sums payable under this Section 3.01), the applicable Recipient receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the applicable Withholding Agent shall be entitled to make such deductions or withholdings, and (iii) the applicable Withholding Agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Laws. As soon as practicable after any payment of Taxes by a Loan Party to a Governmental Authority pursuant to this Section, the applicable Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(b) In addition, Each Loan Party shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) The Loan Parties agree to indemnify each Recipient, within ten (10) days after demand therefore, for the full amount of Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and 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 delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Loan Parties have not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.7(e) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. 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 any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (A), (B) and (D) of Section 3.01(e)(ii)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender:

(i) Without limiting the generality of the foregoing.

(A) 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 Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent) executed copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) Each Lender that is not a United States person (as defined in Section 7701(a)(30) of the Code) (a "**Foreign Lender**") shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent) whichever of the following is applicable;

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E (or any successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E (or any successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of Internal Revenue Service Form W-8ECI (or any successor forms);

(3) in the case of a Foreign 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-1 to the effect that such Foreign Lender is not a

“bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code hereto (any such certificate a “**United States Tax Compliance Certificate**”) and (B) executed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms);

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, W-8BEN-E (or any successor forms), a United States Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-3, Form W-9, or any other required information from each beneficial owner, as applicable (*provided* that, if the Lender is a partnership and one or more direct or indirect partners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate substantially in the form of Exhibit H-4 may be provided by such Foreign Lender on behalf of such partner(s)); or

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or around the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed 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, , duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) 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.

(E) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) If any Lender requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to this Section 3.01, then such Lender shall (at the request of the Borrower) use reasonable efforts to, as applicable, designate a different lending or issuing office for funding or booking its Loans hereunder or issuing Letters of Credit 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 this Section 3.01, in the future, and (ii) would not subject such Lender to any

unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(g) If any Lender or the Administrative Agent determines, in its sole discretion, that it has received a refund in respect of any Indemnified 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 pay an amount equal to 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 giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) of the Lender or Administrative Agent, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund net of any Taxes payable by the Administrative Agent or Lender on such interest); *provided* that the Loan Parties, upon the request of the Lender or the Administrative Agent, as the case may be, agree promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such party in the event such party is required to repay such refund to the relevant Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will any Lender or the Administrative Agent be required to pay any amount to a Loan Party pursuant to this paragraph (g) the payment of which would place any Lender or the Administrative Agent, as applicable, in a less favorable net after-Tax position than any Lender or the Administrative Agent, as applicable, would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 3.01(g) shall not be construed to require the Administrative 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 the 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 Loans whose interest is determined by reference to SOFR or Term SOFR, or to determine or charge interest rates based upon SOFR or Term SOFR, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent), (a) any obligation of the Lenders to make Tranche Rate Loans, and any right of the Borrower to continue Tranche Rate Loans or to convert Base Rate Loans to Tranche Rate Loans, shall be suspended, (b) the interest rate on which Base Rate Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of "Base Rate", and (c) the Borrower shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Tranche Rate Loans 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 clause (c) of the definition of "Base Rate"), on the last day of the Interest Period therefor, if all affected Lenders may lawfully continue to maintain such Tranche Rate Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such Tranche Rate Loans to such day, 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 any prepayment or conversion contemplated by the foregoing clause (c), 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 Unavailability of Deposits or Inability to Ascertain, or Inadequacy of, SOFR or Successor Rates.

(a) Temporary Replacement of the Tranche Rate and Tenor Replacement. In the event that, prior to commencement of any Interest Period relating to a Tranche Rate Loan, the Administrative Agent shall determine or be notified by Required Lenders that no Successor Rate has been determined in accordance with Section 3.03(b) and either: (i) the Tranche Rate is unavailable, unrepresentative, or unreliable, (ii) the Tranche Rate as determined by the Administrative Agent will not adequately and fairly reflect the cost to Lenders of funding their Tranche Rate Loans for such Interest Period, or (iii) the making or funding of Tranche Rate Loans has become impracticable; then, in any such case, the Administrative Agent shall promptly provide notice of such determination to the Borrower and the Lenders (which shall be conclusive and binding on all parties hereto absent manifest error), and (A) any request for a Tranche Rate Loan or for a conversion to or continuation of a Tranche Rate Loan shall be automatically withdrawn and shall be deemed a request for a Base Rate Loan, (B) each Tranche Rate Loan will automatically, on the last day of the then current Interest Period relating thereto, become a Base Rate Loan, and (C) the obligations of the Lenders to make Tranche Rate Loans shall be suspended until the Administrative Agent or the Required Lenders determine that the circumstances giving rise to such suspension no longer exist, in which event the Administrative Agent shall so notify the Borrower and the Lenders. If a Successor Rate has been determined in accordance with Section 3.03(b) and the Administrative Agent determines, or the Required Lenders provide notice, that any of the circumstances described in clauses (i)-(iii) of this paragraph has occurred, then clauses (A)-(C) of this paragraph shall apply as if each reference to Tranche Rate therein were a reference to the Successor Rate.

(b) At any time (including in connection with the implementation of a Successor Rate), the Administrative Agent may remove any tenor of a Tranche Rate that is unavailable, non-representative, or not in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, in the Administrative Agent's sole discretion, for Tranche Rate settings; *provided* however that the Administrative Agent may reinstate such previously removed tenor for Tranche Rate settings, if the Administrative Agent determines in its sole discretion that such tenor has become available and representative again.

(c) Tranche Rate Replacement.

(i) Notwithstanding anything to the contrary herein or in any other Loan Document (and, for the avoidance of doubt, "Loan Documents" shall not include any Secured Hedge Agreement), but without limiting Section 3.03(a) above, if the Administrative Agent determines (which determination shall be conclusive and binding on all parties hereto absent manifest error) that any of the circumstances described in Section 3.03(a)(i)-(iii) has occurred and is unlikely to be temporary or the administrator of the Tranche Rate or a Governmental Authority having or purporting to have jurisdiction over the Administrative Agent or such administrator has made a public statement identifying a specific date (the "**Scheduled Unavailability Date**") after which the Tranche Rate will no longer be representative or made available or used for determining the interest rate of loans or otherwise cease or will no longer be in compliance or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Benchmarks, and there is no successor administrator satisfactory to the Administrative Agent, then on a date and time determined by the Administrative Agent, in consultation with the Borrower, (the "**Tranche Rate Replacement Date**"), but no later than the Scheduled Unavailability Date, the Tranche Rate will be replaced hereunder and under any other Loan Document with Daily Simple SOFR.

(ii) If the Successor Rate is based on Daily Simple SOFR, interest shall be due and payable on the last Business Day of every calendar month.

(iii) Notwithstanding anything to the contrary herein, if the Administrative Agent determines that Daily Simple SOFR is not available and administratively feasible prior to the Tranche Rate Replacement Date, or if any of the circumstances described in Section 3.03(b)(1) with regard to the Tranche Rate has occurred with respect to a Successor Rate then in effect, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing the Tranche Rate or any then current Successor Rate in accordance with this Section 3.03(b) with another alternative benchmark rate and a Spread Adjustment, giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities and any recommendations of a relevant Governmental Authority, and which Spread Adjustment or method for calculating such Spread Adjustment shall be published on an information service as selected by the Administrative Agent and the Borrower from time to time in their reasonable discretion. Any such alternative benchmark rate and Spread Adjustment shall constitute a Successor Rate hereunder. Any such amendment shall become effective on the date set forth in a written notice provided by the Administrative Agent to the Borrower and Lenders (such date to be five or more Business Days after the date of such notice) unless the Required Lenders have provided written notice of their objection to such amendment on or before the fifth Business Day after the Administrative Agent provides such notice.

(iv) The Administrative Agent will promptly (in one or more notices) notify the Borrower and the Lenders of the implementation of any Successor Rate. Any 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 Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent, in consultation with the Borrower.

(v) In connection with the implementation and administration of a Successor Rate, the Administrative Agent, in consultation with the Borrower, will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that the Administrative Agent shall provide notice of such Conforming Changes to the Borrower and Lenders reasonably promptly after such amendment becomes effective.

(vi) Notwithstanding anything to the contrary herein, if the Successor Rate would be less than the Index Floor, the Successor Rate will be deemed to be the Index Floor for the purposes of this Agreement and the other Loan Documents.

(vii) The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, or any other matter related to the Tranche Rate or any Successor Rate, including the selection of such rate, any related Spread Adjustment, or any Conforming Changes, or whether the composition or characteristics of any Successor Rate and Spread Adjustment or Conforming Changes will be similar to, or produce the same value or economic equivalence of, the initial Tranche Rate.

(viii) Notwithstanding anything to the contrary contained herein, if, after the Closing Date, the Borrower enters into a Secured Hedge Agreement with respect to all or part of a Tranche Rate Loan and the floating interest rate under the Secured Hedge Agreement is Daily Simple SOFR, the Administrative Agent and the Borrower may agree to replace the Tranche Rate hereunder with Daily Simple SOFR and a Spread Adjustment without consent of any other party hereto; *provided further* that, if subsequent thereto, the Administrative Agent and the Borrower amend such Secured Hedge Agreement to include, or terminate such Secured Hedge Agreement and enter into a new Secured Hedge Agreement with, a floating interest rate thereunder of the original Tranche Rate, then the Administrative Agent and the Borrower may further agree to replace Daily Simple SOFR hereunder with the original Tranche Rate (and a Spread Adjustment,

if applicable) hereunder without consent of any other party hereto; and, in either such event, (A) such rate shall be a Successor Rate hereunder, and (B) the Administrative Agent shall provide written notice thereof to the Lenders.

Section 3.04 Increased Cost and Reduced Return: Capital Adequacy.

(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 Loans whose interest is determined by reference to SOFR or Term SOFR, 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 (ii) Excluded Taxes), 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)), 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 or the L/C Issuer reasonably determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer'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 or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loan held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy and liquidity and such Lender's or such L/C Issuer'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 or the L/C Issuer, 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 the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

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 Tranche 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 Tranche 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 Tranche 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 Tranche Rate Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into Tranche 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 Tranche Rate Loan or to convert Base Rate Loans into Tranche Rate Loans shall be suspended pursuant to Section 3.06(b) hereof, such Lender's applicable Tranche Rate Loans shall be automatically converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for such Tranche 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 Tranche Rate Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's applicable Tranche 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 Tranche 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 Tranche 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 Tranche 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 Tranche 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 Tranche Rate Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Tranche 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) The Administrative 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, the Administrative Agent or Lender may use any reasonable averaging and attribution methods. The Administrative Agent or Lender claiming compensation under Section 3.04 shall do so only to the extent the Administrative Agent or Lender requires similarly situated borrowers under comparable credit facilities to pay such amounts.

(g) A Lender or the L/C Issuer shall be entitled to compensation under Section 3.04 only if it is such Lender's or the L/C Issuer's general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

Section 3.07 Replacement of Lenders under Certain Circumstances.

If (i) any Lender ceases to make Tranche 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 the 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 the 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 the L/C Issuer or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to the 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 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:

(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 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 (the "**Solvency Certificate**"); and

(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;

(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, Closing Date Refinancing shall have been consummated.

(d) The Administrative Agent shall have received, at least two (2) days prior to the Closing Date, (i) 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 and (ii) if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification for the Borrower, in each case, that has been requested by the Administrative Agent or any Lender in writing at least ten (10) Business Days prior to the Closing Date.

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.

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 Tranche Rate Loans) 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; *provided, however*, that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(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 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 Tranche 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 Administrative Agent 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 Subsidiary of the Borrower 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) 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.

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 of the Parent as of the fiscal year ending on or around December 31, 2021 fairly present in all material respects the financial condition of the Parent 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 of the Parent as of the fiscal quarter ending on or around September 30, 2022 fairly present in all material respects the financial condition of the Parent as of the date thereof and its 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) Since December 26, 2021, 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.

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 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 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 7.01(b) 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 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.

The Borrower and its 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 (i) 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, or (ii) as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. 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.

(c) As of the First Amendment Effective Date the Borrower is not and will not be using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans

with respect to the Borrower's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement.

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 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 the Administrative 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. As of the First Amendment Effective Date, the information included in any Beneficial Ownership Certification delivered to the Administrative Agent or any Lender, if applicable, is true and correct in all material respects.

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 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 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 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 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 Subsidiaries of the Borrower, 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 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 Letter 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, or for any other purpose, in each case in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), the UK Bribery Act 2010 or any other applicable 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 in all material respects with the FCPA and all other applicable 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 all material respects.

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 Administrative Agent 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 Secured Treasury Services Agreements or obligations under Secured Hedge Agreements as to which arrangements reasonably satisfactory to the applicable Hedge Bank or Treasury Services 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 L/C Issuer or such Letter of Credit has been deemed reissued under another agreement reasonably acceptable to the 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 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 on or around December 31, 2022, within one hundred twenty (120) days after the end of each fiscal year of the Borrower, 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 on or around December 31, 2022, 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, 2022, 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 any Financial Covenant, (y) an actual Event of Default with respect to any Financial Covenant or (z) the impending maturity of any Facility or any Incremental Equivalent Debt); and

(b) commencing with the fiscal quarter ending on or around March 31, 2023, within forty-five (45) 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 on or around March 31, 2023 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;

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 its 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 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 on or around December 31, 2022, 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 any Financial Covenant, (y) an actual Event of Default with respect to any Financial Covenant or (z) the impending maturity of any Facility or any Incremental Equivalent Debt).

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 Arrangers 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 Arrangers 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 direct or indirect parent of the Borrower) or any Subsidiary of the Borrower 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), 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

(d) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Loan Parties or any of their respective 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 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 Subsidiaries of the Borrower) 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.

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 Subsidiary of the Borrower, 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 as often as may be reasonably desired 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 its 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; provided that the Borrower shall notify the Administrative Agent that information is being withheld in reliance on this sentence.

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 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 or acquisition 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 any 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 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) [reserved]

(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) or (ii) .

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.

Section 6.14 [Reserved].

Section 6.15 [Reserved].

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 [Reserved].

Section 6.18 [Reserved].

Section 6.19 Anti-Corruption Laws; Sanctions.

Conduct its business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable Anti-Corruption Laws and with all applicable Sanctions.

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 Secured Treasury Services Agreements or obligations under Secured Hedge Agreements as to which arrangements reasonably satisfactory to the applicable Hedge Bank or Treasury Services 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 L/C Issuer or such Letter of Credit has been deemed reissued under another agreement reasonably acceptable to the 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 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) Liens created pursuant to any Loan Document;

(b) Liens existing on the First Amendment Effective 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 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 Subsidiaries, taken as a whole, or the use of the property for its intended purpose;

(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 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 Subsidiary of the Borrower on assets of a Non-Loan Party or (ii) in favor of the Borrower or any Subsidiary Guarantor on assets of a Subsidiary of the Borrower;

(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 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 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 Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any of its Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Subsidiaries in the ordinary course of business;

(s) Liens solely on any cash earnest money deposits made by the Borrower or any of its 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 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 Subsidiary of the Borrower, 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 Subsidiary of the Borrower, (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) or (s);

(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 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), and (w) 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);

(ab) Liens with respect to property or assets of the Borrower or any of its Subsidiaries securing obligations in an aggregate principal amount outstanding at any time not to exceed the greater of \$20,000,000 and 20.0% of Consolidated EBITDA, in each case determined as of the date of incurrence;

(ac) [Reserved];

(ad) [Reserved];

(ae) 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;

(af) 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;

(ag) Liens securing Incremental Equivalent Debt;

(ah) [reserved]; and

(ai) Liens in respect of any Sale Leaseback Transaction, in each case on the assets or property sold and leased back in such Sale Leaseback Transaction.

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 First Amendment Effective Date and listed in Schedule 7.03(b) and any Permitted Refinancing thereof and (ii) intercompany Indebtedness among the Borrower and any Subsidiary of the Borrower outstanding on the Closing Date and any Permitted Refinancing thereof; *provided* that all such Indebtedness of the Borrower or any Subsidiary Guarantor 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 Subsidiary of the Borrower in respect of Indebtedness of the Borrower or any Subsidiary of the Borrower otherwise permitted hereunder; *provided* that (A) no Guarantee by any Subsidiary of any Indebtedness constituting a Specified Junior Financing Obligation, Incremental Equivalent Debt or Permitted Ratio Debt shall be permitted unless such guaranteeing party shall have also provided a Guarantee of the Obligations on the terms set forth herein, (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 and (C) if such Guaranty is by the Borrower or any Subsidiary Guarantor in respect of Indebtedness of a Subsidiary that is not a Subsidiary Guarantor, such Guaranty shall constitute a Restricted Investment permitted by Section 7.06 or a Permitted Investment (other than under clause (1) of the definition of "Permitted Investments");

(d) Indebtedness of the Borrower or any Subsidiary of the Borrower owing to the Borrower or any Subsidiary of the Borrower or issued or transferred to any direct or indirect parent of the Borrower which is substantially contemporaneously transferred the Borrower or any Subsidiary of the Borrower to the extent constituting a Restricted Investment permitted by Section 7.06 or a Permitted Investment; *provided* that all such Indebtedness of the Borrower or any Subsidiary Guarantor 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 Subsidiary of the Borrower 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 20.0% of Consolidated EBITDA, in each case determined at the time of incurrence at any time outstanding and (ii) Attributable Indebtedness arising out of any Sale Leaseback Transaction 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 of its Subsidiaries' 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 Subsidiary of the Borrower (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, in each case, not exceed in the aggregate at any time outstanding the greater of \$20,000,000 and 20.0% of Consolidated EBITDA determined at the time of incurrence; *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), the Consolidated Total Net Rent Adjusted Leverage Ratio does not exceed 5.25:1.00.

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 date that is 91 days following the then Latest Maturity Date at the time such Indebtedness is incurred and (2) all such Indebtedness incurred by Non-Loan Parties, together with all Permitted Ratio Debt incurred by Non-Loan Parties, does not exceed in the aggregate at any time outstanding the greater of \$25,000,000 and 25.0% of Consolidated EBITDA, 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 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 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 Subsidiaries under deferred compensation or other similar arrangements incurred by such Person in connection with Permitted Acquisitions or any other Investment expressly permitted under this Agreement;

(l) obligations under Treasury Services Agreements 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 \$25,000,000 and 25.0% of Consolidated EBITDA (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 Subsidiary of the Borrower 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 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 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) [Reserved];

(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) [Reserved];

(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 15.0% of Consolidated EBITDA (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 Subsidiary could have incurred such Indebtedness under Section 7.03(s) without reliance on this Section 7.03(u));

(v) [Reserved];

(w) Incremental Equivalent Debt;

(x) [Reserved];

(y) unsecured Indebtedness in respect of obligations of the Borrower or any Subsidiary of the Borrower 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 (including any Incremental Commitments and any Incremental Term Loans) shall only be classified as incurred under Section 7.03(a) and (b) as Incremental Equivalent Debt shall only be classified as incurred under Section 7.03(w).

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.

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 Subsidiary of the Borrower 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 Subsidiaries of the Borrower; *provided* that when any Subsidiary Guarantor is merging with a Non-Loan Party, a Subsidiary Guarantor shall be the continuing or surviving Person unless the resulting Investment made in connection with Subsidiary Guarantor 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 Subsidiary of the Borrower may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Subsidiary of the Borrower; *provided* that if the transferor in such a transaction is the Borrower or a Subsidiary Guarantor, then (i) the transferee must be the Borrower or a Subsidiary Guarantor 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 and (E) the Borrower shall have delivered to the Administrative Agent (1) 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 and (2) all documentation and other information requested by the Administrative Agent or any Lender that is required under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act; *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 the Borrower or a Subsidiary), any Subsidiary of the Borrower 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 Subsidiary of the Borrower, which together with each of the Borrower's Subsidiaries, shall have complied with the requirements of Section 6.11 to the extent required pursuant to the Collateral and Guarantee Requirement;

(f) [reserved];

(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, 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 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 Subsidiary of the Borrower; *provided* that if the transferor of such property is the Borrower or a Subsidiary Guarantor (i) the transferee thereof must be the Borrower or a Subsidiary Guarantor 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 Subsidiaries and (ii) Dispositions of intellectual property that are not material to the business of the Borrower or any of its Subsidiaries;
- (i) transfers of property subject to Casualty Events;
- (j) Dispositions of property not to exceed the greater of \$20,000,000 and 20.0% of Consolidated EBITDA per fiscal year as determined at the time of such Dispositions; *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, (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 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 shall be secured on a *pari passu* or senior basis with such Liens), 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 Subsidiary of the Borrower, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that (1) are assumed by the transferee with respect to the applicable Disposition or (2) are otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Borrower or its Subsidiaries) and, in each case, for which the Borrower and all of its 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 Subsidiary of the Borrower from such transferee that are converted by the Borrower or such Subsidiary of the Borrower 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 Subsidiary of the Borrower 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 \$10,000,000 and 10.0% of Consolidated EBITDA as determined at the time of such Dispositions (net of any non-cash consideration converted into cash and Cash Equivalents) and (iii) after giving Pro Forma Effect to such Disposition, the Borrower shall be in compliance with the Financial Covenants;

(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 its 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 the Borrower or any Subsidiary Guarantor to any wholly-owned Subsidiary of the Borrower 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 Subsidiaries of the Borrower of the type described in clauses (d), (h) and (i) of the definition of "Excluded Subsidiary" to such wholly-owned Subsidiary of the Borrower;

(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) [reserved];

(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) [reserved];

(t) any Sale Leaseback Transaction provided that the aggregate fair market value of the property subject to all Sale Leaseback Transactions pursuant to this clause (t) shall not exceed \$30,000,000 during the term of this Agreement, as determined for any Sale Leaseback Transaction at the time of such Sale Leaseback Transaction; and

(u) Dispositions in the aggregate pursuant to this clause (u) not to exceed the greater of \$10,000,000 and 12.5% of Consolidated EBITDA 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)) 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 Subsidiary of the Borrower, 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 Subsidiary of the Borrower may make Restricted Payments to the Borrower and other Subsidiaries of the Borrower (and, in the case of a Restricted Payment by a non-wholly owned

Subsidiary of the Borrower, to the Borrower and any other Subsidiary of the Borrower and to each other owner of Equity Interests of such Subsidiary of the Borrower based on their relative ownership interests of the relevant class of Equity Interests);

(b) the Borrower and each Subsidiary of the Borrower 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) [reserved];

(d) to the extent constituting Restricted Payments, the Borrower and its 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 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 Subsidiary of the Borrower 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 Subsidiary of the Borrower (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 Subsidiary of the Borrower (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 Subsidiary of the Borrower (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 Subsidiary of the Borrower (or the Borrower or any other direct or indirect parent thereof) or any of its 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 (x) \$10,000,000 in any calendar year (with 100% of the unused amounts in any calendar year being carried over to succeeding calendar years) and (y) \$25,000,000 during the term of this Agreement; *provided further* that such amount in (x) and (y) may further be increased by an amount not to exceed:

(A) [reserved];

(B) the Net Proceeds of key man life insurance policies received by the Borrower or its 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 Subsidiary of the Borrower from members of management of the Borrower, any of the Borrower's direct or indirect parent

companies or any of the Borrower's 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 Subsidiaries may make Restricted Payments in an aggregate amount not to exceed the greater of \$20,000,000 and 20.0% of Consolidated EBITDA 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));

(h) the Borrower may make Restricted Payments to any direct or indirect parent of the Borrower:

(i) to pay its (or any direct or indirect parent's) 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 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 Subsidiaries;

(ii) the proceeds of which shall be used to pay (or make dividends or distributions 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) (x) for any taxable period for which Holdings and Borrower are corporations (or are disregarded entities directly or indirectly owned by a corporation) for U.S. federal income tax purposes that are included in a consolidated, combined, unitary or similar tax group (a "**Tax Group**") tax return for U.S. federal income tax purposes, distributions in amounts required for Holdings (if Holdings is the parent of such Tax Group) to pay, or distributions in amounts required for the parent of such Tax Group (if Holdings is not the parent of such Tax Group) to pay the aggregate amount of consolidated, combined, unitary or similar group tax liabilities owed by Holdings or the parent of such Tax Group, as applicable, and attributable to the income of Holdings, the Borrower and its subsidiaries (if Holdings is not the parent of such Tax Group) or attributable to the income of the Borrower and its subsidiaries (if Holdings is the parent of such Tax Group), reduced by any such taxes paid directly by Holdings, the Borrower or any of its subsidiaries to the relevant taxing authority; provided, that, if Holdings is not the parent of such Tax Group, the amount of such payments does not exceed the amounts that Holdings, the Borrower, and its subsidiaries would have been required to pay had Holdings, the Borrower, and its subsidiaries been a stand-alone group for applicable tax purposes, and if Holdings is the parent of such Tax Group, the amount of such payments does not exceed the amounts that the Borrower and its subsidiaries would have been required to pay had the Borrower and its subsidiaries been a stand-alone group for applicable tax purposes; (y) for any taxable period for which the Borrower is a partnership or disregarded entity (other than wholly-owned by a corporation) for US federal income tax purposes, any distributions from the Borrower in an amount sufficient to permit PHD Group Holdings, LLC (or such other direct or indirect parent partnership of the Borrower) to make pro rata distributions (in accordance with percentage interests) to its equity owners in an amount sufficient for each of them (or their direct or indirect owners) to pay their U.S. federal, state, and local taxes (including estimated taxes) with respect to income of the Borrower and its subsidiaries for each taxable year (determined (A) without regard to any adjustments under Section 743(b) or 734(b) of the Code and (B) taking into account any allocations under Section 704(c) of the Code and the Treasury Regulations thereunder), based on an assumed tax rate equal to the highest combined U.S. federal, state, and local tax rate applicable to an individual or corporation (whichever is higher) resident in New York, taking into account (A) the character and type of income earned (and for the avoidance of doubt, without regard to any reduction in rate attributable to Section 199A of the Code), (B) the net investment income tax under Section 1411 of the Code, and (C) any

applicable limitations with respect to any deductions; and (z) distributions by the Borrower and Holdings to fund payments to satisfy obligations of the Parent under the Tax Receivable Agreement (which in the case of the structure described in clause (y) would need to be sufficient assuming all distributions from PHD Group Holdings, LLC (or such other direct or indirect parent partnership of the Borrower) would be made on a pro rata basis (in accordance with percentage interests)); provided, that distributions under this clause (z) shall be permitted with respect to a taxable period (or portion thereof) only to the extent that distributions under clauses (x) or (y), as applicable, with respect to such taxable period (or portion thereof) are insufficient for the Parent to comply with its obligations under the Tax Receivable Agreement after the payment of the actual income tax liability of the Parent (such distributions described in this clause (iii), "**Tax Distributions**");

(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 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 Subsidiaries of the Borrower or (2) the merger (to the extent permitted in Section 7.04) of the Person formed or acquired into the Borrower or its 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 Subsidiaries of the Borrower 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 of the Borrower);

(vi) the proceeds of which shall be used by Holdings to pay (or to make dividends or distributions 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 Subsidiaries and (B) expenses and indemnities of the trustee with respect to any debt offering by Holdings (or any direct or indirect parent thereof);

(vii) to pay Public Company Costs; and

(viii) the proceeds of which shall be used by Holdings to pay (or to make dividends or distributions to allow any direct or indirect parent thereof to pay) cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted Acquisition;

(i) payments made or expected to be made by Holdings, the Borrower or any of the Subsidiaries of the Borrower 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 repurchase 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) [Reserved];

(k) [Reserved];

(l) [Reserved]; and

(m) additional Restricted Payments (the proceeds of which may be utilized by Holdings to make additional dividends or distributions) so long as immediately after giving effect to such Restricted Payment, the Consolidated Total Net Rent Adjusted Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 4.25 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 Subsidiaries of the Borrower 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 the Loan Parties,

(b) on terms substantially as favorable to the Borrower or such Subsidiary of the Borrower as would be obtainable by the Borrower or such Subsidiary of the Borrower at the time in a comparable arm's-length transaction with a Person other than an Affiliate,

(c) (i) the Transactions and the payment of fees and expenses (including Transaction Expenses) as part of or in connection with the Transactions and (ii) the First Amendment and the payment of fees and expenses as part of or in connection with the First Amendment,

(d) the issuance of Equity Interests or equity-based awards to any officer, director, employee or consultant of the Borrower or any of its Subsidiaries or any direct or indirect parent of Holdings in connection with the Transactions,

(e) [reserved],

(f) Restricted Payments permitted under Section 7.06 and Permitted Investments other than Permitted Investments under clauses (3), (10), (11), (13) and (26) of the definition thereof,

(g) transactions by the Borrower and its 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 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 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 Subsidiaries,

(j) transactions pursuant to agreements, instruments or arrangements in existence on the First Amendment Effective 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 Subsidiaries to one or more direct or indirect holders of Equity Interests in Holdings 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) [reserved],

(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 Subsidiaries of the Borrower, 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) [reserved],

(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 Subsidiaries of the Borrower, 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 Subsidiary of the Borrower 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 Subsidiaries of the Borrower in such joint venture) to the extent otherwise constituting a Permitted Investment or Restricted Payment permitted under Section 7.06, and

(s) [reserved].

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 the Borrower or any Subsidiary Guarantor, or

(b) the Borrower or any Subsidiary Guarantor 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 First Amendment Effective 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 Subsidiary of the Borrower at the time such Subsidiary of the Borrower first becomes a Subsidiary of the Borrower, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a 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 Subsidiaries of the Borrower 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 Subsidiary of the Borrower,

(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) solely with respect to clause (a), 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 Subsidiary of the Borrower 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.

(a) Permit the Consolidated Total Net Rent Adjusted Leverage Ratio as of the last day of any Test Period (commencing with the Test Period ended on or around December 31, 2024) to be greater than (i) for each Test Period ending during the period from and including the Test Period ended on or around December 31, 2024 to and including the Test Period ending on or around March 31, 2027, 5.25:1.00 and (ii) for each Test Period ending thereafter, 5.00:1.00 (the "**Leverage Covenant**").

(b) Permit the Consolidated Cash Interest Coverage Ratio as of the last day of any Test Period (commencing with the Test Period ended on or December 31, 2024) to be less than (i) for each Test Period ending during the period from and including the Test Period ended on or around December 31, 2024 to and including the Test Period ending on or around March 31, 2027, 1.75:1.00 and (ii) for each Test Period ending thereafter, 2.00:1.00 (the "**Interest Coverage Covenant**"; together with the Leverage Covenant, the "**Financial Covenants**").

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 other Indebtedness for borrowed money of the Borrower or any Subsidiary Guarantor that is subordinated in right of payment or Collateral to the Obligations expressly by its terms (including any Incremental Equivalent Debt that is subordinated in right of Collateral to the Liens securing the Obligations) 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)),

(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 Subsidiary of the Borrower to the Borrower or any of its Subsidiaries,

(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 the greater of \$20,000,000 and 20.0% of Consolidated EBITDA 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)), 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 Consolidated Total Net Rent Adjusted Leverage Ratio calculated on a Pro Forma Basis is less than or equal to 4.25 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 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) in any manner that is not permitted by the intercreditor or subordination agreement applicable to such Junior Financing.

Section 7.14 Permitted Activities.

With respect to Holdings, notwithstanding any other provision of this Agreement or any other Loan Document to the contrary:

(a) 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 receiving dividends and other amounts in respect of such 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 under the Loan Documents, (iv) any offering of its common stock or any other issuance or sale of its Equity Interests and the payment of dividends and other amounts in respect of its Equity Interests, (v) the Guarantee of the Obligations, (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;

(b) own any Equity Interests other than those of the Borrower; or

(c) incur, assume or suffer to exist any Indebtedness for borrowed money or any Guarantee of Indebtedness for borrowed money other than (i) the Guarantee of the Obligations, (ii) the Guarantee of Indebtedness of the Borrower or any its Subsidiaries (to the extent such Indebtedness is otherwise permitted hereunder), provided if such Indebtedness is subordinated to the Obligations then such Guarantee shall be subordinated to the Obligations on terms reasonably satisfactory to the Administrative Agent and (iii) Indebtedness owed to the Borrower or any of its Subsidiaries (to the extent such Indebtedness is otherwise permitted hereunder);

(d) issue Disqualified Equity Interests; and

(e) create, incur, assume or suffer to exist any Lien on any of its property or assets, whether now owned or hereafter acquired, other than, if Holdings we subject to Section 7.01, nonconsensual Liens permitted under Section 7.01 and Liens permitted under Sections 7.01(a) and (gg).

Section 7.15 Anti-Corruption Laws and Sanctions.

(a) Use the proceeds of the Loans or any Letter of Credit, directly or, to the knowledge of Holdings and its Subsidiaries, indirectly, for any purpose in violation of the FCPA, the UK Bribery Act 2010 or any other applicable Anti-Corruption Laws.

(b) Use the proceeds of the Loans or any Letter of Credit, directly or, to the knowledge of Holdings and its Subsidiaries, indirectly, 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 or in any other manner that is will result in a violation of any Person (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, Swing Line Lender, or otherwise) of applicable Sanctions.

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) or Article VII; 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 (or, in the case of any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language, in any respect) when made or deemed made; or

(e) *Cross-Default.* Any Loan Party or any Subsidiary of the Borrower (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 Subsidiary of the Borrower 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 Holdings, the Borrower and the Subsidiaries of the Borrower, 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 Subsidiary of the Borrower 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, 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 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) *[Reserved]*.

(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 Issuer 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 Issuer 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.

Section 8.03 Application of Funds.

Except as may be otherwise provided in any applicable Incremental Amendment with respect to Obligations under Incremental Term Loans (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), 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 Secured 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 Secured 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,

Notwithstanding the foregoing, obligations arising under Secured Treasury Services Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice of such obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Treasury Services Bank or Hedge Bank, as the case may be. Each Treasury Services Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX for itself and its Affiliates as if a "Lender" party hereto.

Section 8.04 [Reserved].

**ARTICLE IX.
ADMINISTRATIVE AGENT**

Section 9.01 Appointment and Authority.

(a) Each of the Lenders and the L/C Issuer hereby irrevocably appoints, designates and authorizes Fifth Third 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 the L/C Issuer, and no Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties.

(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 Treasury Services 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 the Administrative 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, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial, advisory, underwriting or other 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 or to provide notice to or consent of the Lenders with respect thereto.

Section 9.03 Exculpatory Provisions.

(a) The Administrative Agent or the Arranger, as applicable, shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent or the Arranger, as applicable, and its Related Parties:

(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, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief 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) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (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 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower, a Lender or the L/C Issuer.

(c) Neither the Administrative Agent nor any of its Related Parties have any duty or obligation to any Lender or participant or any other Person 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.

(d) Neither the Administrative Agent nor any of its Related Parties shall be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (i) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (ii) have any liability with respect to or arising out of any assignment or participation of Loans or Commitments, or disclosure of confidential information, to any Disqualified Institution.

Section 9.04 Reliance by Administrative Agent

The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, 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 be fully protected in relying, 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, extension, renewal or increase 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. For purposes of determining compliance with the conditions specified in 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 objections.

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. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 9.06 Resignation of Administrative Agent

(a) 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. 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, 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 of the Administrative Agent, the retiring 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.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable Law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders), then such removal shall nonetheless become effective in accordance with such notice.

(c) On the effective date of any such resignation or removal, (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) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, 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 (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the effective date of such resignation or removal, as applicable). 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 (A) while the retiring or removed Administrative Agent was acting as Administrative Agent and (B) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including, without limitation, in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

Any resignation by or removal of Fifth Third 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.

(d) On or before the date a successor Administrative Agent becomes the Administrative Agent hereunder, such successor Administrative Agent shall deliver to the Borrower executed copies of the documentation prescribed in clause (x) or (y) of this Section 9.06(d), as applicable (together with all required attachments thereto): (x) if the successor Administrative Agent is a "United States person" (as defined in Section 7701(a)(30) of the Code), executed copies of Internal Revenue Service Form W-9 certifying that such successor Administrative Agent is exempt from U.S. federal backup withholding, or (y) if the successor Administrative Agent is not a "United States person" (as defined in Section 7701(a)(30) of the Code), (A) with respect to fees received on its own behalf, executed copies of Internal Revenue Service Form W-8ECI or any such other documentation prescribed by applicable Law that would allow Borrower to make payments to such successor Administrative Agent without deduction or withholding of any U.S. federal withholding Taxes, and (B) with respect to payments received on account of any Lender, executed copies of Internal Revenue Service Form W-8IMY evidencing that the successor Administrative Agent is either (a) a "qualified intermediary" assuming primary withholding responsibility under Chapters 3 and 4 of the Code and primary Form 1099 reporting and backup withholding responsibility for payments it receives for the accounts of others, or (b) a "U.S. branch" and may be treated as a United States person for purposes of applicable U.S. federal withholding Tax. At any time thereafter, such successor Administrative Agent shall provide updated documentation previously provided (or a successor form thereto) when any documentation previously delivered has expired or become obsolete or invalid or otherwise upon the reasonable request of the Borrower. Notwithstanding anything to the contrary in this Section 9.06(d), the successor Administrative Agent shall not be required to provide any documentation that the successor Administrative Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

Section 9.07 Non-Reliance on Administrative Agent, Arranger and Other Lenders

Each Lender and the L/C Issuer acknowledges that none of the Administrative Agent nor the Arranger has made any representation or warranty to it, and that no act by the Administrative Agent or the Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or the Arranger to any Lender or the L/C Issuer as to any matter, including whether the Administrative Agent or the Arranger have disclosed material information in their (or their Related Parties') possession. Each Lender and the L/C Issuer represents to the Administrative Agent and the Arranger that it has, independently and without reliance upon the Administrative Agent, the Arranger, 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 of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and its Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Arranger, 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 credit analysis, appraisals and 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, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and the L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a

Lender or L/C Issuer for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and the L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and the L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

Section 9.08 No Other Duties, Etc.

Anything herein to the contrary notwithstanding, except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Administrative Agent (collectively, the "Additional Titled Agents"), no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the other Loan Documents.

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 Treasury Services 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 Secured 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 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 permitted hereunder; *provided* that the Administrative Agent shall not release such Subsidiary Guarantor from its obligations under the Guaranty or any other Loan Document if such Guarantor continues to be a guarantor or obligor in respect of any Junior Financing 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, the Administrative Agent shall not release such Subsidiary Guarantor from its obligations under the Guaranty or any other Loan Document as a result thereof unless (x) after giving pro forma effect to such release and the consummation of any concurrent transactions, the Borrower and the Subsidiary Guarantors would be permitted to make Investments in such Subsidiary Guarantor in an amount equal to the fair market value of any and all Investments then held by the Borrower and the Subsidiary Guarantors in such Subsidiary Guarantor and if this clause (x) is applicable, the Borrower and the Subsidiary Guarantors shall be deemed to have made such Investments in such Subsidiary Guarantor on the date hereof and (y) such transaction shall have been entered into for a bona fide business purpose and not, for the avoidance of doubt, for the purpose of causing the release of such guarantee, with any Person that is not an Affiliate of the Borrower.

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 Treasury Service Agreements and Secured Hedge Agreements.

Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Hedge Bank or Treasury Services Bank in each case 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 Secured 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 or Treasury Services Bank.

The Lenders hereby authorize the Administrative Agent to enter into any 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 the L/C Issuer and any Swing Line Lender.

Section 9.13 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments, or this agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84–14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95–60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90–1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91–38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96–23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84–14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84–14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84–14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Section 9.14 Acknowledgments Regarding Erroneous Payments.

(a) Each Lender and L/C Issuer hereby agrees that (x) if Administrative Agent notifies such Lender or such L/C Issuer that Administrative Agent has determined in its sole discretion that any funds received by such Lender or such L/C Issuer from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a “Payment”) were erroneously transmitted to such Lender or such L/C Issuer (whether or not known to such Lender or such L/C Issuer), and demands the return of such Payment (or a portion thereof), such Lender or such L/C Issuer shall promptly, but in no event later than one Business Day thereafter, return to Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received

by such Lender or such L/C Issuer to the date such amount is repaid to Administrative Agent at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender or such L/C Issuer shall not assert, and hereby waives, as to Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Administrative Agent for the return of any Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of Administrative Agent to any Lender or such L/C Issuer under this [Section 9.14](#) shall be conclusive, absent manifest error.

(b) Each Lender and the L/C Issuer hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by Administrative Agent (or any of its Affiliates) with respect to such Payment (a "[Payment Notice](#)") or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender and the L/C Issuer agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender or such L/C Issuer shall promptly notify Administrative Agent of such occurrence and, upon demand from Administrative Agent, it shall promptly, but in no event later than one Business Day thereafter, return to Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender or such L/C Issuer to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) Borrower and each other Loan Party hereby agrees that (x) in the event an erroneous Payment (or portion thereof) is not recovered from any Lender or such L/C Issuer that has received such Payment (or portion thereof) for any reason, Administrative Agent shall be subrogated to all the rights of such Lender or such L/C Issuer with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by any Borrower or any other Loan Party.

(d) Each party's obligations under this [Section 9.14](#) shall survive the resignation or replacement of Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender or the L/C Issuer, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

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 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 Cash Interest Coverage Ratio", "Consolidated Total Net Rent Adjusted 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 Cash Interest Coverage Ratio", "Consolidated Total Net Rent Adjusted 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 Section 2.12(a), Section 2.13 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly affected thereby;
- (e) 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);
- (f) (i) 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 or (ii) subordinate (x) the Liens on all or substantially all of the Collateral securing the Obligations to any Lien on the Collateral securing any other Indebtedness of any Loan Party or any of its Subsidiaries or (y) any of the Obligations in right of payment to any other Indebtedness of any Loan Party or its Subsidiaries, in each case, without the written consent of each Lender, other than in connection with (A) any Acceptable Debtor-In-Possession Financing and/or (B) any other financing with respect to which each Lender is offered a bona fide opportunity to provide such financing on a pro rata basis on the same terms as the other lenders thereunder; provided, that, this clause (ii) shall not apply to Indebtedness that is expressly permitted by this Agreement (as in effect on the Closing Date) to either be senior in right of payment to the applicable Obligations or be secured by a Lien on the Collateral that is senior to the Lien securing the Obligations, in which case, such subordination may be made with the consent of the Administrative Agent acting alone;
- (g) 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;
- (h) (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), (e) or (f) above) under the applicable Class or Classes of Revolving Credit Commitments; or

(i) 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), (e) or (f) 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);

and *provided, further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the 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 Issuer, with only the written consent of the Administrative Agent, the 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 Issuer, 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.

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 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 Incremental Equivalent Debt (or, in each case, a Senior Representative with respect thereto), as parties thereto, as expressly contemplated by the terms of such 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 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.

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 Issuer 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) to pay or reimburse the Administrative Agent and Fifth Third in its capacity as Arranger 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 Moore & Van Allen 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.

Section 10.05 Indemnification by the Borrower.

The Borrower shall indemnify and hold harmless the Administrative Agent, each Agent Party, each Lender, the Arrangers and their respective Affiliates and the 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 the 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 or 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"), (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 holding company, investment vehicle or trust for, or owned and operated by or for the primary benefit of one or more natural Persons, or a Disqualified Institution or (iii) to Holdings, the Borrower or any of their respective Subsidiaries. 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.

(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) [reserved]; *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 five (5) Business Days after having received notice thereof;

(B) the Administrative Agent

(C) the L/C Issuer at the time of such assignment; *provided* that no consent of the L/C Issuer shall be required for any assignment of a Term Loan or any assignment to the Administrative Agent or an Affiliate of the Administrative Agent; 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 the Administrative Agent or an Affiliate of the Administrative 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, the 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).

(i) 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 \$5,000,000 (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 \$5,000,000 (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) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and all documentation and other information required under applicable “Know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act.

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 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 a non-fiduciary agent of the Borrower, shall maintain at the Administrative Agent's Office 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 Administrative Agent 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 and any Lender, 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).

(e) Any Lender may at any time sell participations to any Person (other than a natural person, or a holding company, investment vehicle or trust for, or owned and operated by or for the primary benefit of one or more natural Persons, 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 Administrative Agent 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(e) 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(e) 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 a non-fiduciary 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 except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquires the applicable participation.

(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, the L/C Issuer or Swing Line Lender may, upon thirty (30) days' notice to the Borrower and the Lenders, resign as the 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 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 the 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 L/C Issuer or the Swing

Line Lender, as the case may be, except as expressly provided above. If the L/C Issuer resigns as the L/C Issuer, it shall retain all the rights and obligations of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as the 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).

Section 10.08 Confidentiality.

Each of the Administrative Agent 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 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 the Administrative 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 Issuer, 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 the Administrative 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 the Administrative 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 Administrative Agent 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 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 Administrative Agent 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.

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 and Secured Treasury Services Agreements and 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 L/C Issuer or such Letter of Credit has been deemed reissued under another agreement reasonably acceptable to the 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, the Administrative 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 Loan Parties agree to, promptly following a request by the Administrative Agent or any Lender, provide all such other documentation and information that the Administrative Agent or such Lender 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 NY INTERCREDITOR AGREEMENT, THE SUBORDINATION AGREEMENT AND ANY OTHER INTERCREDITOR AGREEMENT OR ARRANGEMENT PERMITTED BY THIS AGREEMENT.

Section 10.21 Acknowledgment and Consent to Bail-In of Affected 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 Affected Financial Institution arising under any Loan Document may be subject to the write-down and conversion powers of the applicable 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 the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected 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 Affected 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 applicable Resolution Authority.

Section 10.22 Acknowledgment Regarding Any Supported QFCs.

(i) To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts 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), and 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.

**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 Secured 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 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;

or (iv) any Lien or security interest granted to, or in favor of, the L/C Issuer or any Lender or the Administrative Agent as security for any of the Guaranteed Obligations shall fail to be perfected;

(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 the Administrative 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, (a) 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 (b) 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 Administrative Agent such certifications or documents as the Administrative 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, (i) such Guarantor shall not be released from its obligations under the Guaranty or any other Loan Document if such Guarantor continues to be a guarantor or obligor in respect of any Junior Financing or any Incremental Equivalent Debt or any Permitted Refinancing in respect thereof and (ii) 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 as a result thereof unless (x) after giving pro forma effect to such release and the consummation of any concurrent transactions, the Borrower and the Subsidiary Guarantors would be permitted to make Investments in such Subsidiary Guarantor in an amount equal to the fair market value of any and all Investments then held by the Borrower and the Subsidiary Guarantors in such Subsidiary Guarantor and if this clause (x) is applicable, the Borrower and the Subsidiary Guarantors shall be deemed to have made such Investments in such Subsidiary Guarantor on the date hereof and (y) such transaction shall have been entered into for a bona fide business purpose and not, for the avoidance of doubt, for the purpose of causing the release of such guarantee, with any Person that is not an Affiliate of the Borrower.

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 Secured Treasury Services Agreements or obligations under Secured Hedge Agreements as to which arrangements reasonably satisfactory to the applicable Hedge Bank or Treasury Services 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 L/C Issuer or such Letter of Credit has been deemed reissued under another agreement reasonably acceptable to the 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]

Schedules

[Pursuant to Item 601(b)(2) of Regulation S-K certain exhibits and schedules have been omitted and will be furnished supplementally to the SEC upon request]

AMENDMENT TO TAX RECEIVABLE AGREEMENT

This Amendment to Tax Receivable Agreement (the “**Amendment**”) is entered into as of January 24, 2025, by and among, Portillo’s Inc., a Delaware corporation (“**PubCo**”), PHD Group Holdings, LLC, a Delaware limited liability company (“**OpCo**”) and the TRA Party Representative (as defined below) party hereto.

RECITALS

WHEREAS, PubCo, the TRA Party Representative and the other the TRA Parties party thereto (collectively, excluding PubCo, the “**TRA Parties**”) are parties to that certain Tax Receivable Agreement, dated as of October 20, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**TRA**”). Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the TRA.

WHEREAS, PubCo, OpCo and the TRA Party Representative desire to amend the TRA to establish Term SOFR as the Replacement Rate for LIBOR.

NOW, THEREFORE, in consideration of the promises and the mutual agreements and covenants hereinafter set forth, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Certain Amendments to the TRA:

- (a) Section 1.1 of the TRA is hereby amended by deleting the defined terms “**LIBOR**” and “**Alternate Source**” therein.
- (b) Section 1.1 of the TRA is hereby amended by inserting in the appropriate alphabetical order the following definitions:

“**SOFR**” means, a rate per annum equal to the secured overnight financing rate published by the SOFR Administrator on the SOFR Administrator’s Website.

“**SOFR Administrator**” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**SOFR Administrator’s Website**” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**Term SOFR**” the forward-looking SOFR rate for a period of one month administered by CME Group, Inc. (or other administrator selected by the TRA Representative and the Corporate Taxpayer) and published on the applicable Bloomberg LP screen page (or such other commercially available source providing such quotations as may be selected by the TRA

Representative and the Corporate Taxpayer), fixed by the administrator thereof two (2) Business Days prior to the commencement of the applicable period (provided, however, that if Term SOFR is not published for such Business Day, then Term SOFR shall be determined by reference to the immediately preceding Business Day on which such rate is published); provided, that at no time shall Term SOFR be less than 0.00%. If the Corporate Taxpayer has made the determination (such determination to be conclusive absent manifest error) that (i) Term SOFR is no longer a widely recognized benchmark rate for newly originated loans in the U.S. loan market in U.S. dollars or (ii) the applicable supervisor or administrator (if any) of Term SOFR has made a public statement identifying a specific date after which Term SOFR shall no longer be used for determining interest rates for loans in the U.S. loan market in U.S. dollars, then the Corporate Taxpayer and the TRA Party Representative shall (as determined by the Corporate Taxpayer and the TRA Party Representative to be consistent with market practice generally), establish a replacement interest rate (the "**Replacement Rate**"), in which case, the Replacement Rate shall, subject to the next two sentences, replace Term SOFR for all purposes under this Agreement. In connection with the establishment and application of the Replacement Rate, this Agreement shall be amended solely with the consent of the Corporate Taxpayer, OpCo and the TRA Party Representative, as may be necessary or appropriate, in the reasonable judgment of the Corporate Taxpayer and the TRA Party Representative, to effect the provisions of this section. The Replacement Rate shall be applied in a manner consistent with market practice; provided, that in each case, to the extent such market practice is not administratively feasible for the Corporate Taxpayer, such Replacement Rate shall be applied as otherwise reasonably determined by the Corporate Taxpayer and the TRA Party Representative.

(c) Section 1.1 of the TRA is hereby amended by amending and restating the defined terms for "**Agreed Rate**", "**Default Rate**" and "**Replacement Rate**", respectively, as follows:

"**Agreed Rate**" means a per annum rate of Term SOFR plus 100 basis points.

"**Default Rate**" means a per annum rate of Term SOFR plus 500 basis points.

"**Replacement Rate**" has the meaning set forth in the definition of "Term SOFR".

Section 2. Conditions to Effectiveness of Amendment. This Amendment shall become effective on the date hereof upon receipt by the TRA Representative of executed counterparts of this Amendment by PubCo, OpCo and the TRA Representative.

Section 3. Miscellaneous.

(a) This Amendment may be executed in any number of counterparts, each of which when executed shall be an original, and all of which, when taken together, shall constitute one agreement. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart hereof.

(b) This Amendment shall be governed by and construed in accordance with the laws of the State of New York. The provisions of Sections 7.4, 7.8 and 7.12 of the TRA are incorporated herein by reference, *mutatis mutandis*.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, each of the undersigned has caused its duly authorized officer to execute and deliver this Amendment as of the date first written above.

BSR LLC,
as TRA Party Representative

By: /s/ Sharlyn Musslewhite

Name: Sharlyn Musslewhite
Title: Managing Director

[Signature Page to Amendment to TRA]

PORTILLO'S INC.

By: /s/ Michelle Hook

Name: Michelle Hook
Title: Chief Financial Officer

PHD GROUP HOLDINGS, LLC

By: /s/ Michelle Hook

Name: Michelle Hook
Title: Chief Financial Officer

[Signature Page to Amendment to TRA]

Subsidiaries of the Registrant

Legal Name	State of Incorporation
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

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-260396, 333-260560, and 333-266652 on Form S-8 and Registration Statement No. 333-268340 on Form S-3, of our reports dated February 25, 2025, relating to the consolidated financial statements of Portillo's Inc. and the effectiveness of Portillo's Inc.'s internal control over financial reporting appearing in this Annual Report on Form 10-K for the year ended December 29, 2024.

/s/ Deloitte & Touche LLP

Chicago, Illinois
February 25, 2025

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Portillo's Inc. (the "Company"), for the fiscal year ended December 29, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of the Company certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of such officer's knowledge:

- 1 The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- 2 The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certificate is being furnished solely for the purposes of 18 U.S.C. Section 1350 and is not being filed as part of the Report or as a separate disclosure document.

Date: February 25, 2025

By: /s/ Michael Osanloo
Name: Michael Osanloo
Title: President, Chief Executive Officer and Director
(Principal Executive Officer)

Date: February 25, 2025

By: /s/ Michelle Hook
Name: Michelle Hook
Title: Chief Financial Officer and Treasurer
(Principal Financial Officer and Principal Accounting Officer)