

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K**

(Mark One)

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

For the fiscal year ended December 25, 2022

OR

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

Commission file number 001-040866



FIRST WATCH
THE DAYTIME CAFE

First Watch Restaurant Group, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

82-4271369

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

8725 Pendery Place, Suite 201, Bradenton, FL 34201

(Address of Principal Executive Offices) (Zip Code)

(941) 907-9800

Registrant's telephone number, including area code

Title of each class

Trading Symbol(s)

Name of each exchange on which registered

Common Stock, \$0.01 par value

FWRG

**The Nasdaq Stock Market LLC
(Nasdaq Global Select Market)**

Securities registered pursuant to Section 12(b) 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 and posted 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 and post 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 Accelerated filer Emerging growth company Non-accelerated filer Smaller reporting 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.

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).

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 common stock held by non-affiliates (based on the closing price on the last business day of the registrant's most recently completed second fiscal quarter as reported on the Nasdaq Stock Market) was approximately \$163.3 million.

As of March 3, 2023, 59,259,299 shares of common stock of the registrant were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Definitive Proxy Statement relating to the 2023 Annual Meeting of Stockholders are incorporated by reference into Part III of this Annual Report on Form 10-K where indicated. Such Definitive Proxy Statement will be filed with the Securities and Exchange Commission within 120 days after the end of the registrant's fiscal year ended December 25, 2022.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (the “Annual Report on Form 10-K”) contains forward-looking statements. Forward-looking statements can be identified by words such as “anticipates,” “intends,” “plans,” “seeks,” “believes,” “estimates,” “expects” and similar references to future periods, or by the inclusion of forecasts or projections. Examples of forward-looking statements include, but are not limited to, statements we make regarding the outlook for our future business and financial performance, such as those contained in the section titled “*Management’s Discussion and Analysis of Financial Condition and Results of Operations*.” Forward-looking statements are based on our current expectations and assumptions regarding our business, the economy and other future conditions. Because forward-looking statements relate to the future, by their nature, they are subject to inherent uncertainties, risks and changes in circumstances that are difficult to predict. As a result, our actual results may differ materially from those contemplated by the forward-looking statements. Important factors that could cause actual results to differ materially from those in the forward-looking statements include regional, national or global political, economic, business, competitive, market and regulatory conditions and the following:

- our vulnerability to changes in consumer preferences and economic conditions such as inflation and recession;
- our inability to open new restaurants in new and existing markets;
- the number of visitors to areas where our restaurants are located may decline;
- our inability to generate same-restaurant sales growth;
- our marketing programs and limited-time menu offerings may fail to generate profits;
- shortages or disruptions in the supply or delivery of frequently used food items or increases in the cost of our frequently used food items;
- continued adverse effects of the COVID-19 pandemic, including the emergence of COVID-19 variants, or other infectious disease on our financial condition, results of operations, and supply chain;
- our inability to prevent instances of food-borne illness in our restaurants;
- our inability to compete successfully with other breakfast and lunch restaurants;
- our inability to hire, train, reward and retain employees;
- our sustainability activities, including environmental, social and governance (“ESG”) matters;
- issues with our existing franchisees, including their financial performance, our lack of control over their operations, and conflicting business interests;
- our vulnerability to adverse demographic, unemployment, economic, regulatory and weather conditions;
- damage to our reputation and negative publicity, even if unwarranted;
- our reliance on a small number of suppliers for a substantial amount of our food and coffee;
- our inability to effectively manage our internal control over financial reporting;
- our failure to adequately protect our network security;
- compliance with federal and local environmental, labor, employment and food safety laws and regulations;
- our level of indebtedness and our duty to comply with covenants under our credit agreement;
- uncertainty regarding ongoing conflict between Russia and Ukraine and the related impact on transportation and energy costs and other macroeconomic conditions as a result of such conflict; and
- the interests of Advent International Corporation, our controlling stockholder, may differ from those of our public stockholders.

See Item 1A. “*Risk Factors*” for a further description of these and other factors. For the reasons described above, we caution you against relying on any forward-looking statements, which should also be read in conjunction with the other cautionary statements that are included elsewhere in this Annual Report on Form 10-K. Any forward-looking statement made by us in this Annual Report on Form 10-K speaks only as of the date on which we make it. Factors or events that could cause our actual results to differ may emerge from time to time, and it is not possible for us to predict all of them. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by law.

PART I

Item 1. Business

First Watch Restaurant Group, Inc. is a Delaware holding company that was acquired by funds affiliated with or managed by Advent International Corporation (“Advent”) in August 2017 (the “Advent Acquisition”). Unless the context otherwise requires, “we,” “us,” “our,” “First Watch,” the “Company,” “Management” and other similar references refer to First Watch Restaurant Group, Inc. and, unless otherwise stated, all of its subsidiaries.

Overview

Since opening our doors in 1983, we have been a pioneer in Daytime Dining, serving made-to-order breakfast, brunch and lunch using the freshest of ingredients. We have built our brand on our commitment to operational excellence, our culinary mission centered around a fresh, continuously evolving menu, and our “You First” culture. Our focus on one daytime shift enables us to optimize restaurant operations while generating an average unit volume of \$2.0 million per restaurant in 2022 in only 7.5 hours per day. This daytime focus also provides us with a competitive advantage allowing us to attract and retain employees who are passionate about hospitality and drawn to our “No Night Shifts Ever” approach.

As of December 25, 2022, we had a total of 474 restaurants across 29 states, 366 of which were company-owned and 108 were franchise-owned.

Our Promise: Yeah, It's Fresh!

At First Watch, we take a creative approach to Daytime Dining led by our commitment to freshness. Each item is made-to-order and prepared with care. We do not use microwave ovens, heat lamps or deep fryers in our kitchens. Every morning, we arrive at the crack of dawn to slice and juice fresh fruits and vegetables, bake muffins, brew our fresh coffee and whip up our French Toast batter from scratch. Our award-winning chef-driven menu includes elevated executions of classic favorites for breakfast, brunch and lunch, along with First Watch-specific specialties such as our protein-packed Breakfast Quinoa, Farmstand Breakfast Tacos, Avocado Toast, Morning Meditation (juiced in-house daily), our Pomegranate Sunrise, Chickichangas and our famous Million Dollar Bacon. While our menu constantly evolves, our promise of freshness never wavers.

Our Culture: You First

For four decades, we have cultivated an organizational culture built on our foundational concept of “You First,” which puts serving others above all else. As a company, we put our employees first and empower them to do whatever it takes to put our customers first. We also work hard to provide an opportunity for limitless growth and meaningful relationships, and we prioritize personal and professional growth so that our people can thrive. We believe our approach and operating model have enabled us to retain and attract the best and brightest employees in the industry and are key factors in our ability to meet the growing demand we are seeing across the country. In 2022, a five-year longitudinal study of employee surveys on Glassdoor published by William Blair ranked us #1 for work/life balance and we were in the top 10 in overall employee satisfaction, among casual dining concepts. Also in 2022, First Watch was recognized with ADP’s Culture at Work Award and named a Top 100 Most Loved Workplace ® by Newsweek and the Best Practice Institute.

We extend our You First culture by giving to important local organizations and causes in communities where our restaurants operate. First Watch also supports national and international causes we care about, such as our Project Sunrise partnership. Through Project Sunrise we source our coffee beans from women-owned farms in Colombia, and we pay an annual quality incentive bonus to farmers to further support their high-quality production. This program in turn empowers these women leaders to reinvest in their communities.

Growth Strategies

New Restaurant Openings

We currently believe First Watch has the potential for more than 2,200 restaurants in the continental United States. In 2021, First Watch was recognized by FSR Magazine as the fastest-growing full-service restaurant company in the United States based on unit growth and in 2022, we continued to realize that potential by opening 43 new company-owned and franchise-owned restaurants, which we collectively refer to as “system-wide” restaurants, across 16 states. Our growth strategy targets an accelerating pace of new restaurant development with a long-term goal of a percentage increase of system-wide restaurants in the low double digits.

In selecting new locations, we evaluate specific market characteristics, demographics, traffic patterns, co-tenants and growth potential. Our development approach has proven that First Watch has tremendous portability across markets, with new restaurants boasting consistent and a strong average unit volume across all geographies. In 2022, our new company-owned restaurants generated an annualized average unit volume of \$2.2 million. Our new restaurant performance continues to accelerate and we are confident in our ability to continue this growth by elevating both the quality of real estate as well as the introduction of new design features that allow our teams to serve the significant demand.

Acquisitions of Franchise-Owned Restaurants

As an element of our growth strategy, from time to time, we have acquired restaurants from our franchisees. We believe there is potential to increase value through strategic acquisitions of our franchise-owned restaurants. As of December 25, 2022, we had 15 franchisees operating 108 restaurants with 39 total new restaurant development obligations. At December 25, 2022, sixty franchise-owned restaurants are subject to our option to purchase.

Drive Restaurant Traffic and Build Sales

Our attractive returns on invested capital in each restaurant starts with our focus on traffic and customer frequency in the building of our sales through:

- ***Delivering an Excellent On-Premise Dining Experience.*** Excellence in restaurant-level execution, recognized by customers and reinforced by the hundreds of accolades we have received, increases the visit frequency of our customers, promotes trial by new consumers and ultimately encourages loyalty. Our single menu, throughout the day and across all restaurants in our system, streamlines our supply chain and restaurant operations, simplifies our employee training and provides for a consistent and superior customer dining experience.
- ***Continued Menu Innovation.*** We continuously evolve our on-trend menu which highlights our commitment to quality and freshness and is also operationally efficient. When it comes to sourcing, we are guided by a core philosophy: “Follow The Sun.” Our five highly anticipated seasonal menus and the introduction of new platforms drive customer frequency and incremental revenue opportunities. This means that we welcome each season into our menu with exceptional ingredients harvested when they are most flavorful and fresh. In addition, successful platform introductions over the past few years, such as our Fresh Juice program and Shareables, add incremental revenue opportunities while enhancing our culinary credibility. We have seen the incidences from our Fresh Juice and Shareables platforms rise from 9.6% and 3.4%, respectively, in the fourth fiscal quarter ended December 30, 2018 to 15.4% and 7.1%, respectively, in 2022.
- ***Convenience and Increased Accessibility of Our Off-Premises Offering.*** We believe our integrated technology and improvements continue to optimize our customers’ convenience when ordering directly from us as well as our third-party delivery partners. In 2022, our total off-premises sales accounted for 20.6% of our total restaurant sales. Even as our in-restaurant dining sales recovered from the COVID-19 pandemic, off-premises sales remained strong, indicating continued customer demand. We see future opportunity to refine and grow this demand largely by focusing on in-restaurant infrastructure, especially in our new restaurant prototypes, which include dedicated make lines and to-go rooms, separate entrances and dedicated parking spots to enhance the experience of both our off-premises and dine-in customers.
- ***Offer Alcohol as Only First Watch Can.*** Our alcohol platform is unique and reflects our culinary innovation in combining fresh juices and ingredients with a variety of liquors. We have continued to expand on this strategic initiative and acquire the necessary licenses. As of December 25, 2022, our alcohol menu was offered in about 85.0% of our system-wide restaurants.

- **Increasing Our Brand Awareness.** For 40 years, our awareness has grown primarily through word-of-mouth as our service, menu and environment created loyal fans. While we believe that organic growth of awareness contributes to our local feel, we also recognize the potential of strategically marketing in appropriate channels to accelerate our brand awareness. We continue to build expertise in, and deploy tested strategies for, utilizing targeted digital channels to reach certain attractive customer segments and build top-of-mind awareness. By using our first party data, we have been able to identify higher frequency customers and target similar customers with digital media vehicles. These demand generation strategies have aided us to “balance out” our customer base in recent years by growing penetration with Millennial and Gen Z segments.
- **Additional Platforms and Initiatives.** We continue to evolve the First Watch concept and offerings via the implementation of initiatives that include:
 - **Weekday Occasions:** We believe that the broad appeal of our menu and the quality of our ingredients give us a competitive advantage over many alternatives that offer breakfast and lunch and provide us with the opportunity to significantly increase market share by driving incremental customer visits during the week. As a result of an evolving consumer landscape, there has been a significant migration of people from urban to suburban areas, where a meaningful portion of our restaurants exist. This migration, coupled with trending work-from-home flexibility, presents First Watch with an incremental customer opportunity during the weekday business hours which we believe will further propel long-term growth.
 - **Customer Technology & Customer Data:** We accelerated the implementation of customer data acquisition systems in order to better inform the habits and behaviors of our customers. With the large increase in remote digital orders, we also sought to digitize in-restaurant orders for the purpose of creating an omnichannel view of the First Watch customer. By integrating remote waitlist, remote orders, tokenized credit card transactions and WiFi into one system, we now have the ability to better understand trial and frequency. Since the establishment of these systems, we have gathered customer information for over 10 million unique customer profiles, 4 million of which are opted into communication. The advancements in these foundational systems have allowed us to learn more about our customers and the behaviors that drive customer lifetime value. We see this as a long-term opportunity to drive increased visit frequency as we have the ability to build new customer technology features that elevate the customer experience through reduced friction.
 - **Serving More Demand:** First Watch has long appreciated significant demand that regularly exceeds our capacity to serve. Following 2020, the composition of our sales shifted with the increase in our off-premises sales. Combined with a significant acceleration in our business, we focused on optimizing our back-of-house roles, functions and processes. New technologies, such as the implementation of kitchen display screens in all company-owned restaurants in 2022, have increased our ability to serve more demand during peak hours. This focus has also extended to the front-of-house, where we have implemented new practices to increase table turns, optimize seat utilization and drive improved customer satisfaction scores. This initiative to serve more of our existing demand is highly desirable, given that these additional customers are already visiting our restaurants and do not require investment in customer acquisition. We are confident this enduring initiative will continue to create value for First Watch.

Operations

Quality and Food Safety

First Watch emphasizes high food quality and a commitment to food safety in each restaurant through the careful training and supervision of personnel and by following rigorous quality and cleanliness standards. Food preparation and cleaning procedures are defined, monitored and maintained by our quality assurance department. We contract with third-party inspectors to regularly monitor restaurant performance through unannounced non-biased food safety assessments with program standards that meet or exceed those of local health departments. These inspections are intended to achieve active managerial control in our restaurants in an effort to reduce risk factors and maintain a strong food safety culture.

Restaurant management incentive plans provide strong motivation to meet and exceed standards. In addition, as part of our overall food quality assurance, we have a process in place to review vendors’ food safety practices to ensure they meet or exceed industry standards.

Restaurant Staff

As of December 25, 2022, we had approximately 12,000 employees. None of our employees are part of a collective bargaining agreement and based upon independent surveys and our internal evaluations, we believe our “You First” organizational culture continues to foster overall favorable relations with our employees.

Each restaurant operates with a staff of approximately 20 to 30 team members led by general manager(s).

During a restaurant’s 7:00 a.m. to 2:30 p.m. shift, our staff focus on gracious service, food preparation, order accuracy and “instagrammable” plating. We employ a narrow span of control, which we believe contributes to the consistency of our restaurants’ performance across our system. The general managers interview each applicant and identify motivated employees who are friendly, service oriented, eager to prepare high-quality food and a fit for our “You First” culture.

Training

Our training programs share our legacy and culture of operating excellence. We have established a training facility at our corporate headquarters named the F.A.R.M. (“First Watch Academy of Restaurant Management”), to which we invite managers-in-training for a week-long brand experience where they learn everything from our history and cultural pillars to leadership and management tools. We have enhanced this training program to also focus on building a more diverse and inclusive team. In addition, managers-in-training also complete a comprehensive 10-week C.A.F.E. (“Culture and Food Experience”) training program in the restaurants, alongside experienced managers. Training for all in-restaurant management positions was also enhanced to clearly define and delineate roles in order to drive both results and engagement. New hourly employees participate in at least three days of initial onboarding training and shadowing. Our general managers and directors of operations conduct in-restaurant training for our staff who also train online through our Virtual Learning Academy.

Purchasing and Distribution

Our Supply Chain department manages and negotiates directly with qualified, national suppliers and distributors with the dual goals of securing the supply of high quality, fresh products and controlling cost. Our selected vendors undergo inspection to ensure that products purchased conform to our standards. Our Quality Assurance department requires third-party supplier audits or Global Food Safety Initiative certification for all food distributors and manufacturing facilities to ensure good manufacturing practices, food safety, pest control, sanitation, training, regulatory compliance and food defense systems are in place. To ensure freshness, most of our restaurants accept produce and broadline distribution deliveries at least three times per week.

Management Information Systems

All our restaurants use digital management information systems, which we believe are scalable to support our future growth plans. These systems are designed to enable functionality, improve operating efficiencies, provide us with timely access to financial and marketing data and reduce restaurant and corporate administrative time and expense. In addition, our in-restaurant systems are used to process customer orders, credit card payments, employee time-keeping and scheduling.

Marketing and Advertising

We use a variety of marketing channels, including affiliate partnerships, social media interactions, digital marketing, direct mailers, public relations initiatives and local community sponsorships, email communications, promotions and partnerships. We focus on increasing our engagement with social media platforms in order to generate brand awareness and also to gather information we can then apply to future marketing efforts.

Franchise Program

As of December 25, 2022, we had 15 franchisees that operated 108 restaurants and our existing franchisees had 39 total new restaurant development obligations. Typically, our franchise agreements provide an initial term of 10 years with additional renewal terms that total 10 years subject to various conditions that include upgrades to the restaurant facility and brand image. All franchise agreements grant licenses to use our trademarks, trade secrets and proprietary methods, recipes and procedures. The initial franchise fee for each restaurant is \$35,000 to \$40,000. Franchisees are required to pay 4.0%-4.5% of franchised restaurant sales in royalties and contribute 1.0%-3.0% of franchised restaurant sales to a system fund, which is used for advertising, marketing and public relations programs and materials on a system-wide basis. Presently, we are not extending franchise agreements to new franchisees.

Human Capital

“You First” Culture Elevates Employee and Customer Satisfaction

First Watch has a simple mission statement based on its “You First.” culture - “Making days brighter at every opportunity.” We have been people-focused from our inception as we have always believed our employees are our greatest asset. We believe that putting our employees first, in turn, leads them to put customers first. We believe the Company’s culture plays a significant role in higher retention of all employees, as the Company had historically experienced below industry turnover. This culture was also a key factor in the Company’s achievement of top 50 status in Newsweek’s Top 100 Most Loved Workplaces, a designation that was a result of an assessment of First Watch’s people practices along with an independent survey of approximately 1,000 of our employees. First Watch also introduced a new Vision, Mission and Values statement to all employees to further reinforce its award-winning culture and emphasis on both employee and customer engagement and loyalty.

Diversity and Inclusion

In 2020, we developed and launched an annual campaign, branded #beabetterhuman, which has taken our people-focused approach to a new level. We turned participation in the #beabetterhuman campaign into an opportunity for employees to give back to the community. The #beabetterhuman initiative included a six-part live, interactive web series tackling sensitive topics such as unconscious bias, privilege and mental health. The #beabetterhuman campaign was designed to educate our entire workforce, raise awareness and influence change. In order to provide employees with a chance to make a difference, for each employee that participated in all six #beabetterhuman web sessions, First Watch made a donation to Bryan Stevenson’s Equal Justice Initiative (featured in the book and film “Just Mercy”). We continue to build upon the success of the program with training on the program for new managers and an ongoing #beabetterhuman series on Facebook, Instagram and Glassdoor highlighting diverse employees within the restaurants and their unique and inspiring stories.

The R.I.S.E. (Race Inclusion and Support Exchange) Council was created to engage high performing diverse leaders in dialogue on how to best advance the Company’s diversity efforts. As a result of ideas that the R.I.S.E. Council surfaced, The Rising 20, a new mentor program was established as an important step in the #beabetterhuman campaign to help accelerate the development and advancement of under-represented groups within First Watch. In this mentoring program, employees are partnered with a senior leader in the organization for a six-month guided mentorship journey targeting personal development and professional growth. In addition, the program includes a self-assessment and career goal setting workshops.

In both 2021 and 2022, First Watch also worked with an independent Diversity, Equity, and Inclusion (“DEI”) consultant to track our DEI data, complete a thorough assessment of our current state and benchmark on key metrics. Leveraging this data, along with their analytics and strategy platform, we then identified efforts to prioritize DEI in order to drive impact and took action. First Watch was pleased to achieve solid positioning in the benchmarking results and significant year-over-year improvement.

In 2022, CEO and President, Chris Tomasso, Chief People Officer, Laura Sorensen and Chief Operating Officer, Dan Jones, hosted nineteen separate 90 minute calls with hourly employees across the country for their second annual W.H.Y. Tour – their “We Hear You” listening tour. The purpose of the in-depth sessions was to learn more about the issues that matter most to our hourly workforce. As a result of this tour, the Company was able to take swift action on the most meaningful issues. New employee benefits, practices and operational tools have been introduced as a direct result of

feedback from each tour, reinforcing the Company's culture of listening to its employees and taking action on the issues that matter the most to them.

Experienced, Passionate Leadership Team and Deep Bench of Talent

Our team is led by passionate executives who have an extensive mix of experience in our brand and with other leading national restaurant concepts and consumer facing businesses. We have a deep bench of talent throughout the organization. Our executives and key employees average more than 15 years of industry experience and our directors of operations have an average tenure at First Watch of approximately ten years. In addition, our restaurant staff includes hundreds of fully-trained, tested, high-performing managers throughout our system who are poised to step into the general manager role as we execute our growth strategy and open new restaurants.

Government Regulation

We are subject to extensive federal, state and local government laws and regulations, including those relating to, among others, public health and safety, zoning and fire codes, alcoholic beverage control and franchising.

In addition, we are also subject to the Fair Labor Standards Act, the Immigration Reform and Control Act of 1986, the Americans with Disabilities Act and various federal and state laws governing such matters as minimum wages, exempt versus non-exempt, overtime, unemployment tax rates, workers' compensation rates, citizenship requirements and other working conditions. New laws, regulations or interpretations could impact our business or our cost of compliance.

For a discussion of the various risks we face from regulation and compliance matters, see Item 1A. "Risk Factors."

Intellectual Property

We have registered "First Watch the Daytime Cafe," "You First," "Yeah, It's Fresh!" and certain other names used by our restaurants as trademarks or service marks with the United States Patent and Trademark Office ("USPTO"). In addition, the First Watch logo, website name and address and Facebook and Twitter accounts are our intellectual property. Our policy is to pursue and maintain registration of service marks and trademarks and to oppose vigorously any infringement or dilution of the service marks or trademarks. We maintain certain recipes for our menu items, as well as certain standards, specifications and operating procedures, as trade secrets or confidential information.

Competition

The restaurant industry is highly competitive and fragmented, with restaurants competing directly and indirectly with regard to dining experience, food quality, service, price and location. We also compete with grocery store chains and meal subscription services. In addition, there is active competition for management personnel, real estate sites, supplies and restaurant employees. Competition is also influenced strongly by marketing and brand reputation.

As consumers increasingly seek higher quality breakfast, brunch and lunch experiences, we believe we are well-positioned to compete with a wide range of national, regional and local establishments that operate during our hours of operation. More directly, we do not believe there is a comparable offering within our segment that operates at scale as First Watch does and we view our primary competition as a network of independent restaurants that also serve breakfast and lunch in neighborhoods across the United States.

Seasonality

Our quarterly results of operations are subject to seasonal fluctuations. Additionally, the timing of holidays, weather conditions and the number of new restaurant openings may affect sales volumes seasonally.

See Item 1A. "Risk Factors" for discussion of risks related to seasonal and periodic fluctuations.

Corporate Information

First Watch Restaurant Group, Inc. was incorporated in Delaware on August 10, 2017, under the name AI Fresh Super Holdco, Inc. We changed our name on December 20, 2019 to First Watch Restaurant Group, Inc. Our principal executive offices are located at 8725 Pendery Place, Suite 201, Bradenton, FL 34201 and our telephone number is (941) 907-9800. Our corporate website address is www.firstwatch.com. We completed our initial public offering (“IPO”) in October 2021 and our common stock is listed on the Nasdaq Global Select Market (“Nasdaq”) under the symbol “FWRG.”

Additional Information

Our consumer website is located at www.firstwatch.com, and our investor relations website is located at <https://investors.firstwatch.com>. We make available, free of charge, through our internet website, our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, Proxy Statements and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, as soon as reasonably practicable after electronically filing such material with the Securities and Exchange Commission (“SEC”). Our reports and other materials filed with the SEC are also available at www.sec.gov. The reference to these website addresses does not constitute incorporation by reference of the information contained on the websites and should not be considered part of this Annual Report on Form 10-K.

We announce material information to the public about us, our products and services, and other matters through a variety of means, including filings with the SEC, press releases, public conference calls, webcasts and our investor relations website (<https://investors.firstwatch.com>) in order to achieve broad, non-exclusionary distribution of information to the public and for complying with our disclosure obligations under Regulation FD.

The information disclosed by the foregoing channels could be deemed to be material information. As such, we encourage investors, the media, and others to follow the channels listed above and to review the information disclosed through such channels. Any updates to the list of disclosure channels through which we will announce information will be posted on the investor relations page on our website.

Item 1A. Risk Factors

You should carefully consider the risks described below in addition to the other information set forth in this Annual Report on Form 10-K, including the sections titled “*Management’s Discussion and Analysis of Financial Condition and Results of Operations*,” “*Quantitative and Qualitative Disclosures About Market Risk*” and our consolidated financial statements and related notes. If any of the risks and uncertainties described in the cautionary factors described below actually occur or continue to occur, our business, financial condition, results of operations, cash flow and the trading price of our common stock could be materially and adversely affected. The considerations and risks that follow are organized within relevant headings but may be relevant to other headings as well. Moreover, the risks below are not the only risks we face and additional risks not currently known to us or that we presently deem immaterial may emerge or become material at any time and may negatively impact our business, reputation, financial condition, results of operations, cash flow or the trading price of our common stock.

Risk Factors Summary

Our business is subject to numerous risks and uncertainties, including those outside of our control, that could cause our actual results to be harmed. These risks include the following:

Risks Related to Our Business and Industry

- our vulnerability to changes in economic conditions and other factors, many of which are largely outside of our control
- our inability to open new restaurants in new and existing markets or to operate them as profitably as we have experienced in the past
- our inability to effectively manage our growth
- the number of visitors to areas where our restaurants are located may decline
- our inability to generate same-restaurant sales growth

- our marketing programs and limited-time menu offerings may fail to generate profits
- shortages or disruptions in the supply or delivery of frequently used food items or increases in the cost of our frequently used food items
- continued adverse effects of the COVID-19 pandemic, including the potential impact of the emergence of COVID-19 variants, or other infectious disease on our financial condition, results of operations, and supply chain
- our inability to compete successfully with other breakfast and lunch restaurants
- our vulnerability to food safety and food-borne illness concerns
- issues with our existing franchisees, including their financial performance, our lack of control over their operations and conflicting business interests
- our reliance on a small number of suppliers for a substantial amount of our food and coffee
- geographic concentration
- damage to our reputation and negative publicity, even if unwarranted
- our inability to effectively manage the accelerated impact of social media
- our insurance may not provide adequate levels of coverage against claims

Risks Related to Information Technology and Intellectual Property

- our failure to adequately protect our network security
- compliance with federal and state laws and regulations relating to privacy, data protection, advertising and consumer protection
- potential state property law liability with our gift cards
- our failure to enforce and maintain our trademarks and other intellectual property
- adverse litigation outcomes with respect to our intellectual property rights

Risks Related to Employees and the Workforce

- the loss of our executive officers or other key employees
- our inability to identify qualified individuals for our workforce
- our failure to maintain our corporate culture
- potential unionization activities
- our sustainability activities, including ESG matters

Legal and Regulatory Risks

- compliance with federal and local environmental, labor, employment, food safety, franchise, zoning and other applicable laws and regulations
- the distraction and expense of litigation
- risks associated with leasing properties subject to long-term and non-cancelable leases
- risks related to our sale of alcoholic beverages

Risks Related to Accounting and Financial Reporting Matters

- changes in accounting principles or estimates
- impairment in the carrying value of our goodwill or indefinite-lived intangible assets
- our inability to effectively manage our internal control over financial reporting

Risks Related to Our Indebtedness

- our inability to access additional capital to support business growth
- our level of indebtedness and our duty to comply with covenants under our credit agreement

Risks Related to Our Company and Organizational Structure

- the interests of Advent may differ from those of our public stockholders
- our reliance on our operating subsidiaries
- our lack of significant experience managing a public company
- risks associated with our status as an emerging growth company and a Delaware corporation

Risks Related to Ownership of Our Common Stock

- the market price of our common stock could be reduced by future offerings of debt or equity securities
- risks associated with our status as a controlled company with highly concentrated ownership of common stock
- possible significant fluctuations in our quarterly results of operations that could fall below the expectations of securities analysts and investors
- dilutive impact from grants under our equity incentive plans

Risks Related to Our Business and Industry

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

Food service businesses depend on consumer discretionary spending and are often affected by changes in consumer tastes, national, regional and local economic conditions and demographic trends. For example, due in large part to trends related to increased work-from-home accommodations by employers, we experienced and continue to experience changes in our breakfast and lunch business as it relates to customers who visit us before starting the workday, on their way to work or during corporate lunch breaks. Factors such as traffic patterns, weather, fuel prices, local demographics and the type, number and locations of competing restaurants may adversely affect the performances of individual locations. In addition, economic downturns, geopolitical tensions, inflation or increased food or energy costs could harm the restaurant industry in general and our restaurants in particular. Adverse changes in any of these factors could reduce consumer traffic or impose practical limits on pricing that could have a material adverse effect on our business, financial condition and results of operations. There can also be no assurance that consumers will continue to regard our menu offerings favorably, that we will be able to develop new menu items that appeal to consumer preferences or that there will not be a drop in consumer demands for restaurant dining during breakfast and lunch dayparts. Restaurant traffic and our resulting sales depend in part on our ability to anticipate, identify and respond to changing consumer preferences and economic conditions. In addition, the restaurant industry is subject to scrutiny due to the perception that restaurant company practices have contributed to poor nutrition, high caloric intake, obesity or other health concerns of their customers. If we are unable to adapt to changes in consumer preferences and trends, we may lose customers, which could have a material adverse effect on our business, financial condition and results of operations.

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

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

Our financial condition and results of operations are subject to, and may be adversely affected by, a number of other factors, many of which are also largely outside of our control.

Our operating results have been in the past and will continue to be subject to a number of other factors, many of which are largely outside our control. Any one or more of the factors listed below or described elsewhere in this risk factors section could have a material adverse impact on our business, financial condition and/or results of operations:

- increases in real estate costs in certain markets;
- inflationary pressures;
- disruptions to our supply chain;
- changes in governmental rules and approaches to taxation;
- adverse outcomes of litigation;
- severe weather or other natural or man-made disasters affecting a large market or several closely located markets that may temporarily but significantly impact our restaurant operations in such markets;
- changes in climate, including changes to the frequency of severe weather events, that impact the cost and availability of goods and services, energy and other materials throughout our supply chain; and
- labor discord or disruption, geopolitical events, war, terrorism, political instability, acts of public violence, boycotts, hostilities and social unrest and other health pandemics that lead to avoidance of public places or restrictions on public gatherings such as in our restaurants.

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

A key part of our growth strategy includes opening new restaurants in existing and new markets and operating those restaurants on a profitable basis. We must identify target markets where we can enter or expand. We may not be able to open our planned new restaurants within budget or on a timely basis, and our new restaurants may not perform as well as anticipated. Our and our franchisees' ability to successfully open new restaurants is affected by a number of factors, many of which are beyond our control, including our and our franchisees' ability to:

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

If we are unable to open new restaurants, or if planned restaurant openings are significantly delayed, it could have a material adverse effect on our business, financial condition and results of operations.

Our system-wide restaurants are geographically concentrated in the southeast portion of the United States and we may encounter new challenges as we enter new markets. The challenges of entering new markets include: difficulties in hiring experienced personnel; increased labor costs; unfamiliarity with local real estate markets and demographics; consumer unfamiliarity with our brand; and different competitive and economic conditions, consumer tastes and discretionary spending patterns that are more difficult to predict or satisfy than in our existing markets. Consumer recognition of our

brand has been important in the success of company-owned and franchise-owned restaurants in our existing markets, and we may find that our concept has limited appeal in new markets. Restaurants we open in new markets may take longer to reach expected sales and profit levels on a consistent basis and may have higher construction, occupancy and operating costs than existing restaurants. Any failure on our part to recognize or respond to these challenges may adversely affect the success of any new restaurants and could have a material adverse effect on our business, financial condition and results of operations.

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

Our growth plan includes opening new restaurants. Our existing restaurant management systems, financial and management controls and information systems may be inadequate to support our planned expansion. Managing our growth effectively will require us to continue to enhance these systems, procedures and controls and to recruit, hire, train and retain managers and team members. We may not respond quickly enough to the changing demands that our expansion will impose on our management, restaurant teams and existing infrastructure which could have a material adverse effect on our business, financial condition and results of operations.

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

The consumer target area of our and our franchisees' restaurants varies by location, depending on a number of factors, including population density, other local retail and business attractions, area demographics and geography. As a result, if we open new restaurants in or near markets in which we or our franchisees' already have restaurants, it could have a material adverse effect on the results of operations and same-restaurant sales growth for our restaurants in such markets due to the close proximity with our other restaurants and market saturation. Existing restaurants could also make it more difficult to build our and our franchisees' consumer base for a new restaurant in the same market. Sales cannibalization between our restaurants may become significant in the future as we continue to open new restaurants and could affect our sales growth, which could, in turn, have a material adverse effect on our business, financial condition and results of operations.

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

Our restaurants are primarily located in high-activity trade areas that often contain retail centers, lifestyle centers, and entertainment centers. We depend on high visitor rates in these trade areas to attract customers to our restaurants. Factors that may result in declining visitor rates at these locations include economic or political conditions, anchor tenants closing in retail centers in which we operate, changes in consumer preferences or shopping patterns, changes in discretionary consumer spending, increasing petroleum prices, mobility restrictions and fear of contracting infectious diseases. A decline in traffic at these locations for a sustained period could have a material adverse effect on our business, financial condition and results of operations.

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

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

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

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

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

Our profitability depends in part on our ability to anticipate and react to changes in food and beverage costs, including, among other things, pork, coffee, eggs, avocados, potatoes, bread, cheese, fresh fruit and produce items. We are susceptible to increases in the cost of food due to factors beyond our control, such as freight and delivery charges, general economic conditions, seasonal economic fluctuations, weather conditions, global demand, food safety concerns, infectious diseases, fluctuations in the U.S. dollar, tariffs and import taxes, product recalls and government regulations. Dependence on frequent deliveries of fresh produce and other food products subjects our business to the risk that shortages or interruptions in supply could adversely affect the availability, quality or cost of ingredients or require us to incur additional costs to obtain adequate supplies. Further, increases in fuel prices could result in increased distribution costs.

Changes in the price or availability of certain food products could affect our profitability and reputation. While some commodities we purchase are subject to contract pricing, as our contracts expire, we may not be able to successfully re-negotiate terms that protect us from price inflation in the future. International commodities we purchase are also subject to supply shortages or interruptions.

Changes in the cost of ingredients can result from a number of factors, including seasonality, increases in the cost of grain, disease and viruses and other factors that affect availability and greater international demand for domestic pork products. In 2022, we experienced significant increases in the cost of eggs primarily due to an outbreak of avian influenza that is expected to continue into 2023. In the event of cost increases with respect to one or more of our raw ingredients, we may choose to temporarily suspend or permanently discontinue serving menu items rather than pay the increased cost for the ingredients. Any such changes to our available menu could negatively impact our restaurant traffic, business and same-restaurant sales growth during the shortage and thereafter. While future cost increases can be partially offset by increasing menu prices, there can be no assurance that we will be able to offset future cost increases by increasing menu prices. If we or our franchisees implement menu price increases, there can be no assurance that increased menu prices will be fully absorbed by our customers without any resulting change to their visit frequencies or purchasing patterns. Competitive conditions may limit our menu pricing flexibility and if we or our franchisees implement menu price increases to protect our margins, restaurant traffic could be materially adversely affected, at both company-owned and franchise-owned restaurants.

Our financial condition, results of operations, and supply chain have been and may continue to be adversely affected for an extended period of time by the COVID-19 pandemic or other infectious diseases.

The COVID-19 pandemic has had, and is continuing to have, a significant impact on our business and results of operations. At the peak of the COVID-19 outbreak, all of our company-owned restaurants were closed. For franchised restaurants that remained open, same-store sales declined due to modified operating hours and reduced customer traffic. While all of our company-owned and franchised restaurants have reopened, we expect that our operations will continue to be impacted by the continuing effects of COVID-19, including resurgences and variants of the virus. It remains difficult to predict the full impact of the COVID-19 pandemic on the broader economy and how consumer behavior may change, and whether such change is temporary or permanent. Social distancing, telecommuting and reductions in travel may become the new normal. In addition, the COVID-19 pandemic has required and may continue to require us to make controversial decisions about precautionary measures, such as vaccinations, showing proof of vaccinations and face coverings, that could impact our results, including by impacting our brand, our employee retention and satisfaction, and our customer traffic. All of these

conditions could fundamentally impact the way we work and the customer experience we provide, and could have continuing adverse effects on our results of operations, cash flows and financial condition. As a result, we may incur impairment charges to our inventory, restaurant and corporate assets—and our ability to realize the benefits from deferred tax assets may become limited—any of which may have a significant or material impact on our financial results.

The COVID-19 pandemic also has affected and may continue to adversely affect the ability of certain of our suppliers, from whom we purchase domestic and international commodities, to fulfill their obligations to us, which may negatively affect our restaurant operations. These suppliers include third parties that supply and/or prepare our ingredients, packaging, paper and cleaning products and other necessary operating materials, as well as distribution centers, and logistics and transportation services providers, including those in the trucking industry. If our suppliers are unable to fulfill their obligations to us, we could face shortages of food items or other supplies at our restaurants, which could have a material adverse effect on our business, financial condition and results of operations.

Prolonged volatility or significant disruption of global financial markets due in part to the COVID-19 pandemic could have a negative impact on our ability to access capital markets and other funding sources, on acceptable terms or at all and impede our ability to comply with debt covenants.

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

Some of our restaurants open with an initial start-up period of higher or lower than normal sales volumes. Our restaurant level operating profit margins are generally lower through the first 12 months of operation. In new markets, the length of time before average sales for new restaurants stabilize is less predictable as a result of our limited knowledge of these markets and consumers' limited awareness of our brand. In addition, our average unit volume and same-restaurant sales growth 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 our average unit volume and same-restaurant sales growth will depend on many factors, some of which are beyond our control, including:

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

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

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

The restaurant industry is intensely competitive with many companies that compete directly and indirectly with us with respect to food quality, brand recognition, service, price and value, convenience, design and location. We compete in the restaurant industry with national, regional and locally-owned and/or operated limited-service restaurants and full-service restaurants. We compete with fast casual restaurants, quick service restaurants and casual dining restaurants. Some of our competitors have significantly greater financial, marketing, personnel and other resources than we do, and many of our competitors are well-established in markets in which we have existing restaurants or intend to locate new restaurants. In addition, many of our competitors have greater name recognition nationally or in some of the local markets in which we have or plan to have restaurants. We also compete with a number of non-traditional market participants, such as

convenience stores, grocery stores, coffee shops, meal kit delivery services, and “ghost” or dark kitchens, where meals are prepared at separate takeaway premises rather than a restaurant. Competition from food delivery services companies has also increased in recent years, particularly during the COVID-19 pandemic, and is expected to continue to increase. Any inability to successfully compete with the restaurants in our existing or new markets will place downward pressure on our customer traffic and could have a material adverse effect on our business, financial condition and results of operations.

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

Food safety and food-borne illness concerns may have an adverse effect on our business by decreasing sales and increasing costs.

Food safety and quality concerns may negatively impact our business and profitability, our internal operational controls and standards may not always be met and our employees may not always act professionally, responsibly and in our and our customers’ best interests. Any possible instances of food-borne illness could reduce our restaurant sales.

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

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

Finally, although we have followed industry standard food safety protocols in the past and have endeavored to continually enhance our food safety procedures to ensure that our food is as safe as it can possibly be, we may still be at a higher risk for food-borne illness occurrences than some competitors due to our greater use of fresh, unprocessed produce and meats, our reliance on employees cooking with traditional methods rather than automation, and our avoidance of frozen ingredients.

The financial performance of our franchisees can have a material adverse effect on our business, financial condition and results of operations.

As 23% and 22% of our system-wide restaurants were franchised as of December 25, 2022 and December 26, 2021, respectively, our results of operations are dependent in part upon the operational and financial success of our franchisees. While we are responsible for ensuring the success of our system-wide restaurants and for taking a long-term view with respect to system-wide improvements, our franchisees have individual business strategies and objectives, which may conflict with our interests. Our franchisees may not be able to secure adequate financing to open or continue operating their restaurants. If they incur too much debt or if economic or sales trends deteriorate such that they are unable to repay existing debt, our franchisees could experience financial distress or even bankruptcy. If a significant number of franchisees become financially distressed or close their restaurants, it could result in reduced franchise revenues, which could have a material adverse effect on our business, financial condition and results of operations.

We have limited control with respect to the operations of our franchisees, which could have a material adverse effect on our business, financial condition and results of operations.

Franchisees are independent business operators and are not our employees, and we do not exercise control over the day-to-day operations of the franchised restaurants. We provide training and support to franchisees, and set and monitor operational standards and guidelines, however, because we do not have day-to-day control over the franchisees, we cannot give assurance that the franchisees operate restaurants in a manner consistent with our standards, guidelines and requirements, or hire and train qualified managers and other restaurant personnel. If franchisees do not operate to our expectations, our image and reputation, and the image and reputation of other franchisees, may suffer, which could have a material adverse effect on our business, financial condition and results of operations.

If we are unable to maintain good relationships with our franchisees due to conflicts of interest or otherwise, revenues could decrease and we may be unable to expand our presence in certain markets.

Our franchisees pay us fees pursuant to our franchise agreements. The viability of our franchise business depends on our ability to maintain good relationships with our franchisees. If we are unable to maintain good relationships with our franchisees, we may be unable to renew franchise agreements, which would result in a decrease in our franchise revenues and our presence in certain markets, which could have a material adverse effect on our business, financial condition and results of operations.

Franchisees, as independent business operators, may from time to time disagree with us on our strategies regarding the business or our interpretation of our respective rights and obligations under the franchise agreement and the terms and conditions of the franchisee/franchisor relationship. In addition, franchise agreements require us and our franchisees to comply with operational and performance conditions that are subject to interpretation and could result in disagreements. As a result, at any given time, we may be in disputes with one or more of our franchisees. Such disputes may result in legal action against us. To the extent we have such disputes, the attention, time and financial resources of our management and our franchisees will be diverted from our restaurants, which could, even if we prevail, have a material adverse effect on our business, financial condition and results of operations.

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

We contract with one distributor, which we refer to as our “broad line” distributor, to provide virtually all of our food distribution services in the United States. As of December 25, 2022, we utilized 16 affiliated distribution centers and each distribution center carries two to three weeks of inventory for our core ingredients. In the event of a catastrophe, such as a fire, our broad line distributor can supply the restaurants affected by their respective distribution center from another affiliated distribution center. If a catastrophe, such as a fire or extreme adverse weather conditions such as storms, floods, severe thunderstorms and hurricanes, were to occur at the distribution center that services the concentration of our restaurants located in Florida, we would be at immediate risk of product shortages because that distribution center supplies

23.0% of our company-owned restaurants as of December 25, 2022, which collectively represented 31.0% of our restaurant sales for 2022. The other 15 distribution centers collectively supply the other 77.0% of our company-owned restaurants, which represented the remaining 69% of our sales.

As of December 25, 2022, we purchased substantially all of our pork from two suppliers, substantially all of our eggs from one supplier and all of our coffee from one supplier. We purchase these ingredients pursuant to purchase orders at prevailing market or negotiated contract prices and are not limited by minimum purchase requirements. The cancellation of our supply arrangements with any one of these suppliers or the disruption, delay or inability of these suppliers to deliver these major products to our restaurants or distribution centers due to problems in production or distribution, inclement weather, unanticipated demand or other conditions may materially and adversely affect our results of operations while we establish alternative supplier and distribution channels, all of which may materially and adversely affect our results of operations while we establish these alternate supplier and distribution channels. Accordingly, although we believe that alternative supply and distribution sources are available, there can be no assurance that we will continue to be able to identify or negotiate with such sources on terms that are commercially reasonable to us. If our existing suppliers or distributors are unable to fulfill their obligations under their contracts or we are unable to identify alternative sources, we could encounter supply shortages and incur higher costs, each of which could have a material adverse effect on our business, financial condition and results of operations.

In addition, if our suppliers or distributors fail to comply with food safety or other laws and regulations, or face allegations of non-compliance, their operations may be disrupted. We also could experience shortages of key ingredients if our suppliers need to close or restrict operations due to the impact of a pandemic or other infectious diseases. If our suppliers' employees are unable to work or our suppliers' operations are disrupted due to a pandemic or other infectious diseases, we and our franchisees could face shortages of food items or other supplies, and our and our franchisees' operations and sales could be materially adversely impacted by such supply interruptions. If that were to occur, we may not be able to find replacement suppliers on commercially reasonable terms or a timely basis, if at all.

More generally, we are subject to additional risks related to the increases to energy or transportation costs. Energy prices are in turn subject to significant volatility caused by, among other things, market fluctuations, supply and demand, currency fluctuations, production and transportation disruptions, geopolitical developments, and other world events, as well as climate change related conditions discussed above. For instance, the Russia-Ukraine conflict could adversely impact, among other things, our raw material, energy and transportation costs, as well as certain of our suppliers, global and local macroeconomic conditions, and cause further supply chain disruptions.

Our system-wide restaurant base is geographically concentrated in the southeast portion of the United States, and we could be negatively affected by conditions specific to that region.

Our restaurants in the southeast portion of the United States represented approximately 41.0% of our system-wide restaurants as of December 25, 2022. Our restaurants in Florida represented approximately 23.0% of our system-wide restaurants as of December 25, 2022. Adverse changes in demographic, unemployment, economic, regulatory or weather conditions in the southeast portion of the United States have had, and may continue to have, material adverse effects on our business, financial condition and results of operations. As a result of our concentration in this market, we have been, and in the future may be, disproportionately affected by conditions in this geographic area compared to other chain restaurants with a national footprint.

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

Our reputation and the quality of our brand are critical to our business and success in existing markets, and will be critical to our success as we enter into new markets. Any incident that erodes consumer loyalty to our brand could significantly reduce its value and damage our business. We may be adversely affected by negative publicity relating to food quality, the safety, sanitation and welfare of our restaurant facilities, customer complaints or litigation alleging illness or injury, health inspection scores, integrity of our or our suppliers' food processing and other policies, practices and procedures, employee relationships and welfare or other matters at one or more of our restaurants. Any publicity relating to health concerns, perceived or specific outbreaks of infectious diseases attributed to one or more of our restaurants, or non-compliance with government restrictions imposed by federal, state and local governments could result in a significant decrease in customer traffic in all of our restaurants and could have a material adverse effect on our business, financial condition and results of operations. Furthermore, similar negative publicity or occurrences with respect to other restaurants or other restaurant chains could also decrease our customer traffic and have a similar material adverse effect on our business. In addition, incidents of restaurant commentary have increased dramatically with the proliferation of social media platforms. Negative

publicity may adversely affect us, regardless of whether the allegations are valid or whether we are held responsible. In addition, the negative impact of adverse publicity may extend far beyond the restaurant involved, especially due to the high geographic concentration of many of our restaurants, and affect some or all our other restaurants, including our franchise-owned restaurants. The risk of negative publicity is particularly great with respect to our franchise-owned restaurants because we are limited in the manner in which we can regulate them, especially on a real-time basis and negative publicity from our franchised restaurants may also significantly impact company-owned restaurants. A similar risk exists with respect to food service businesses unrelated to us, if customers mistakenly associate such unrelated businesses with our operations. Employee claims against us based on, among other things, wage and hour violations, discrimination, harassment or wrongful termination may also create not only legal and financial liability but negative publicity that could adversely affect us and divert our financial and management resources that would otherwise be used to benefit the future performance of our operations. These types of employee claims could also be asserted against us, on a co-employer theory, by employees of our franchisees. A significant increase in the number of these claims or an increase in the number of successful claims could have a material adverse effect on our business, financial condition and results of operations.

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

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

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

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

Risks Related to Information Technology and Intellectual Property

Information technology system failures or breaches of our network security could interrupt our operations and have a material adverse effect on our business, financial condition and results of operations.

We and our franchisees rely heavily on our computer systems and network infrastructure across our operations, including point-of-sale processing at our restaurants, for management of our supply chain, accounting, payment of obligations, collection of cash, credit and debit card transactions and other processes and procedures. Our ability to efficiently and effectively manage our business depends significantly on the reliability and capacity of these systems. Our and our franchisees' operations depend upon our and our franchisees' ability to protect our computer equipment and systems against damage from physical theft, fire, power loss, telecommunications failure or other catastrophic events, as well as from internal and external security breaches, viruses and other disruptive problems. Any actual or perceived breach in the security of our information technology systems or those of our franchisees and third-party service providers could lead to damage or failure of our computer systems or network infrastructure that causes an interruption in our operations could have a material adverse effect on our business and a significant theft, loss, disclosure, modification or misappropriation of, or access to, guests', employees', third parties' or other proprietary data or other breach of our information technology systems could subject us or our franchisees to litigation or to actions by regulatory authorities. Furthermore, before and during the COVID-19 pandemic, at various times we have allowed certain of our team members in our corporate headquarters to work from home. The significant increase in remote working, particularly for an extended period of time, could increase certain risks to our business, including an increased risk of cybersecurity events, vulnerability of our systems and improper dissemination of confidential or personal information, if our physical and cybersecurity measures or our corporate policies are not effective. The costs to us to eliminate any of the foregoing cybersecurity vulnerabilities or to

address a cyber-incident could be significant and have a material adverse impact on our business, financial condition and results of operations.

The techniques and sophistication used to conduct cyber-attacks and breaches of information technology systems, as well as the sources and targets of these attacks, may take many forms (including phishing, social engineering, denial or degradation of service attacks, malware or ransomware), change frequently and are often not recognized until such attacks are launched or have been in place for a period of time. In addition, our employees, franchisees, contractors, or third parties with whom we do business or to whom we outsource business operations may attempt to circumvent our security measures in order to misappropriate regulated, protected, or personally identifiable information, and may purposefully or inadvertently cause a breach involving or compromise of such information. Third parties may have the technology or know-how to breach the security of the information collected, stored, or transmitted by us or our franchisees, and our respective security measures, as well as those of our technology vendors, may not effectively prohibit others from obtaining improper access to this information. Advances in computer and software capabilities and encryption technology, new tools, and other developments may increase the risk of such a breach or compromise. There is no assurance that any security procedures or controls that we or our third-party providers have implemented will be sufficient to prevent data-security related incidents from occurring.

We may be required to expend significant capital and other resources to protect against, respond to, and recover from any potential, attempted or existing security breaches or failures and their consequences. As data security-related threats continue to evolve, we may be required to expend significant additional resources to continue to modify or enhance our protective measures or to investigate and remediate any information security vulnerabilities. We could be forced to expend significant financial and operational resources in responding to a security breach, including investigating and remediating any information security vulnerabilities, defending against and resolving legal and regulatory claims and complying with notification obligations, all of which could divert resources and the attention of our management and key personnel away from our business operations and adversely affect our business, financial condition and results of operations. In addition, our remediation efforts may not be successful and we could be unable to implement, maintain and upgrade adequate safeguards.

We are continuing to expand, upgrade and develop our information technology capabilities. If we are unable to successfully upgrade or expand our technological capabilities, we may not be able to take advantage of market opportunities, manage our costs and transactional data effectively, satisfy customer requirements, execute our business plan or respond to competitive pressures.

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

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

Further, the standards for systems currently used for transmission and approval of electronic payment transactions, and the technology utilized in electronic payment themselves, all of which can put electronic payment data at risk, are determined and controlled by the payment card industry, not by us. For example, we are subject to industry requirements such as the Payment Card Industry Data Security Standard, or PCI-DSS, as well as certain other industry standards. Any failure to comply with these rules and/or requirements could significantly harm our brand, reputation, business and results of operations, and in the case of PCI-DSS, could result in monetary penalties and/or the exclusion from applicable card brands. We also rely on independent service providers for payment processing, including payments made using credit and debit cards. If these independent service providers become unwilling or unable to provide these services to us or if the cost of using these providers increases, our business could be harmed.

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

security of consumer data, particularly in the context of digital marketing, which we rely upon to attract new customers. We are, and may increasingly become, subject to other various laws, directives, industry standards and regulations, as well as contractual obligations, relating to data privacy and security in the jurisdictions in which we operate. The information, security and privacy requirements imposed by governmental regulation are increasingly demanding and are subject to potentially differing interpretations. Laws and expectations relating to privacy continue to evolve, and we continue to adapt to changing needs. For example, the definition of “personal information” or “personal data” under newer privacy laws is much broader than the definition of “personally identifiable information” that appears in older privacy laws, and many jurisdictions have or will soon enact new privacy laws. Specifically, certain states in which we operate or may operate in the future have enacted or may soon enact comprehensive privacy laws that may be more stringent or broader in scope, or offer greater individual rights, with respect to personal information than current federal, international or other state laws, and such laws may differ from each other, all of which may complicate compliance efforts. The California Consumer Privacy Act (“CCPA”), for example, requires, among other things, covered companies to provide new disclosures to California consumers and allows such consumers new abilities to opt-out of certain sales of personal data. The CCPA also provides for civil penalties for violations as well as a private right of action for data breaches that may increase data breach litigation. Further, the California Privacy Rights Act, which became fully effective in January 2023, significantly modifies the CCPA. These modifications will require us to incur additional costs and expenses in our effort to comply. Virginia and Colorado recently enacted similar data privacy legislation that will take effect in 2023, and several other states and countries are considering expanding or passing privacy laws in the near term. Our failure to adhere to or successfully implement appropriate processes to adhere to the requirements of evolving laws and regulations in this area could expose us and our franchisees to financial penalties and legal liability. Our and our franchisees’ systems may not be able to satisfy these changing requirements and customer and employee expectations, or may require significant additional investments or time in order to do so.

Any failure, or perceived failure, by us to comply with our posted privacy policies or with any federal or state privacy or consumer protection-related laws, regulations, industry self-regulatory principles, industry standards or codes of conduct, regulatory guidance, orders to which we may be subject or other legal obligations relating to privacy or consumer protection could adversely affect our reputation, brand and business, and may result in claims, proceedings or actions against us by governmental entities, customers, suppliers or others or other liabilities or may require us to change our operations and/or cease using certain data sets. We may also be contractually required to indemnify and hold harmless third parties from the costs or consequences of non-compliance with any laws, regulations or other legal obligations relating to privacy or consumer protection or any inadvertent or unauthorized use or disclosure of data that we store or handle as part of operating our business.

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

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

Our gift cards, which may be used to purchase food and beverages in our restaurants, may be considered stored value cards by certain states in accordance with their abandoned and unclaimed property laws. These laws could require a company to remit to the state cash in an amount equal to all or a designated portion of the unredeemed balance on the gift cards based on certain card attributes and the length of time that the cards are inactive.

We received a letter, dated February 21, 2022, from the Delaware Secretary of State inviting us to participate in the Delaware Secretary of State’s Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program to avoid being sent an audit notice by the Delaware Department of Finance. On August 31, 2022, the Company was accepted into Delaware’s Voluntary Disclosure Agreement Program, entitling it to certain benefits and protections offered to participants

in the program. We intend to work in good faith to complete a review of our books and records related to unclaimed or abandoned property during the periods required under the program. Amounts incurred and paid to resolve past due unclaimed property obligations in Delaware could have a material adverse effect on our financial condition and results of operations.

We believe we are not currently required to remit any amounts relating to future unredeemed gift cards to states as our subsidiary that is the issuer of our gift cards was re-domiciled in Florida on December 9, 2022, a jurisdiction which exempts gift cards from the abandoned and unclaimed property laws. If this exemption was no longer available to us, our financial condition and results of operations could be adversely affected. We recognize income from unredeemed cards when we determine that the likelihood of the cards being redeemed is remote and that recognition is appropriate based on governing state statutes.

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

Additionally, through December 25, 2022, we relied on a third-party service provider to administer aspects of our gift cards. Any failure on the part of this service provider to fulfill their contract in a way that adversely effects the use or purchase of our gift cards prior to the termination of our contract with the third-party service provider could result in a material adverse effect on our business, financial condition and results of operations.

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

We have registered First Watch® and certain other names, logos and slogans used by our restaurants as trademarks or service marks with the USPTO. The First Watch® trademark is also registered in Canada. In addition, the First Watch logo, website domain name and Facebook, Instagram and Twitter accounts are our intellectual property. The success of our business strategy depends on our continued ability to use our existing trademarks and service marks in order to increase brand awareness and develop our branded products. If our efforts to protect our intellectual property are not adequate, or if any third-party misappropriates or infringes on our intellectual property, whether in print, on the Internet or through other media, the value of our brands may be negatively affected, which could have a material adverse effect on our business, including the failure of our brands and branded products to achieve and maintain market acceptance. There can be no assurance that all the steps we have taken to protect our intellectual property in the United States will be adequate.

We or our suppliers maintain the seasonings and additives for our menu items, as well as certain standards, specifications and operating procedures, as trade secrets or confidential information. We may not be able to prevent the unauthorized disclosure or use of our trade secrets or confidential information, despite the existence of confidentiality agreements and other measures. If any of our trade secrets or information were to be disclosed to or independently developed by a competitor, it could have a material adverse effect on our business, financial condition and results of operations.

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

There can be no assurance that third parties will not assert infringement or misappropriation claims against us, or assert claims that our rights in our trademarks, service marks, trade names and other intellectual property assets are invalid or unenforceable. Any such claims could have a material adverse effect on us or our franchisees if such claims were to be decided against us. If our rights in our intellectual property were invalidated or deemed unenforceable, we may not be able to prevent third parties from using such intellectual property or similar intellectual property to compete with us, which, in turn, could lead to a decline in our brand and the goodwill associated therewith and the results of operations. If our intellectual property became subject to third-party infringement, misappropriation or other claims, and such claims were decided against us, we may be forced to pay damages, be required to develop or adopt non-infringing intellectual property or be obligated to acquire a license to the intellectual property that is the subject of the asserted claim. There could be significant expenses associated with the defense of any infringement, misappropriation, or other third-party claims. We may also from time to time be required to institute litigation to enforce our trademarks, service marks and other intellectual property. Any such litigation could result in substantial costs and diversion of resources and could have a material adverse effect on our business, financial condition and results of operations regardless of whether we are able to successfully enforce our rights.

Risks Related to Employees and the Workforce

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

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

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

Our success depends in part upon our ability to attract, motivate and retain a sufficient number of qualified managers and employees to meet the needs of our existing restaurants and to staff new restaurants. A sufficient number of qualified individuals to fill these positions may be in short supply in some communities. Competition in these communities for qualified staff could require us to pay higher wages and provide greater benefits. We place a heavy emphasis on the qualification and training of our personnel and spend a significant amount of time and money on training our employees. Any inability to recruit and retain qualified individuals may result in higher turnover and increased labor costs, and could compromise the quality of our service, could have a material adverse effect on our business, financial condition and results of operations. Any such inability could also delay the planned openings of new restaurants and could adversely impact our existing restaurants. The inability to retain or recruit qualified employees, increased costs of attracting qualified employees or delays in restaurant openings could have a material adverse effect on our business, financial condition and results of operations.

The COVID-19 pandemic has created systemic staffing complexities for us and other restaurant operators, including among others a decreased applicant pool for all positions, safety concerns, and ongoing staff call-outs and exclusions due to illness. The restaurant industry has also experienced since the start of the COVID-19 pandemic aggressive competition for talent, wage inflation and pressure to improve benefits and workplace conditions to remain competitive. In addition, our existing wages and benefits programs, combined with the highly competitive wage pressure resulting from the labor shortage, may be insufficient to attract and retain the best talent. Our failure to recruit and retain new restaurant employees in a timely manner or higher employee turnover levels all could affect our ability to open new restaurants and grow sales at existing restaurants, and we may experience higher than projected labor costs.

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

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

Unionization activities may disrupt our operations and increase our costs.

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

Our sustainability activities, including environmental, social and governance matters, could result in reputational risks, increased costs and other risks.

Customers, investors, lenders, regulators and other industry stakeholders have placed increasing importance on corporate ESG practices, which could cause us to incur additional costs and changes to our operations. If our ESG practices or disclosures do not meet stakeholders' evolving expectations and standards, our customer and employee retention, our access to certain types of capital, and our brand and reputation may be negatively impacted, which could affect our business operations and financial condition. We could also incur additional costs and require additional resources to monitor, report and comply with various ESG practices and regulations, which could increase our operating costs and affect our results of operations and financial condition.

In addition, from time to time, we may communicate certain initiatives regarding climate change and other ESG matters. We could fail or be perceived to fail to achieve such initiatives, which may negatively affect our reputation. The future adoption of new technology or processes to achieve such initiatives could also result in the impairment of existing assets.

Legal and Regulatory Risks

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

Various federal and state labor laws govern our relationships with our employees. Our operations are subject to the U.S. Occupational Safety and Health Act, which governs worker health and safety, the U.S. Fair Labor Standards Act, which governs such matters as minimum wages and overtime, and a variety of similar federal, state and local laws that govern these and other employment law matters. These laws include employee classifications as exempt or non-exempt, minimum wage requirements, employment eligibility verification requirements, workers' compensation rates, overtime, family leave, working conditions, safety standards, immigration status, unemployment tax rates, state and local payroll taxes, federal and state laws which prohibit discrimination, citizenship requirements and other wage and benefit requirements for employees classified as non-exempt. Significant additional government regulations and new laws, including mandated increases in minimum wages, changes in exempt and non-exempt status, or mandated benefits such as health insurance could have a material adverse effect on our business, financial condition and results of operations.

Our business is subject to the risk of litigation by employees or others through private actions, class actions, administrative proceedings, regulatory actions or other litigation. Moreover, employment and labor claims asserted against franchisees may at times be made against us as a franchisor. The outcome of litigation, particularly class action and regulatory actions, is difficult to assess or quantify. In recent years, restaurant companies, including us, have been subject to lawsuits, including class action lawsuits, alleging violations of federal and state laws regarding workplace and employment conditions, discrimination and similar matters. Similar lawsuits have been instituted from time to time alleging violations

of various federal and state wage and hour laws regarding, among other things, employee meal deductions, overtime eligibility of managers and failure to pay for all hours worked. Regardless of whether any claims against us are valid or whether we are liable, claims may be expensive to defend and may divert time and money away from our operations and result in increases in our insurance premiums. In addition, they may generate negative publicity, which could reduce customer traffic and sales. Although we maintain what we believe to be adequate levels of insurance, insurance may not be available at all or in sufficient amounts to cover any liabilities with respect to these or other matters. A judgment or other liability in excess of our insurance coverage for any claims or any adverse publicity resulting from claims could have a material adverse effect on our business, financial condition and results of operations. Additionally, if we or our franchisees are unable to properly identify unauthorized workers, such workers will be subject to deportation and may subject us to fines or penalties. If any of our workers are found to be unauthorized, we could experience adverse publicity that may negatively impact our brand, disrupt our operations, make it more difficult to hire and keep qualified employees, cause temporary increases in our labor costs as we train new employees and result in adverse publicity.

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

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

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

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

We have a substantial number of hourly employees who are paid wage rates at or based on the applicable federal or state minimum wage and increases in the minimum wage will increase our labor costs and the labor costs of our franchisees. Additionally, we operate in states and localities where the minimum wage is significantly higher than the federal minimum wage and in such areas our staff members receive minimum compensation equal to the state's or locality's minimum wage. In other geographic areas, some of our staff members may be paid a tip credit wage that is supplemented by gratuities received from our customers. We rely on our employees to accurately disclose the full amount of their tip income, and we base our Federal Insurance Contributions Act tax reporting on the disclosures provided to us by such employees. Increases in the tip credit minimum wage in these states or localities, or under federal law, may have a material adverse effect on our labor costs, and our financial performance. Increases in federal or state minimum wage may also result in increases in the wage rates paid for non-minimum wage positions. We may be unable to increase our menu prices in order to pass future increased labor costs on to our customers, in which case our operating margins would be negatively affected. If menu prices are increased by us or our franchisees to cover increased labor costs, the higher prices could adversely affect demand for our menu items, resulting in lower sales and decreased franchise revenues.

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

Many of our restaurant leases are non-cancelable and typically have initial terms of 10 years, providing for two to four renewal options of five years each as well as rent escalations. Generally, our leases are triple-net leases that require us to

pay our share of the costs of real estate taxes, utilities, building operating expenses, insurance and other charges in addition to rent. We generally cannot cancel these leases, and additional sites that we lease are likely to be subject to similar long-term non-cancelable leases. Even if we close a restaurant, we are required to perform our obligations under the applicable lease, which could include, among other things, a payment of the base rent, property taxes, insurance and common area maintenance costs for the balance of the lease term, which would impact our profitability. In addition, as leases expire for restaurants that we will continue to operate, we may, at the end of the lease term and any renewal period for a restaurant, be unable to negotiate renewals, either on commercially acceptable terms or at all. As a result, we may close or relocate the restaurant, which could subject us to construction costs related to leasehold improvements and other costs and risks. Additionally, the revenues and profit, if any, generated at a relocated restaurant may not equal the revenues and profit generated at the existing restaurant.

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

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

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

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

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

The development and operation of our restaurants depend, to a significant extent, on the selection of suitable sites, which are subject to zoning, land use, environmental, traffic and other regulations and requirements. We are also subject to licensing and regulation by state and local authorities relating to health, sanitation, safety and fire standards.

There is also a potential for increased regulation of certain food establishments in the United States, where compliance with a Hazard Analysis and Critical Control Points (“HACCP”) approach would be required. HACCP refers to a management system in which food safety is addressed through the analysis and control of potential hazards from production, procurement and handling, to manufacturing, distribution and consumption of the finished product. Many states have required restaurants to develop and implement HACCP Systems, and the United States government continues to expand the sectors of the food industry that must adopt and implement HACCP programs. For example, the Food Safety Modernization Act (“FSMA”), signed into law in January 2011, granted the U.S. Food and Drug Administration new authority regarding the safety of the entire food system, including through increased inspections and mandatory food recalls. Although restaurants are specifically exempted from or not directly implicated by some of these requirements, we anticipate that the requirements may impact our industry. Additionally, our suppliers may initiate or otherwise be subject to food recalls that may impact the availability of certain products, result in adverse publicity or require us to take actions that

could be costly for us or otherwise impact our business. We may be required to incur additional time and resources to comply with new food safety requirements made under FSMA or other federal or state food safety regulations. Failure to comply with the laws and regulatory requirements of federal, state and local authorities could result in, among other things, revocation of required licenses, administrative enforcement actions, fines and civil and criminal liability. In addition, many applicable laws could require us to expend significant funds to make modifications to our restaurants or operations to comply with such laws. Compliance with these laws can be costly and may increase our exposure to litigation or governmental investigations or proceedings.

Our business is also subject to extensive laws and regulations relating to public company compliance, disclosure and governance matters, including accounting and tax regulations, SEC and Nasdaq disclosure requirements. The impact of current laws and regulations, the effect of future changes in laws or regulations that impose additional requirements and the consequences of litigation relating to current or future laws and regulations, or our inability to respond effectively to significant regulatory or public policy issues, could increase our compliance and other costs of doing business and could have a material adverse effect on our business, financial condition and results of operations. Failure to comply with the laws and regulatory requirements of federal, state and local authorities could result in, among other things, revocation of required licenses, administrative enforcement actions, fines and civil and criminal liability. In addition, certain laws, including the Americans with Disabilities Act, which, among other things, requires our restaurants to meet federally mandated requirements for the disabled, could require us to expend significant funds to make modifications to our restaurants if we failed to comply with applicable standards. Compliance with all these laws and regulations can be costly and can increase our exposure to litigation or governmental investigations or proceedings.

Risks Related to Accounting and Financial Reporting Matters

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

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

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

As of December 25, 2022, we had \$345.2 million of goodwill and \$138.9 million of indefinite-lived intangible assets. We test goodwill and indefinite-lived intangible assets for impairment annually on the first day of the fourth quarter of each fiscal year and whenever events or changes in circumstances indicate that impairment may have occurred. We performed a qualitative annual impairment assessment of goodwill and indefinite-lived intangible assets on the first day of the fourth quarter of 2022. Based on the results of the qualitative assessment, we did not perform a quantitative assessment and no impairment was recognized in 2022.

We cannot accurately predict the amount and timing of any impairment of assets and an impairment test in the future may indicate that an impairment has occurred. In the event that the book value of goodwill or other indefinite-lived intangible assets is impaired, any such impairment would be charged to earnings in the period of impairment and could have a material adverse effect on our financial condition and results of operations.

Changes to estimates related to our long-lived assets 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 losses on certain long-lived assets, which may adversely affect our results of operations.

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 losses or accelerate the amortization on certain long-lived assets, which may adversely affect our financial condition and results of operations.

We have identified material weaknesses in our internal control over financial reporting, which could result in us failing to prevent or detect material misstatements of our consolidated financial statements due to error or fraud. If our

remediation of the material weaknesses is not effective, or if we otherwise fail to maintain effective internal control over financial reporting in the future, we may not be able to accurately or timely report our financial condition or results of operations, which, in turn, could negatively impact the market value of our common stock.

As a newly public company, we are required to comply with Section 404 of the Sarbanes-Oxley Act (“Section 404”) in accordance with the rules and regulations of the SEC, 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 control over financial reporting commencing with our second annual report after our IPO. In addition, under Section 404 our independent registered public accounting firm will also need to attest to the effectiveness of our internal control over financial reporting in the future to the extent that we are no longer an emerging growth company, as defined in the Jumpstart Our Business Startups Act (the “JOBS Act”). To achieve compliance with the rules and regulations of the SEC within the prescribed period, we will need to continue to dedicate internal resources, engage outside consultants and continue to execute on a detailed work plan to assess and document the adequacy of our internal control over financial reporting, continue taking steps to improve control processes, as appropriate, validate through testing that controls are functioning as documented and implement a continuous reporting and improvement process for internal control over financial reporting. Despite our efforts, there is a risk that we will not be able to conclude, within the prescribed timeframe or at all, that our internal control over financial reporting is effective.

In connection with the preparation of our consolidated financial statements, we identified material weaknesses in our internal control over financial reporting. The material weaknesses we identified were as follows:

We did not design and maintain an effective internal control environment commensurate with the financial reporting requirements of a public company. Specifically, we lacked a sufficient complement of personnel with an appropriate level of knowledge, experience and training in internal control over financial reporting and the reporting requirements of a public company. Additionally, we did not formally delegate authority or establish appropriate segregation of duties in our finance and accounting functions. As a result, we did not perform an effective risk assessment nor did we design and maintain internal controls in response to the risks of material misstatement. These material weaknesses contributed to the following material weaknesses:

- We did not design and maintain effective controls over the period-end financial reporting process, including controls over the preparation and review of account reconciliations and journal entries, and the appropriate classification and presentation of accounts and disclosures in the consolidated financial statements. This material weakness resulted in adjustments to accruals and within the statement of cash flows in our fiscal 2018 consolidated financial statements, which were recorded prior to the issuance of our fiscal 2018 consolidated financial statements.
- We did not design and maintain effective controls over the accounting for income taxes over the recording of deferred income taxes and the assessment of the realization of deferred tax assets. This material weakness resulted in adjustments to the income tax benefit, deferred taxes, goodwill, and liabilities in our fiscal 2018 consolidated financial statements, which were recorded prior to issuance. This material weakness also resulted in immaterial adjustments to the income tax benefit and deferred taxes and related disclosures in the fiscal 2017 and 2019 consolidated financial statements, which were corrected in the fiscal 2019 and 2020 consolidated financial statements, respectively. This material weakness also resulted in adjustments to the income tax expense and deferred taxes in our fiscal 2021 consolidated financial statements, which were recorded prior to issuance.
- We did not design and maintain effective controls over information technology general controls for information systems and applications that are relevant to the preparation of the consolidated financial statements. Specifically, we did not design and maintain: sufficient user access controls to ensure appropriate segregation of duties and adequately restrict user and privileged access to financial applications, programs and data to appropriate Company personnel; program change management controls to ensure that information technology program and data changes affecting financial information technology applications and underlying accounting records are identified, tested, authorized and implemented appropriately; computer operations controls to ensure that critical batch jobs are monitored, privileges are appropriately granted, and data backups are authorized and monitored; and testing and approval controls for program development to ensure that new software development is aligned with business and information technology requirements. The deficiencies, when aggregated, could impact our ability to maintain effective segregation of duties, as well as the effectiveness of information technology-dependent controls (such as automated controls that address the risk of material misstatement to one or more assertions, along with the information technology controls and underlying data that

support the effectiveness of system-generated data and reports) that could result in misstatements potentially impacting all financial statement accounts and disclosures that would result in a material misstatement to the annual or interim consolidated financial statements that would not be prevented or detected. Therefore, we concluded the information technology deficiencies resulted in a material weakness. However, these information technology deficiencies did not result in any misstatements to the consolidated financial statements.

Additionally, each of the aforementioned material weaknesses could result in a misstatement of the consolidated financial statements that would result in a material misstatement to the annual or interim consolidated financial statements that would not be prevented or detected.

We have taken certain measures to remediate the material weaknesses described above, as described in Item 9A of this Form 10-K.

Risks Related to Our Indebtedness

We might require additional capital to support business growth and this capital might not be available.

We intend to continue to make investments to support our business growth and may require additional funds to respond to business challenges or opportunities, including the need to open additional restaurants, develop new menu items or enhance our existing menu items, and enhance our operating infrastructure. Accordingly, we may need to engage in equity or debt financings to secure additional funds. In addition, we may not be able to obtain additional financing on terms favorable to us, if at all. Volatility in the financial markets like we are currently experiencing could affect our ability to access capital markets at a time when we desire, or need, to do so, which could have an impact on our flexibility to pursue additional expansion opportunities and maintain our desired level of revenue growth in the future. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, our ability to continue to support our business growth and to respond to business challenges could be significantly limited, which could have a material adverse effect on our business, financial condition and results of operations.

Our level of indebtedness could have a material adverse effect on our business, financial condition and results of operations.

Our total principal amount of debt outstanding, excluding finance lease liabilities, financing obligations and unamortized debt discount and deferred issuance costs as of December 25, 2022 was \$98.1 million. Our indebtedness could have significant effects on our business, such as:

- limiting our ability to borrow additional amounts to fund capital expenditures, acquisitions, debt service requirements, execution of our growth strategy and other purposes;
- limiting our ability to make investments, including acquisitions, loans and advances, and to sell, transfer or otherwise dispose of assets;
- requiring us to dedicate a substantial portion of our cash flow from operations to pay principal and interest on our borrowings, which would reduce availability of our cash flow to fund working capital, capital expenditures, acquisitions, execution of our growth strategy and other general corporate purposes;
- making us more vulnerable to adverse changes in general economic, industry and competitive conditions, in government regulation and in our business by limiting our ability to plan for and react to changing conditions;
- placing us at a competitive disadvantage compared with our competitors that have less debt; and
- exposing us to risks inherent in interest rate fluctuations because our borrowings are at variable rates of interest, which could result in higher interest expense in the event of increases in interest rates.

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

Pursuant to our credit agreement dated as of October 6, 2021 (the “Credit Agreement”), which provides for (i) a \$100.0 million term loan A facility (the “Term Facility”) and (ii) a \$75.0 million revolving credit facility (the “Revolving Credit Facility”) and together with the Term Facility, the “Facilities”), we are required to maintain, on a consolidated basis, both (a) a maximum total rent adjusted net leverage ratio of (i) consolidated total net debt to (ii) consolidated EBITDA plus consolidated cash rental expense with certain adjustments and (b) a minimum fixed charge coverage ratio of (i) consolidated EBITDA plus consolidated cash rental expense with certain adjustments to (ii) consolidated fixed charges, in each case, as set forth in the Credit Agreement and tested as of the last day of each fiscal quarter (commencing with the fiscal quarter ending March 27, 2022). Our ability to borrow under the Revolving Credit Facility is subject to the absence of a default or event of default under the Credit Agreement, including our compliance with these financial covenants. Events beyond our control, including changes in general economic and business conditions, may affect our ability to comply with the financial covenants. We cannot assure you that we will comply with the financial covenants in the future, or that our lenders will waive any failure to comply with the financial covenants.

The failure to comply with the covenants under our Credit Agreement or the volatile credit and capital markets could have a material adverse effect on our financial condition.

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

Risks Related to Our Company and Organizational Structure

The interests of Advent may conflict with our interests or the interests of the holders of our common stock in the future.

Advent engages in a range of investing activities, including investments in restaurants and other consumer-related companies in particular. In the ordinary course of its business activities, Advent may engage in activities where its interests conflict with our interests or those of our stockholders. Our amended and restated certificate of incorporation contains provisions renouncing any interest or expectancy held by our directors affiliated with Advent in certain corporate opportunities. Accordingly, the interests of Advent 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 Advent and inaction on our part could have a material adverse effect on our business, financial condition and results of operations. In addition, Advent may have an interest in pursuing acquisitions, divestitures and other transactions that, in its judgment, could enhance its investment in us, even though such transactions might involve risks to you, such as debt-financed acquisitions.

First Watch Restaurant Group, Inc. is a holding company with no operations and relies on its operating subsidiaries to provide it with funds necessary to meet its financial obligations and to pay dividends.

First Watch Restaurant Group, Inc. is a holding company with no material direct operations. First Watch Restaurant Group, Inc.'s principal assets are the equity interests it indirectly holds in its operating subsidiaries which own our operating assets. As a result, First Watch Restaurant Group, Inc. is dependent on loans, dividends and other payments from its operating subsidiaries to generate the funds necessary to meet its financial obligations and to pay dividends on its common stock. Its subsidiaries are legally distinct from First Watch Restaurant Group, Inc. and may be prohibited or restricted from paying dividends, including pursuant to the restrictions contained in our Credit Agreement, or otherwise making funds available to us under certain conditions. Although First Watch Restaurant Group, Inc. does not expect to pay dividends on its common stock for the foreseeable future, if it is unable to obtain funds from its subsidiaries, it may be unable to, or its board of directors (the "Board") may exercise its discretion not to, pay dividends.

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

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

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

As an emerging growth company, we are eligible to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including, but not

limited to, not being required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a non-binding advisory vote on executive compensation and of stockholder approval of any golden parachute payments not previously approved. We may take advantage of some of these exemptions. If we do, we do not know if some investors will find our common stock less attractive as a result. The result may be a less-active trading market for our common stock and our stock price may be more volatile.

In addition, Section 107 of the JOBS Act provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. In other words, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this exemption and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

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

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

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

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

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

The foregoing factors, as well as the significant common stock ownership by Advent could impede a merger, takeover, or other business combination, or discourage a potential investor from making a tender offer for our common stock, which, under certain circumstances, could reduce the market value of our common stock.

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 and proceedings that may be initiated by our stockholders and designates the federal district courts of the United States of America as the sole and exclusive forum for claims arising under the Securities Act of 1933, as amended, which, in each case, could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees, agents or other stockholders.

Our amended and restated certificate of incorporation provides that, unless we consent in writing to an alternative forum, the Court of Chancery of the State of Delaware or, if the Court of Chancery lacks jurisdiction, a state court located within

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

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

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

Risks Related to Ownership of Our Common Stock

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

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

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

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

Advent indirectly beneficially owns approximately 70.0% of our outstanding common stock. As a result, Advent beneficially owns shares sufficient for majority votes over all matters requiring stockholder votes, including: the election of

directors; mergers, consolidations and acquisitions; the sale of all or substantially all of our assets and other decisions affecting our capital structure; amendments to our certificate of incorporation or our bylaws; and our winding up and dissolution.

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

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

We are considered a “controlled company” under the rules of Nasdaq. Controlled companies are exempt from the corporate governance rules requiring that listed companies have (i) a majority of the Board consist of “independent” directors under the listing standards of Nasdaq, (ii) independent director oversight of director nominations and (iii) a compensation committee composed entirely of independent directors. Although we are eligible to use some or all of these exemptions, our Board is comprised of a majority of independent directors, and our nominating and corporate governance committee and compensation committee consists entirely of independent directors. However, if we are to use some or all of these exemptions in the future, you may not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of Nasdaq.

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

We do not expect to declare or pay any cash or other dividends in the foreseeable future on our common stock because we intend to use cash flow generated by operations to grow our business. Our Credit Agreement for our Facilities restricts our ability to pay cash dividends on our common stock. We may also enter into other credit agreements or other borrowing arrangements in the future that restrict or limit our ability to pay cash dividends on our common stock. As a result, you may not receive any return on an investment in our common stock unless you sell our common stock for a price greater than that which you paid for it.

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

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

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

Of our issued and outstanding shares, all the common stock sold in our initial public offering is freely transferable, except for any shares held by our “affiliates,” as that term is defined in Rule 144 under the Securities Act. Approximately 70.0% of our outstanding common stock is indirectly beneficially owned by Advent, and can be resold into the public markets in the future in accordance with the requirements of Rule 144.

The market price of our common stock may decline significantly in connection with any sales by Advent of its common stock. A decline in the price of our common stock might impede our ability to raise capital through the issuance of additional common stock or other equity securities.

The future issuance of additional common stock in connection with the First Watch Restaurant Group, Inc. 2021 Equity Incentive Plan (the “2021 Equity Plan”) and the First Watch Restaurant Group, Inc. 2017 Omnibus Equity Incentive Plan (the “2017 Equity Plan”) will dilute all other stockholdings.

As of December 25, 2022, we had an aggregate of 10,172,312 shares of common stock authorized for issuance under the 2021 Equity Plan and 2017 Equity Plan. Additionally, the 2021 Equity Plan contains an “evergreen provision,” pursuant to which the aggregate number of shares available for issuance will automatically increase on the first day of each fiscal year, beginning on December 26, 2022 and continuing for each fiscal year until, and including, the fiscal year ending on (and including) December 30, 2030. While we do not intend to grant any further awards under the 2017 Equity Plan, we may issue all the shares underlying the awards granted under the 2017 Plan and all of the shares authorized for issuance under the 2021 Equity Plan without any action or approval by our stockholders, subject to certain exceptions. Any common stock issued in connection with the 2021 Equity Plan or the 2017 Equity Plan would dilute the ownership percentage held by existing stockholders.

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

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

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

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

We are subject to income taxes in various U.S. jurisdictions. We record tax expense based on our estimates of future payments, which may in the future include reserves for uncertain tax positions in multiple tax jurisdictions, and valuation allowances related to certain net deferred tax assets. At any one time, many tax years may be subject to audit by various taxing jurisdictions. The results of these audits and negotiations with taxing authorities may affect the ultimate settlement of these issues. We expect that throughout the year there could be ongoing variability in our quarterly tax rates as events occur and exposures are evaluated.

In addition, our effective tax rate in a given financial reporting period may be materially impacted by a variety of factors including, but not limited to, changes in the mix and level of earnings, varying tax rates in the different jurisdictions in which we operate, fluctuations in the valuation allowance or by changes to existing accounting rules or regulations. Further, tax legislation may be enacted in the future, which could negatively impact our current or future tax structure and effective tax rates.

The U.S. government may enact significant changes to the taxation of business entities including, among others, an increase in the corporate income tax rate and the imposition of minimum taxes or surtaxes on certain types of income. No specific United States tax legislation has been proposed at this time and the likelihood of these changes being enacted or implemented is unclear. We are currently unable to predict whether such changes will occur. If such changes are enacted or implemented, we are currently unable to predict the ultimate impact on our business.

Item 1B. Unresolved Staff Comments

None

Item 2. Properties

We lease all our company-owned restaurant facilities. As of December 25, 2022, we had 366 company-owned restaurants and 108 franchise-owned restaurants located in 29 states, including a large presence in Florida, Texas, Ohio and Arizona. As of December 25, 2022, company-owned and franchise-owned restaurants by jurisdiction were:

State	Company-owned	Franchise-owned	Total
Alabama	4	—	4
Arizona	28	—	28
Arkansas	—	3	3
Colorado	18	—	18
Delaware	2	—	2
Florida	107	4	111
Georgia	17	2	19
Illinois	5	—	5
Indiana	4	1	5
Kansas	10	—	10
Kentucky	2	13	15
Louisiana	—	1	1
Maryland	9	—	9
Michigan	10	—	10
Mississippi	—	1	1
Missouri	16	7	23
Nebraska	—	6	6
New Jersey	5	—	5
North Carolina	3	28	31
Ohio	38	—	38
Oklahoma	—	1	1
Pennsylvania	17	—	17
South Carolina	—	5	5
Tennessee	12	8	20
Texas	40	18	58
Utah	—	1	1
Virginia	19	4	23
West Virginia	—	1	1
Wisconsin	—	4	4
TOTAL	366	108	474

Item 3. Legal Proceedings

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

Item 4. Mine Safety Disclosures

None

Part II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information

Our common stock is traded on Nasdaq under the symbol "FWRG."

Holders

As of March 3, 2023, there were 32 stockholders of record of our common stock. The number of record holders does not include persons who held shares of our common stock in nominee or "street name" accounts through brokers.

Dividends

We do not currently intend to pay cash dividends on our common stock in the foreseeable future. However, in the future, subject to the factors described below and our future liquidity and capitalization, we may change this policy and choose to pay dividends. Additionally, our ability to pay dividends is currently restricted by the terms of our Credit Agreement.

We are a holding company that does not conduct any business operations of our own. As a result, our ability to pay cash dividends on our common stock is dependent upon cash dividends and distributions and other transfers from our subsidiaries.

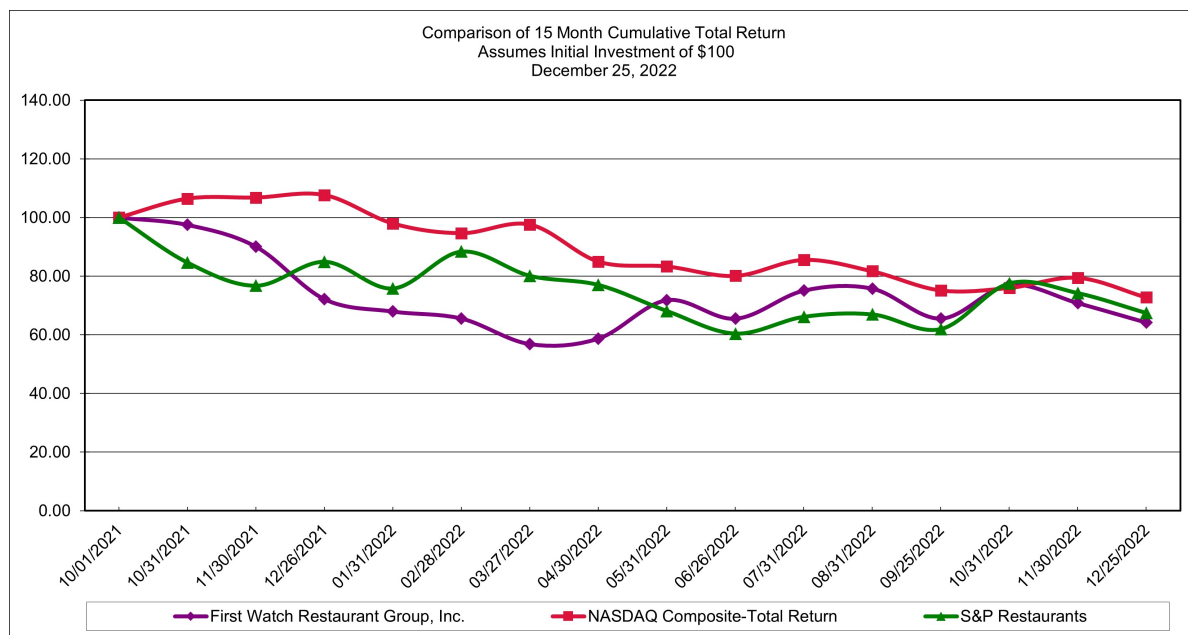
In addition, under Delaware law, our Board may declare dividends only to the extent of our surplus (which is defined as total assets at fair market value minus total liabilities, minus statutory capital) or, if there is no surplus, out of our net profits for the then current and/or immediately preceding fiscal year. Any future determination to pay dividends will be at the discretion of our Board and will take into account: (i) restrictions in our debt instruments, including our Credit Agreement; (ii) general economic business conditions; (iii) our earnings, financial condition, and results of operations; (iv) our capital requirements; (v) our prospects; (vi) legal restrictions; and (vii) such other factors as our Board may deem relevant.

Issuer Purchases of Equity Securities

None

Cumulative Stock Performance Graph

The following graph compares the cumulative annual stockholders return on our common stock from October 1, 2021, the date our common stock began trading on Nasdaq, through December 25, 2022, to that of the total return index for the Nasdaq Composite Index and the S&P Restaurants Index assuming an investment of \$100 on October 1, 2021. The graph uses the closing market price on October 1, 2021 of \$22.13 per share as the initial value of our common stock. In calculating total annual stockholder return, reinvestment of dividends, if any, is assumed. The indices are included for comparative purposes only. They do not necessarily reflect management's opinion that such indices are an appropriate measure of the relative performance of our common stock. The values shown are neither indicative nor determinative of future performance. Information used in the graph and table was obtained from Zacks Investment Research, a source believed to be reliable, but we are not responsible for any errors or omissions in such information. This graph is not "soliciting material," is not deemed filed with the SEC and is not to be incorporated by reference in any of our filings under the Securities Act or the Exchange Act, whether made before or after the date hereof and irrespective of any general incorporation language in any such filing.



	October 1, 2021	December 25, 2022
First Watch Restaurant Group, Inc.	\$ 100.00	\$ 64.20
Nasdaq Composite Index	\$ 100.00	\$ 72.77
S&P Restaurants Index	\$ 100.00	\$ 67.46

Item 6. [Reserved]

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 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 industry outlook, our expectations for the future of our business and our liquidity and capital resources as well as other non-historical statements. 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. Our actual results may differ materially from those contained in or implied by these forward-looking statements.

These statements are based on current expectations and are subject to numerous risks and uncertainties. All forward-looking statements are expressly qualified in their entirety by these cautionary statements. You should evaluate all forward-looking statements made in this Annual Report on Form 10-K in the context of the risks and uncertainties disclosed in Part I, Item 1A of this Annual Report on Form 10-K under the heading “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 Annual Report on 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.

Overview

First Watch is an award-winning Daytime Dining concept serving made-to-order breakfast, brunch and lunch using fresh ingredients. A recipient of hundreds of local “Best Breakfast” and “Best Brunch” accolades, First Watch’s award winning chef-driven menu includes elevated executions of classic favorites for breakfast, brunch and lunch. In 2022, First Watch was recognized with ADP’s coveted Culture at Work Award and named a Top 100 Most Loved Workplace® by Newsweek and the Best Practice Institute. The Company is majority owned by Advent International Corporation, one of the world’s largest private-equity firms. The Company’s common stock trades on Nasdaq under the ticker symbol “FWRG.”

The Company operates and franchises restaurants in 29 states under the “First Watch” trade name and as of December 25, 2022, the Company had 366 company-owned restaurants and 108 franchise-owned restaurants. The Company does not operate outside of the United States.

The Company’s 52- or 53-week fiscal years end on the last Sunday of each calendar year. Its fiscal quarters are comprised of 13 weeks each and end on the 13th Sunday of each quarter, save for 53-week years during which the fourth quarter ends on the 14th Sunday of the fourth quarter. All references to 2022, 2021 and 2020 reflect the results of the 52-week fiscal years ended December 25, 2022, December 26, 2021 and December 27, 2020, respectively. We report financial and operating information in one segment.

Key Performance Indicators

Throughout “Management’s Discussion and Analysis of Financial Condition and Results of Operations” we commonly discuss the following key operating metrics that we believe will drive our financial results and long-term growth model. We believe these metrics are useful to investors because management uses these metrics to evaluate performance and assess the growth of our business as well as the effectiveness of our marketing and operational strategies.

New Restaurant Openings (“NROs”): the number of new company-owned First Watch restaurants commencing operations during the period. Management reviews the number of new restaurants to assess new restaurant growth and company-owned restaurant sales.

Franchise-owned New Restaurant Openings (“Franchise-owned NROs”): the number of new franchise-owned First Watch restaurants commencing operations during the period.

Same-Restaurant Sales Growth: the percentage change in year-over-year restaurant sales (excluding gift card breakage) for the comparable restaurant base, which we define as the number of company-owned First Watch branded restaurants open for 18 months or longer as of the beginning of the fiscal year (“Comparable Restaurant Base”). There were 301 restaurants and 269 restaurants in our Comparable Restaurant Base in 2022 and in 2021, respectively. There were 207 restaurants in the three-year Comparable Restaurant Base. Measuring our same-restaurant sales growth allows management to evaluate the performance of our existing restaurant base. We believe this measure is useful for investors to provide a consistent comparison of restaurant sales results and trends across periods within our core, established restaurant base, unaffected by results of store openings, closings and other transitional changes.

Same-Restaurant Traffic Growth: the percentage change in traffic counts as compared to the same period in the prior year using the Comparable Restaurant Base. Measuring our same-restaurant traffic growth allows management to evaluate the performance of our existing restaurant base. We believe this measure is useful for investors because an increase in same-restaurant traffic provides an indicator as to the development of our brand and the effectiveness of our marketing strategy.

Average Unit Volume (“AUV”): the total restaurant sales (excluding gift card breakage) recognized in the Comparable Restaurant Base, divided by the number of restaurants in the Comparable Restaurant Base during the period. This measurement allows management to assess changes in consumer spending patterns at our restaurants and the overall performance of our restaurant base.

System-wide restaurants: the total number of restaurants, including all company-owned and franchise-owned restaurants.

System-wide sales: consists of restaurant sales from our company-owned restaurants and franchise-owned restaurants. We do not recognize the restaurant sales from our franchise-owned restaurants as revenue.

Non-GAAP Financial Measures

To supplement the consolidated financial statements, which are prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”), we use the following non-GAAP measures, which present operating results on an adjusted basis: (i) Adjusted EBITDA, (ii) Adjusted EBITDA margin, (iii) Restaurant level operating profit and (iv) Restaurant level operating profit margin. Our presentation of these non-GAAP measures includes isolating the effects of some items that are either nonrecurring in nature or vary from period to period without any correlation to our ongoing core operating performance. These supplemental measures of performance are not required by or presented in accordance with GAAP. Management believes these non-GAAP measures provide investors with additional visibility into our operations, facilitate analysis and comparisons of our ongoing business operations because they exclude items that may not be indicative of our ongoing operating performance, help to identify operational trends and allow for greater transparency with respect to key metrics used by management in our financial and operational decision making. Our non-GAAP measures may not be comparable to similarly titled measures used by other companies and have important limitations as analytical tools. These non-GAAP measures should not be considered in isolation or as substitutes for analysis of our results as reported under GAAP as they may not provide a complete understanding of our performance. These non-GAAP measures should be reviewed in conjunction with our consolidated financial statements prepared in accordance with GAAP.

We use Adjusted EBITDA and Adjusted EBITDA margin (i) as factors in evaluating management’s performance when determining incentive compensation, (ii) to evaluate our operating results and the effectiveness of our business strategies and (iii) internally as benchmarks to compare our performance to that of our competitors.

We use Restaurant level operating profit and Restaurant level operating profit margin (i) to evaluate the performance and profitability of each operating restaurant, individually and in the aggregate and (ii) to make decisions regarding future spending and other operational decisions.

Adjusted EBITDA: represents Net income (loss) before depreciation and amortization, interest expense, income taxes, and items that we do not consider in our evaluation of ongoing core operating performance as identified in the reconciliation of

Net income (loss), the most directly comparable measure in accordance with GAAP, to Adjusted EBITDA, included in the section *Non-GAAP Financial Measure Reconciliations* below.

Adjusted EBITDA Margin: represents Adjusted EBITDA as a percentage of total revenues. See *Non-GAAP Financial Measure Reconciliations* below for a reconciliation to Net income (loss) margin, the most directly comparable GAAP measure.

Restaurant Level Operating Profit: represents restaurant sales, less restaurant operating expenses, which include food and beverage costs, labor and other related expenses, other restaurant operating expenses, pre-opening expenses and occupancy expenses. Restaurant level operating profit excludes corporate-level expenses and other items that we do not consider in the evaluation of the ongoing core operating performance of our restaurants as identified in the reconciliation of Income (Loss) from operations, the most directly comparable GAAP measure, to Restaurant level operating profit, included in the section *Non-GAAP Financial Measure Reconciliations* below.

Restaurant Level Operating Profit Margin: represents Restaurant level operating profit as a percentage of restaurant sales. See *Non-GAAP Financial Measure Reconciliations* below for a reconciliation to Income (Loss) from operations margin, the most directly comparable GAAP measure.

Financial Highlights

In 2022, the Company continued to capture strong consumer demand and same-restaurant traffic growth as the dining rooms in the Comparable Restaurant Base returned to more than 90% of 2019 usage levels, while the off-premises channel proved to be a growth vehicle with sales increasing 6.3% from 2021. Our AUV increased 13.8% to \$2.0 million in 2022, from \$1.8 million in 2021. Despite the inflationary environment, customer demand allowed management to offset much of the inflationary pressure with modest menu price increases while continuing to drive same-restaurant traffic growth. Additionally, the Company's development team continued to accelerate new restaurant openings and populate the pipeline of prospective restaurant projects. The 29 NROs opened with warm customer response and generated an annualized average unit volume of \$2.2 million, which exceeded our AUV.

Financial highlights for 2022 include the following:

- Total revenues increased 21.5% to \$730.2 million from \$601.2 million in 2021
- System-wide sales increased 21.9% to \$914.8 million from \$750.7 million in 2021
- Same-restaurant sales growth of 14.5% (29.6% relative to 2019*)
- Same-restaurant traffic growth of 7.7% (6.5% relative to 2019*)
- Income from operations of \$16.9 million and Income from operations margin of 2.4% compared to Income from operations of \$22.2 million and Income from operations margin of 3.8% in 2021
- Restaurant level operating profit** of \$128.9 million and Restaurant level operating profit margin** of 17.9% compared to Restaurant level operating profit** of \$115.4 million and Restaurant level operating profit margin** of 19.5% in 2021
- Net income of \$6.9 million compared to Net loss of \$(2.1) million in 2021
- Adjusted EBITDA** increased to \$69.3 million from \$66.3 million in 2021
- Opened 43 system-wide restaurants (29 company-owned and 14 franchise-owned) across 16 states resulting in a total of 474 system-wide restaurants (366 company-owned and 108 franchise-owned) across 29 states

* Comparison to the fiscal year ended December 29, 2019 ("2019") is presented for enhanced comparability due to the economic impact of COVID-19.

** See *Non-GAAP Financial Measure Reconciliations* section below.

Business Trends, Customer and Supply Chain

Despite surging inflation impacting consumers in 2022, we saw a return of in-restaurant dining levels similar to 2019 levels while our off-premises sales remained strong, indicating continued customer demand.

The unusually high commodity inflation impacted costs throughout 2022 with some deceleration in the third and fourth quarters as the Company began to lap prior year inflation-impacted periods. The Company's market basket experienced cost inflation of approximately 13.0% in 2022. Notably, egg prices and the supply of cage-free shell eggs used in our recipes were under pressure most of the year due to multiple occurrences of Avian Influenza in the United States. Management solved for shortages by expanding sourcing but at higher than planned prices. In 2023, we expect continued cost inflation for our entire market basket in the range of 4.0% 6.0%.

During 2022, there was an increase in the volume of job applications and an overall easing of staffing constraints and labor shortages that developed in 2020 and 2021. Restaurant staffing in both hourly and manager level positions enabled us to serve our increased in-restaurant dining and off-premises demand and sets us up to execute on our strategic development plan and open new restaurants. We experienced restaurant-level hourly labor inflation of approximately 11.0% in 2022, which combined with the increase in staffing levels, contributed to increased labor and other related expenses at the restaurant level. In 2023, we expect restaurant-level hourly labor inflation of 9.0% to 11.0% and we intend to focus on optimizing our staffing as our restaurants have returned to a more normal seasonality.

Costs and timing of new restaurant construction were similarly challenged in 2022 due to the elevated inflation, uneven equipment delivery and supply chain interruptions. As a result, our development team often negotiated with landlords for early entry into new restaurant facilities so we could better control the pace of interior build out and installation of equipment, dining room packages and First Watch trade dress.

We have largely mitigated the inflationary impacts through pricing actions and we will continue to price to offset inflation while remaining focused on maximizing traffic in our restaurants. In late January 2023, we increased in-restaurant menu prices 4.1% to continue to offset the negative effects of inflationary costs.

Development Highlights

During 2022, the Company had a total of 43 new system-wide restaurants in 16 states and we closed 4 company-owned restaurants. At December 25, 2022, the Company had a total of 474 system-wide restaurants. Restaurant closures generally result from lease expirations where management is optimizing the Company's overall market development strategy.

	FISCAL YEAR 2022		
	Company-owned	Franchise-owned	Total
Beginning of period	341	94	435
New restaurants	29	14	43
Closures/Disenfranchised	(4)	—	(4)
End of period	<u>366</u>	<u>108</u>	<u>474</u>

We expect to open 38 to 42 company-owned restaurants and 10 to 12 franchise-owned restaurants during the fiscal year ending December 31, 2023 ("2023"). We also plan on closing 3 company-owned restaurants, resulting in a total of 45-51, net new system-wide restaurants in 2023.

Selected Operating Data

	FISCAL YEAR		
	2022	2021	2020
System-wide sales (in thousands)	\$ 914,816	\$ 750,674	\$ 426,303
System-wide restaurants	474	435	409
Company-owned	366	341	321
Franchise-owned	108	94	88
Same-restaurant sales growth	14.5 %	63.0 %	(29.0)%
Same-restaurant traffic growth	7.7 %	52.6 %	(33.9)%
AUV (in thousands)	\$ 2,032	\$ 1,786	\$ 1,119
Income (Loss) from operations (in thousands)	\$ 16,913	\$ 22,243	\$ (47,222)
Income (Loss) from operations margin	2.4 %	3.8 %	(14.0)%
Restaurant level operating profit (in thousands) ⁽¹⁾	\$ 128,936	\$ 115,404	\$ 28,236
Restaurant level operating profit margin ⁽¹⁾	17.9 %	19.5 %	8.4 %
Net income (loss) (in thousands)	\$ 6,907	\$ (2,107)	\$ (49,681)
Net income (loss) margin	0.9 %	(0.4)%	(14.5)%
Adjusted EBITDA (in thousands) ⁽²⁾	\$ 69,278	\$ 66,301	\$ (5,744)
Adjusted EBITDA margin ⁽²⁾	9.5 %	11.0 %	(1.7)%

(1) Reconciliations from Income (Loss) from operations and Income (Loss) from operations margin, the most comparable GAAP measures to Restaurant level operating profit and Restaurant level operating profit margin, are set forth in the schedules within the *Non-GAAP Financial Measure Reconciliations* section below.

(2) Reconciliations from Net income (loss) and Net income (loss) margin, the most comparable GAAP measures to Adjusted EBITDA and Adjusted EBITDA margin, are set forth in the schedules within the *Non-GAAP Financial Measure Reconciliations* section below.

Results of Operations

The discussion that follows includes a comparison of our results of operations for 2022 and 2021.

The following table summarizes our results of operations and the percentages of items in our Consolidated Statements of Operations and Comprehensive Income (Loss) in relation to Total revenues or, where indicated, Restaurant sales for 2022 and 2021:

<i>(in thousands)</i>	FISCAL YEAR			
	2022		2021	
Revenues				
Restaurant sales	\$ 719,181	98.5 %	\$ 592,343	98.5 %
Franchise revenues	10,981	1.5 %	8,850	1.5 %
Total revenues	730,162	100.0 %	601,193	100.0 %
Operating costs and expenses				
Restaurant operating expenses ⁽¹⁾ (exclusive of depreciation and amortization shown below):				
Food and beverage costs	172,561	24.0 %	134,201	22.7 %
Labor and other related expenses	238,257	33.1 %	189,167	31.9 %
Other restaurant operating expenses	114,476	15.9 %	94,847	16.0 %
Occupancy expenses	59,919	8.3 %	55,433	9.4 %
Pre-opening expenses	5,414	0.8 %	3,310	0.6 %
General and administrative expenses	84,959	11.6 %	70,388	11.7 %
Depreciation and amortization	34,230	4.7 %	32,379	5.4 %
Impairments and loss on disposal of assets	920	0.1 %	381	0.1 %
Transaction expenses (income), net	2,513	0.3 %	(1,156)	(0.2)%
Total operating costs and expenses	713,249	97.7 %	578,950	96.3 %
Income from operations ⁽¹⁾	16,913	2.4 %	22,243	3.8 %
Interest expense	(5,232)	(0.7)%	(20,099)	(3.3)%
Other income (expense), net	910	0.1 %	(1,774)	(0.3)%
Income before income taxes	12,591	1.7 %	370	0.1 %
Income tax expense	(5,684)	(0.8)%	(2,477)	(0.4)%
Net income (loss) and total comprehensive income (loss)	\$ 6,907	0.9 %	\$ (2,107)	(0.4)%

(1) Percentages are calculated as a percentage of restaurant sales.

Restaurant Sales

Restaurant sales represent the aggregate sales of food and beverages, net of discounts, at company-owned restaurants. Restaurant sales in any period are directly influenced by the number of operating weeks in the period, the number of open restaurants, customer traffic and average check. Average check growth is driven by our menu price increases and changes to our menu mix.

<i>(in thousands)</i>	FISCAL YEAR		Change
	2022	2021	
Restaurant sales:			
In-restaurant dining sales	\$ 571,048	\$ 452,989	\$ 118,059 26.1 %
Third-party delivery sales	82,049	70,486	11,563 16.4 %
Take-out sales	66,084	68,868	(2,784) (4.0)%
Total Restaurant sales	\$ 719,181	\$ 592,343	\$ 126,838 21.4 %

The increase in total restaurant sales during 2022 as compared to 2021 was primarily due to (i) same-restaurant sales growth of 14.5%, driven by same-restaurant traffic growth of 7.7%, the increase in average check per person and the increase in third-party delivery sales, in addition to (ii) \$26.8 million from 29 NROs.

Franchise Revenues

Franchise revenues are comprised of sales-based royalty fees, system fund contributions and the amortization of upfront initial franchise fees, which are recognized as revenue on a straight-line basis over the term of the franchise agreement. Franchise revenues in any period are directly influenced by the number of open franchise-owned restaurants.

<i>(in thousands)</i>	FISCAL YEAR		Change
	2022	2021	
Franchise revenues:			
Royalty and system fund contributions	\$ 10,683	\$ 8,575	\$ 2,108 24.6 %
Initial fees	298	275	23 8.4 %
Total Franchise revenues	\$ 10,981	\$ 8,850	\$ 2,131 24.1 %

The increase in franchise revenues during 2022 as compared to 2021 was primarily driven by (i) the increase in sales from franchise-owned restaurants and (ii) \$0.4 million from 14 franchise-owned NROs.

Food and Beverage Costs

The components of food and beverage costs at company-owned restaurants are variable by nature, change with sales volume, are impacted by product mix and are subject to increases or decreases in commodity costs.

<i>(in thousands)</i>	FISCAL YEAR		Change
	2022	2021	
Food and beverage costs	\$ 172,561	\$ 134,201	\$ 38,360 28.6 %
As a percentage of restaurant sales	24.0 %	22.7 %	1.3%

Food and beverage costs as a percent of restaurant sales increased during 2022 as compared to 2021 primarily due to inflation across the market basket, partially offset by menu price increases.

Food and beverage costs increased during 2022 as compared to 2021 primarily as a result of (i) the increase in restaurant sales, (ii) inflation across the market basket and (iii) \$6.8 million from 29 NROs.

Labor and Other Related Expenses

Labor and other related expenses are variable by nature and include hourly and management wages, bonuses, payroll taxes, workers' compensation expense and employee benefits. Factors that influence labor costs include minimum wage and payroll tax legislation, health care costs, the number and performance of our company-owned restaurants and increased competition for qualified staff.

<i>(in thousands)</i>	FISCAL YEAR		Change	
	2022	2021		
Labor and other related expenses	\$ 238,257	\$ 189,167	\$ 49,090	26.0 %
As a percentage of restaurant sales	33.1 %	31.9 %	1.2%	

Labor and other related expenses as a percentage of restaurant sales increased during 2022 as compared to 2021 primarily as a result of the increase in wages and staffing levels. This increase was partially offset by (i) retention bonuses recognized in 2021 and (ii) a decrease in health insurance costs, which includes rebates from our group health plan.

The increase in labor and other related expenses during 2022 as compared to 2021 was primarily due to (i) the increase in wages and staffing levels and (ii) \$11.0 million from 29 NROs. This increase was partially offset by (i) retention bonuses recognized during 2021 and (ii) a decrease in health insurance costs, which includes rebates from our group health plan.

Other Restaurant Operating Expenses

Other restaurant operating expenses consist of marketing and advertising expenses, utilities, insurance and other operating variable expenses incidental to operating company-owned restaurants, such as operating supplies (including paper products, menus and to-go supplies), credit card fees, repairs and maintenance, and third-party delivery services fees.

<i>(in thousands)</i>	FISCAL YEAR		Change	
	2022	2021		
Other restaurant operating expenses	\$ 114,476	\$ 94,847	\$ 19,629	20.7 %
As a percentage of restaurant sales	15.9 %	16.0 %	(0.1)%	

Other restaurant operating expenses as a percentage of restaurant sales during 2022 was slightly lower as compared to 2021 primarily due to leveraging in-restaurant dining sales, which was partially offset by the increase in the cost of to-go supplies and repairs and maintenance costs.

The increase in other restaurant operating expenses during 2022 as compared to 2021 was mainly due to (i) \$9.6 million related to credit card fees, utilities, repairs and maintenance and insurance primarily driven by the increase in restaurant sales and restaurant growth, (ii) \$7.2 million in operating supplies expense primarily driven by inflation and the increase in restaurant sales and restaurant growth, as well as (iii) \$1.2 million in third-party delivery services fees.

Occupancy Expenses

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

<i>(in thousands)</i>	FISCAL YEAR		Change	
	2022	2021		
Occupancy expenses	\$ 59,919	\$ 55,433	\$ 4,486	8.1 %
As a percentage of restaurant sales	8.3 %	9.4 %	(1.1)%	

The decrease in occupancy expenses as a percentage of restaurant sales during 2022 as compared to 2021 was primarily due to sales leverage driven by increased restaurant sales.

The increase in occupancy expenses during 2022 as compared to 2021 was primarily due to the increase in the number of company-owned restaurants.

Pre-opening Expenses

Pre-opening expenses are costs incurred to open new company-owned restaurants. Pre-opening expenses include pre-opening rent expense, which is recognized during the period between the date of possession of the restaurant facility and the restaurant opening date. In addition, pre-opening expenses include manager salaries, recruiting expenses, employee payroll and training costs, which are recognized in the period in which the expense was incurred. Pre-opening expenses can fluctuate from period to period, based on the number and timing of new company-owned restaurant openings.

<i>(in thousands)</i>	FISCAL YEAR		Change
	2022	2021	
Pre-opening expenses	\$ 5,414	\$ 3,310	\$ 2,104 63.6 %

Pre-opening expenses have continued to increase over the last few years, in part due to management's decision to gain early access to facilities during the build-out phase. Early access improves the Company's influence over the pace and timing of completion of new restaurants.

The increase in pre-opening expenses during 2022 as compared to 2021 was primarily due to (i) the higher number of restaurants opened, in addition to (ii) the higher number of restaurants expected to open and the related increase in pre-opening rent.

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 fees, professional fees and stock-based compensation. General and administrative expenses are impacted by changes in our employee headcount and costs related to strategic and growth initiatives. In preparation for and after the consummation of the Company's initial public offering ("IPO") in October 2021, we have incurred and we expect to incur in the future significant additional legal, accounting and other expenses associated with being a public company, including costs associated with our compliance with the Sarbanes-Oxley Act.

<i>(in thousands)</i>	FISCAL YEAR		Change
	2022	2021	
General and administrative expenses	\$ 84,959	\$ 70,388	\$ 14,571 20.7 %

The increase in general and administrative expenses during 2022 as compared to 2021 was mainly due to (i) \$7.3 million of stock-based compensation expense primarily from certain stock option awards that converted into time-based stock option awards upon the Company's IPO, in addition to stock option awards and restricted stock units granted under the 2021 Equity Plan, (ii) \$2.8 million related to health insurance costs and insurance expense associated with being a public company, (iii) \$2.5 million related to legal, accounting and consulting services associated with being a public company, (iv) \$1.7 million of expenses associated with investments in technology initiatives and the redesign of our systems and processes, as well as (v) \$1.3 million in marketing expenses. This increase was partially offset by the one-time expense of \$5.6 million that was recognized in 2021 in connection with the modifications of certain stock option awards.

Depreciation and Amortization

Depreciation and amortization consists of the depreciation of fixed assets, including leasehold improvements, fixtures and equipment and the amortization of definite-lived intangible assets, which are primarily comprised of franchise rights. Franchise rights includes rights which arose from the purchase price allocation in connection with the merger agreement through which the Company was acquired by funds affiliated with or managed by Advent International Corporation in August 2017 as well as reacquired rights from our acquisitions of franchise-owned restaurants.

<i>(in thousands)</i>	FISCAL YEAR		Change
	2022	2021	
Depreciation and amortization	\$ 34,230	\$ 32,379	\$ 1,851 5.7 %

The increase in depreciation and amortization during 2022 as compared to 2021 was primarily due to incremental depreciation of capital expenditures associated with NROs.

Impairments and Loss on Disposal of Assets

Impairments and loss on disposal of assets include (i) the impairment of long-lived assets and intangible assets where the carrying amount of the asset is not recoverable and exceeds the fair value of the asset, (ii) the write-off of the net book value of assets that have been retired or replaced in the normal course of business and (iii) the write-off of the net book value of assets in connection with restaurant closures and natural disasters.

<i>(in thousands)</i>	FISCAL YEAR		Change
	2022	2021	
Impairments and loss on disposal of assets	\$ 920	\$ 381	\$ 539 n/m ⁽¹⁾

Not meaningful.

In 2022 and 2021, the amounts represent write-off of assets retired as a result of restaurant closures or replacements of assets.

Transaction Expenses (Income), Net

Transaction expenses (income), net include (i) revaluations of contingent consideration payable to previous stockholders for tax savings generated through the use of federal and state loss carryforwards and general business credits that had been accumulated from operations prior to August 2017, (ii) gains or losses associated with lease or contract terminations, (iii) costs incurred in connection with the acquisition of franchise-owned restaurants, (iv) costs related to restaurant closures and (v) costs related to certain equity offerings.

<i>(in thousands)</i>	FISCAL YEAR		Change
	2022	2021	
Transaction expenses (income), net	\$ 2,513	\$ (1,156)	\$ 3,669 n/m ⁽¹⁾

Not meaningful.

Transaction expenses, net during 2022 was primarily due to \$2.0 million of costs incurred in connection with the secondary public offering of the Company's common stock by entities affiliated with our majority owner, Advent International Corporation (the "Secondary Offering") and the Registration Statement on Form S-3.

Transaction income, net in 2021 was primarily due to recognizing a gain of \$2.0 million related to a lease termination for the redevelopment of a restaurant facility by a landlord, partially offset by the \$0.8 million loss recognized related to the revaluation of the contingent consideration payable to previous stockholders for tax savings generated through use of loss carryforwards and general business credits arising from Company operations prior to August 2017.

Income from Operations and Income from Operations Margin

<i>(in thousands)</i>	FISCAL YEAR		Change
	2022	2021	
Income from operations	\$ 16,913	\$ 22,243	\$ (5,330) (24.0)%
Income from operations margin	2.4 %	3.8 %	(1.4)%

Income from operations margin decreased during 2022 as compared to 2021 primarily due to (i) inflation across commodities and supplies, (ii) the increase in restaurant-level wages and staffing, (iii) higher general and administrative expenses mainly due to stock-based compensation expense, public company costs and costs for strategic initiatives, as well as (iv) the increase in transaction costs. This decrease was partially offset by menu price increases.

Income from operations decreased during 2022 as compared to 2021 primarily due to (i) inflation across commodities and supplies, (ii) the increase in restaurant-level wages and staffing, (iii) higher operating costs and expenses driven by the increase in restaurant sales and restaurant growth, (iv) higher general and administrative expenses mainly due to stock-based compensation expense, public company costs and costs for strategic initiatives, as well as (v) the increase in transaction costs. This decrease was partially offset by the increase in restaurant sales and franchise revenues.

Interest Expense

Interest expense primarily consists of interest and fees on our outstanding debt and the amortization expense for debt discount and deferred issuance costs.

<i>(in thousands)</i>	FISCAL YEAR		Change
	2022	2021	
Interest expense	\$ (5,232)	\$ (20,099)	\$ 14,867 (74.0)%

The decrease in interest expense during 2022 as compared to 2021 was primarily due to the full repayment of our borrowings under our previous senior credit facilities in October 2021, which were replaced by lower outstanding debt and reduced interest rates from the Term Facility pursuant to our Credit Agreement.

Other Income (Expense), Net

Other income (expense), net includes items deemed to be non-operating based on management's assessment of the nature of the item in relation to our core operations.

<i>(in thousands)</i>	FISCAL YEAR		Change
	2022	2021	
Other income (expense), net	\$ 910	\$ (1,774)	\$ 2,684 n/m ⁽¹⁾

Not meaningful.

The change in Other income (expense), net in 2022 as compared to 2021 primarily related to (i) the loss on extinguishment of debt recognized in connection with the full repayment of our borrowings under our previous senior credit facilities in 2021 and (ii) approximately \$0.4 million of insurance recoveries recognized in connection with Hurricane Ian.

Income Tax Expense

Income tax expense primarily consists of various federal and state taxes.

<i>(in thousands)</i>	FISCAL YEAR		Change
	2022	2021	
Income tax expense	\$ (5,684)	\$ (2,477)	\$ (3,207) n/m ⁽¹⁾
Effective income tax rate	45.1 %	669.5 %	n/m ⁽¹⁾

Not meaningful.

The change in the effective income tax rates for 2022 as compared to 2021 was mainly due to (i) the Company's increased profitability, (ii) the benefit of tax credits for FICA taxes on certain employees' tip wages, (iii) non-deductible costs associated with the Secondary Offering and the Registration Statement on Form S-3 and (iv) impacts of executive stock-based compensation.

Net Income (Loss) and Net Income (Loss) Margin

<i>(in thousands)</i>	FISCAL YEAR		Change
	2022	2021	
Net income (loss)	\$ 6,907	\$ (2,107)	n/m ⁽¹⁾
Net income (loss) margin	0.9 %	(0.4)%	n/m ⁽¹⁾

(1) Not meaningful.

Net income and Net income margin during 2022 as compared to Net loss and Net loss margin during 2021 was primarily due to (i) lower interest expense and (ii) the loss on extinguishment of debt recognized in 2021. This was partially offset by (i) the decrease in income from operations, (ii) costs associated with the Secondary Offering and the Registration Statement on Form S-3, as well as (iii) the increase in income tax expense.

Restaurant Level Operating Profit and Restaurant level Operating Profit Margin

<i>(in thousands)</i>	FISCAL YEAR		Change	
	2022	2021		
Restaurant level operating profit	\$ 128,936	\$ 115,404	\$ 13,532	11.7 %
Restaurant level operating profit margin	17.9 %	19.5 %	(1.6)%	

Restaurant level operating profit margin during 2022 decreased as compared to 2021 primarily due to (i) inflation across commodities and supplies and (ii) the increase in restaurant-level wages and staffing. This decrease was partially offset by (i) leveraging the increase in restaurant sales and (ii) menu price increases.

Restaurant level operating profit during 2022 increased as compared to 2021 primarily due to same-restaurant sales growth, driven by same-restaurant traffic growth, the increase in average check per person and the increase in third-party delivery sales. This increase was partially offset by (i) inflation across commodities and supplies, (ii) the increase in restaurant-level wages and staffing and (iii) the increase in operating costs and expenses driven by higher restaurant sales and our restaurant growth.

Adjusted EBITDA and Adjusted EBITDA Margin

<i>(in thousands)</i>	FISCAL YEAR		Change	
	2022	2021		
Adjusted EBITDA	\$ 69,278	\$ 66,301	\$ 2,977	4.5 %
Adjusted EBITDA margin	9.5 %	11.0 %	(1.5)%	

The decrease in Adjusted EBITDA margin during 2022 as compared to 2021 was primarily due to (i) the decrease in restaurant level operating profit margin and (ii) the increase in general and administrative expenses mainly due to legal, accounting, consulting and insurance costs associated with being a public company, costs for strategic initiatives, as well as the increase in marketing expenses.

The increase in Adjusted EBITDA during 2022 as compared to 2021 was primarily due to the increase in restaurant level operating profit. This increase was partially offset by higher general and administrative expenses mainly due to legal, accounting, consulting and insurance costs associated with being a public company, costs for strategic initiatives, as well as the increase in marketing expenses.

Non-GAAP Financial Measure Reconciliations

Adjusted EBITDA and Adjusted EBITDA margin - The following table reconciles Net income (Loss) and Net income (loss) margin, the most directly comparable GAAP measures to Adjusted EBITDA and Adjusted EBITDA margin for the periods indicated:

<i>(in thousands)</i>	FISCAL YEAR		
	2022	2021	2020
Net income (loss)	\$ 6,907	\$ (2,107)	\$ (49,681)
Depreciation and amortization	34,230	32,379	30,725
Interest expense	5,232	20,099	22,815
Income taxes	5,684	2,477	(19,873)
EBITDA	52,053	52,848	(16,014)
IPO-readiness and strategic transition costs ⁽¹⁾	2,318	2,402	4,247
Stock-based compensation ⁽²⁾	10,374	8,596	750
Loss on extinguishment of debt	—	2,403	—
Transaction expenses (income), net ⁽³⁾	2,513	(1,156)	(258)
Impairments and loss on disposal of assets ⁽⁴⁾	920	381	315
Recruiting and relocation costs ⁽⁵⁾	681	351	228
Severance costs ⁽⁶⁾	155	265	239
Delaware Voluntary Disclosure Agreement Program ⁽⁷⁾	149	—	—
Costs in connection with natural disasters, net of insurance recoveries ⁽⁸⁾	115	—	—
COVID-19 related charges ⁽⁹⁾	—	211	4,749
Adjusted EBITDA	\$ 69,278	\$ 66,301	\$ (5,744)
Total revenues	\$ 730,162	\$ 601,193	\$ 342,388
Net income (loss) margin	0.9 %	(0.4)%	(14.5)%
Adjusted EBITDA margin	9.5 %	11.0 %	(1.7)%
Additional information			
Deferred rent expense (income) ⁽¹⁰⁾	\$ 2,418	\$ (2,011)	\$ 10,087

(1) Represents costs related to the assessment and redesign of our systems and processes. In 2021 and 2020, the costs also include information technology support and external professional service costs incurred in connection with IPO-readiness efforts. These costs are recorded within General and administrative expenses on the Consolidated Statements of Operations and Comprehensive Income (Loss).

(2) Represents non-cash, stock-based compensation expense which is recorded within General and administrative expenses on the Consolidated Statements of Operations and Comprehensive Income (Loss).

(3) Represents (i) revaluations of contingent consideration payable to previous stockholders for tax savings generated through the use of federal and state loss carryforwards and general business credits that had been accumulated from operations prior to August 2017, (ii) gains or losses associated with lease or contract terminations, (iii) costs incurred in connection with the acquisition of franchise-owned restaurants, (iv) costs related to restaurant closures and (v) costs related to secondary offerings of the Company's common stock.

(4) Represents costs related to the disposal of assets due to retirements, replacements, restaurant closures and natural disasters. There were no impairments recognized during the periods presented.

(5) Represents costs incurred for hiring qualified individuals as we assessed the redesign of our systems and processes. These costs are recorded within General and administrative expenses on the Consolidated Statements of Operations and Comprehensive Income (Loss).

(6) Severance costs are recorded in General and administrative expenses on the Consolidated Statements of Operations and Comprehensive Income (Loss).

(7) Represents professional service costs incurred in connection with the Delaware Voluntary Disclosure Agreement Program related to unclaimed or abandoned property. These costs are recorded in General and administrative expenses on the Consolidated Statements of Operations and Comprehensive Income (Loss).

(8) Represents costs incurred, net of insurance recoveries, in connection with Hurricane Ian. The costs include inventory obsolescence and spoilage, compensation for employees and support for hurricane relief, which were recorded in Food and beverage costs, Labor and other expenses and General and administrative expenses on the Consolidated Statements of Operations and Comprehensive Income (Loss).

(9) Represents costs incurred in connection with the economic impact of the COVID-19 pandemic.

(10) Represents the non-cash portion of straight-line rent expense recorded within both Occupancy expenses and General and administrative expenses on the Consolidated Statements of Operations and Comprehensive Income (Loss).

Restaurant level operating profit and Restaurant level operating profit margin - The following table reconciles Income from operations and Income from operations margin, the most comparable GAAP measures to Restaurant level operating profit and Restaurant level operating profit margin for the periods indicated:

<i>(in thousands)</i>	FISCAL YEAR		
	2022	2021	2020
Income from operations	\$ 16,913	\$ 22,243	\$ (47,222)
Less: Franchise revenues	(10,981)	(8,850)	(4,955)
Add:			
General and administrative expenses	84,959	70,388	46,322
Depreciation and amortization	34,230	32,379	30,725
Transaction expenses (income), net ⁽¹⁾	2,513	(1,156)	(258)
Impairments and loss on disposal of assets ⁽²⁾	920	381	315
Costs in connection with natural disasters ⁽³⁾	382	—	—
COVID-19 related charges ⁽⁴⁾	—	19	3,309
Restaurant level operating profit	\$ 128,936	\$ 115,404	\$ 28,236
Restaurant sales	\$ 719,181	\$ 592,343	\$ 337,433
Income from operations margin	2.4 %	3.8 %	(14.0)%
Restaurant level operating profit margin	17.9 %	19.5 %	8.4 %
Additional information			
Deferred rent expense (income) ⁽⁵⁾	\$ 2,219	\$ (2,075)	\$ 10,029

(1) Represents (i) revaluations of contingent consideration payable to previous stockholders for tax savings generated through the use of federal and state loss carryforwards and general business credits that had been accumulated from operations prior to August 2017, (ii) gains or losses associated with lease or contract terminations, (iii) costs incurred in connection with the acquisition of franchise-owned restaurants, (iv) costs related to restaurant closures and (v) costs related to secondary offerings of the Company's common stock.

(2) Represents costs related to the disposal of assets due to retirements, replacements, certain restaurant closures and natural disasters. There were no impairments recognized during the periods presented.

(3) Represents costs incurred in connection with Hurricane Ian. The costs include inventory obsolescence and spoilage as well as compensation for employees, which were recorded in Food and beverage costs and Labor and other expenses on the Consolidated Statements of Operations and Comprehensive Income (Loss).

(4) Represents costs incurred in connection with the economic impact of the COVID-19 pandemic.

(5) Represents the non-cash portion of straight-line rent expense recorded within Occupancy expenses on the Consolidated Statements of Operations and Comprehensive Income (Loss).

Liquidity and Capital Resources

Liquidity

As of December 25, 2022, the Company had cash and cash equivalents of \$49.7 million and outstanding borrowings under the Term Facility of \$98.1 million, excluding unamortized debt issuance costs and deferred issuance costs. In addition, availability under our Revolving Credit Facility was \$75.0 million. Our principal uses of cash include capital expenditures for the development, acquisition or remodeling of restaurants, lease obligations, debt service payments and strategic infrastructure investments. Our working capital requirements are low because our restaurants store very little inventory and our customers pay for their purchases at the time of the sale which frequently precedes our payment terms with suppliers.

We believe that our cash flow from operations, availability under our Credit Agreement and available cash and cash equivalents will be sufficient to meet our liquidity needs for at least the next 12 months. We anticipate that to the extent that we require additional liquidity, or should we decide to pursue one or more significant acquisitions, it will be funded first through additional indebtedness and thereafter through the issuance of equity. Although we believe that our current level of total available liquidity is sufficient to meet our short-term and long-term liquidity requirements, we regularly evaluate opportunities to improve our liquidity position in order to enhance financial flexibility. On November 7, 2022, we filed a Registration Statement on Form S-3 that allows the Company to sell up to 5,000,000 shares of common stock from time to time in one or more offerings.

We estimate that our capital expenditures will total approximately \$100.0 million to \$110.0 million in 2023, which will be invested primarily in new restaurant projects and planned remodels. We plan to fund the capital expenditures primarily with cash generated from our operating activities as well as with borrowings from our facilities pursuant to our Credit Agreement.

Summary of Cash Flows

The following table presents a summary of our cash provided by (used in) operating, investing and financing activities for 2022 and 2021:

<i>(in thousands)</i>	FISCAL YEAR	
	2022	2021
Cash provided by operating activities	\$ 62,937	\$ 62,971
Cash used in investing activities	(63,111)	(35,682)
Cash used in financing activities	(2,018)	(14,271)
Net (decrease) increase in cash and cash equivalents and restricted cash	\$ (2,192)	\$ 13,018

Cash provided by operating activities during 2022 was \$62.9 million as compared to \$63.0 million during 2021 primarily due to (i) the increase in net income of \$9.0 million and (ii) the impact of non-cash charges of \$7.4 million, which were offset by (iii) a net change in operating assets and liabilities of \$16.4 million. The increase in the non-cash charges was primarily driven by (i) additional stock-based compensation expense resulting from certain stock option awards that converted into time-based stock option awards upon closing of the IPO as well as new stock option awards and restricted stock units issued under the 2021 Equity Plan, (ii) the increase in non-cash operating lease costs and depreciation expense mainly due to our restaurant growth. The net change in operating assets and liabilities of \$16.4 million was primarily a result of (i) the timing of employee compensation payments, (ii) the payment of payroll taxes deferred in 2020 as a result of the Coronavirus, Aid, Relief and Economic Security Act and (iii) the timing of operational payments.

Cash used in investing activities increased to \$63.1 million during 2022 from \$35.7 million during 2021 primarily as a result of the increase in capital expenditures to support our restaurant growth and new restaurant technology.

Cash used in financing activities decreased to \$2.0 million during 2022 from \$14.3 million during 2021 primarily as a result of the repayment of our outstanding borrowings under our previous senior credit facilities, which was partially offset by proceeds from our IPO and proceeds from our borrowings under our Credit Agreement in 2021.

Contractual Obligations

Material contractual obligations arising in the normal course of business primarily consist of operating and finance lease obligations, long-term debt, and purchase obligations. The timing and nature of these commitments are expected to have an impact on our liquidity and capital requirements in future periods. Refer to Note 8, *Debt*, in the accompanying consolidated financial statements for additional information relating to our long-term debt and Note 9, *Leases*, in the accompanying consolidated financial statements for additional information related to our operating and financing leases.

Purchase obligations include agreements related to the construction or remodeling of restaurant facilities, the purchase of food, beverages, paper goods and other supplies, equipment purchases, marketing-related contracts, software license commitments, technology and other service contracts in the normal course of business. These obligations are generally pursuant to short-term purchase orders at prevailing market prices and are recorded as liabilities when the related goods are received or services rendered. These commitments are cancellable and there are no material financial penalties associated with these commitments in the event of early termination.

Purchase obligations also include firm minimum commitments in excess of 12 months for certain supply contracts. Refer to Note 15, *Commitments and Contingencies*, in the accompanying consolidated financial statements for additional information.

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K, which have been prepared in accordance with GAAP. The preparation of these financial statements and related notes requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses. Certain of our accounting policies require the application of significant judgment by management in selecting the appropriate assumptions for calculating financial estimates. By their nature, these judgments are subject to an inherent degree of uncertainty. These judgments are based on our historical experience, terms of existing contracts, our evaluation of trends in the industry, information available from other outside sources, as appropriate. We evaluate our estimates and judgments on an on-going basis. Our actual results may differ from these estimates. Judgments and uncertainties affecting the application of those policies may result in materially different amounts being reported under different conditions or using different assumptions. The accounting policies and estimates that we believe to be the most critical to an understanding of our financial condition and results of operations and that require the most complex and subjective management judgments are discussed below.

Goodwill and Indefinite-lived Intangibles

Goodwill and indefinite-lived intangibles are tested for impairment annually, on the first day of the fourth quarter of the fiscal year, or whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. Significant judgments are used to determine if an indicator of impairment has occurred. Such indicators could include negative operating performance of our restaurants, economic and restaurant industry trends, legal factors, significant competition or changes in our business strategy. Any adverse change in these factors could have a significant impact on the recoverability of our goodwill and indefinite-lived intangible assets and could have a material impact on our consolidated financial statements.

We have identified one reporting unit to which we have attributed goodwill. Management may elect to perform a qualitative assessment to determine whether it is more likely than not that the reporting unit and/or asset group is impaired. If the qualitative assessment is not performed, or if it is not more likely than not that the estimated fair value of the reporting unit and indefinite-lived intangible assets exceeds the respective carrying value, a quantitative analysis is required.

If the qualitative assessment is not performed or if we determine that it is not more likely than not that the fair value of the reporting unit exceeds the carrying value, the fair value of the reporting unit is calculated using the best information available, including market information (also referred to as the market approach) and discounted cash flow projections (also referred to as the income approach). The market approach estimates fair value by applying projected cash flow earnings multiples to the reporting unit's operating performance. The multiples are derived from comparable publicly-traded companies with similar operating and investment characteristics. The income approach uses internal future cash flow estimates, which are influenced by revenue growth rates, operating margins and new restaurant openings, that are discounted using a weighted-average cost of capital that reflects current market conditions. We recognize an impairment loss when the carrying value of the reporting unit exceeds the estimated fair value.

In performing the quantitative assessment for indefinite-lived intangibles, we estimate the fair value of trade names and trademarks using the relief-from-royalty method, which requires assumptions related to projected sales, assumed royalty rates that could be payable if we did not own the trademarks and a discount rate. We recognize an impairment loss when the carrying value of the asset exceeds the estimated fair value.

The subjective estimates associated with management's judgments and assumptions in fair value calculations at the measurement date are affected by various factors including changes in economic conditions, our operating performance and our business strategies.

During 2022 and 2021, we elected to perform a qualitative assessment for our annual impairment review of goodwill and indefinite-lived intangibles. In considering the qualitative approach related to goodwill, we considered factors including, but not limited to, macro-economic conditions, market and industry conditions, the competitive environment, results of prior impairment tests, operational stability, the overall financial performance of the reporting unit and the impacts of the discount rates. Management also considered the specific future outlook for the reporting unit. As it relates to our trade names and trademarks, we evaluate similar factors as the goodwill assessment, in addition to impacts of potential changes to the assumed royalty rate. Based on the results of the qualitative assessment, Management concluded that impairment of

goodwill and its indefinite-lived intangibles was not likely and as a result, management was not required to perform a quantitative assessment.

Long-lived assets and definite-lived intangible assets

Long-lived assets deployed at company-owned restaurants include (i) property, fixtures and equipment, (ii) operating lease right-of-use asset, net of the related operating lease liability and (iii) reacquired rights to the extent the restaurant had been previously acquired by the Company. Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset group may not be recoverable. Recoverability is measured by a comparison of the carrying amount of an asset group to the estimated undiscounted future cash flows expected to be generated by the asset group. The comparison is performed at the lowest level of identifiable cash flows, which is primarily at the individual restaurant level. Significant judgment is used to determine the expected useful lives of long-lived assets and the estimated future cash flows, including projected sales growth, operating margins and ongoing maintenance and improvement of the assets. If the carrying amount of the asset group exceeds its estimated undiscounted future cash flows, an impairment charge is recognized.

Definite-lived intangible assets consist of franchise rights which arose from the purchase price allocation in connection with the Advent Acquisition and also include reacquired rights from the Company's acquisitions of franchised restaurants. Definite-lived intangible assets are amortized on a straight-line basis over their estimated useful lives and are reviewed for impairment when events or change in circumstances indicate that the carrying amount of such assets may not be recoverable. Significant judgments are used to determine if an indicator of impairment has occurred. Such indicators may include, among others: negative operating performance of our restaurants, economic and restaurant industry trends, legal factors, significant competition or changes in our business strategy. Adverse changes in these factors could have a significant impact on the recoverability of these assets and the resulting impairment charge could be material to our consolidated financial statements.

Recoverability of definite-lived intangible assets is measured by a comparison of the carrying amount of the asset group to the estimated undiscounted future cash flows expected to be generated by the asset group. If the total future undiscounted net cash flows are less than the carrying amount, this may be an indicator of impairment. An impairment loss is recognized when the asset's carrying value exceeds its estimated fair value, which is generally estimated using discounted future cash flows expected from future use of the asset group. Management did not identify any triggering events in 2022 and 2021 and no impairment charges were recorded in 2022 and 2021.

Leases

We lease our restaurant facilities and corporate offices, as well as certain restaurant equipment under various non-cancelable agreements. At the inception of each lease, we evaluate the expected term which includes reasonably certain renewal options, and the classification as either an operating leases or a finance lease. Lease liabilities represent the present value of future lease payments. To determine the present value of the lease liability, we estimate the incremental borrowing rates corresponding to the reasonably certain lease term as our leases do not provide implicit rates. Assumptions used in determining our incremental borrowing rate include a market yield implied by our outstanding secured term loans interpolated for various maturities using our synthetic credit rating, which is determined using a regression analysis of rated publicly-traded comparable companies and their financial data.

We assess the impairment of the right-of-use asset at the asset group level whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable.

Changes in management's judgments and in the assumptions being used may produce materially different amounts in the recognition of the right-of-use assets, lease liabilities and lease expense.

Income Taxes

We use the asset and liability method of accounting for income taxes. Under this method, deferred tax assets or liabilities are recognized for the estimated future tax effects attributable to temporary differences between the carrying value and the tax basis of assets and liabilities as well as tax credit carryforwards. The estimates we make under this method include, among other items, depreciation and amortization expense allowable for tax purposes, credits for items such as taxes paid on reported employee tip wages, effective rates for state and local income taxes and the deductibility of certain items. In

addition, our annual effective income tax rate is adjusted as additional information becomes available during the reporting period.

We recognize deferred tax assets for all deductible temporary differences to the extent that it is probable that taxable income will be available against which the deductible temporary differences can be utilized. A valuation allowance for deferred tax assets is provided when it is more likely than not that a portion of the deferred tax assets will not be realized. Potential for recovery of deferred tax assets is evaluated by estimating the taxable income in any available carry back period, considering future taxable income expected, scheduling of anticipated reversal of taxable temporary differences and considering prudent and feasible tax planning strategies.

We continue to monitor and evaluate the rationale for recording a valuation allowance against deferred tax assets. As we increase earnings and utilize deferred tax assets, it is possible the valuation allowance could be reduced or eliminated. In addition, our ability to utilize net operating loss carryforwards and tax credit carryforwards could be adversely impacted by, among other things, a future “ownership change” as defined under Section 382 of the Internal Revenue Code. Changes in assumptions regarding our level and composition of earnings, tax laws or the deferred tax valuation allowance and the results of tax audits, may materially impact the effective income tax rate.

Stock-Based Compensation and Fair Value of Common Stock

Stock-based compensation expense is measured based on the award’s grant date fair value. Stock-based compensation expense related to time-based stock option awards issued under the 2017 Equity Plan is recognized on an accelerated recognition method over the requisite service period. Prior to our IPO, we had not recognized any stock-based compensation expense for our performance-based stock option awards issued under the 2017 Equity Plan as the satisfaction of the performance conditions were not considered probable. Upon consummation of the Company’s IPO in October 2021, certain performance-based stock option awards issued under the 2017 Equity Plan for which the performance and market conditions were satisfied as a result of the Company’s IPO, converted into time-based stock option awards with the related stock-based compensation expense to be recognized on an accelerated recognition method over the remaining service period. The performance-based stock option awards that did not convert into time-based stock option awards were canceled and unrecognized compensation expense for those canceled performance-based stock option awards was recognized on the date of the Company’s IPO. No awards were granted under the 2017 Equity Plan during 2022 and the Company does not intend to grant any further awards under the 2017 Equity Plan. Stock-based compensation expense related to time-based stock option awards issued under the 2021 Equity Plan is recognized on a straight-line basis over the requisite service period. Forfeitures are recognized as they occur for all awards.

We estimate the fair value of stock option awards using the Black-Scholes valuation model, which involves several assumptions and judgments including the expected term of the stock option, expected volatility, the risk-free interest rate and the expected dividend yield. The Company does not have sufficient historical stock option exercise activity and therefore we estimated the expected term of stock options granted under the 2021 Plan using the simplified method, which represents the mid-point between the vesting period and the contractual term for each grant. Prior to the IPO, the expected term of stock option awards was determined based on data from publicly traded companies. The expected volatility of stock option awards is based on the historical volatilities of a set of publicly traded peer companies in a similar industry as the Company lacks company-specific historical or implied volatility information. The risk-free interest rate is determined by reference to the U.S. Treasury yield curve for time periods approximately equal to the expected term of the stock option award. The expected dividend yield is based on the fact that the Company has never paid cash dividends and does not have intentions of paying dividends in the foreseeable future. These assumptions represented management’s best estimate, which involved inherent uncertainties and the application of management’s judgment. As a result, if we had used significantly different assumptions or estimates, our stock-based compensation expense could have been materially different.

The fair value of our common stock and our stock-based awards’ grant date fair value is determined based on the closing price on our common stock on Nasdaq. Prior to our IPO and our common stock being listed on Nasdaq, given the absence of a public trading market for our common stock, the estimated fair value had been determined with input from management exercising reasonable judgment and considering several objective and subjective factors including: (i) third-party valuations of our common stock, (ii) a combination of the income approach and the market approach and (iii) general economic outlook including economic growth, inflation and interest rates.

In 2021, prior to the IPO, we determined the Company's equity value using the probability weighted expected return method ("PWERM"), or the hybrid method. Under the hybrid method, multiple valuation approaches are used and then combined into a single probability weighted valuation using a PWERM, which considers the probability of an initial public offering and sale scenarios. The results of the valuation approaches were weighted based on a variety of factors, including: the current macroeconomic environment, current industry conditions and length of time since arms-length market transaction events. Additionally, a discount for lack of marketability was applied to account for the lack of access to an active public market. The resulting value was then allocated to outstanding equity using an option-pricing model. This process involved the use of estimates, judgments, and assumptions that are highly complex and subjective, such as those regarding our expected future revenue, expenses and future cash flows, discount rates, market multiples, the selection of comparable companies, and the probability of possible future events. The assumptions underlying these valuations represented management's best estimate, which involved inherent uncertainties and the application of management's judgment. As a result, if we had used significantly different assumptions or estimates, the fair value of our common stock and our stock-based compensation expense could have been materially different.

See Note 14, *Stock-Based Compensation*, in the accompanying notes to the consolidated financial statements for additional information.

Recently Issued Accounting Pronouncements

For a discussion of recently issued accounting pronouncements, see Note 2, *Summary of Significant Accounting Policies*, in the accompanying notes to the consolidated financial statements included in Item 8 of Part II of this Annual Report on Form 10-K.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Commodity and Food Price Risks

Our profitability is dependent on, among other things, our ability to anticipate and react to changes in the costs of key operating resources, including food and beverage, energy, fuel costs and other commodities. We have been able to partly offset cost increases resulting from a number of factors, including market conditions, shortages or interruptions in supply due to weather, the macroeconomic impacts of the Russia-Ukraine conflict or other conditions beyond our control, governmental regulations and inflation, by increasing our menu prices, as well as making other operational adjustments that increase productivity. However, elevated inflation in commodity markets and substantial increases in costs and expenses could impact our results of operations to the extent that such increases cannot be offset by menu price increases. Currently we do not use financial instruments to hedge our commodity risk.

The Company's market basket experienced cost inflation of approximately 13.0% in 2022. In 2023, we expect continued cost inflation for our entire market basket in the range of 4.0% 6.0%.

In 2023, we have locked prices for approximately 15.0% of our market basket. Other commodities are purchased based upon negotiated price ranges established with vendors and are subject to fixed prices or fixed formulas for 30 to 90 day periods.

Interest Rate Risk

As of December 25, 2022, we had \$98.1 million in outstanding borrowings, excluding unamortized debt discount and deferred issuance costs. Our loans pursuant to our Credit Agreement incur interest at a floating rate and we also pay an unused commitment fee of between 25 and 50 basis points on the undrawn commitments under our revolving credit facility pursuant to our Credit Agreement, depending on the Total Rent Adjusted Net Leverage Ratio, as defined in our Credit Agreement. See Note 8, *Debt*, in the accompanying notes to the consolidated financial statements included in Item 8 of Part II of this Annual Report on Form 10-K for additional information. We currently do not hedge our interest rate exposure and we manage exposure to adverse interest rate changes through our normal operating and financing activities.

Based on the outstanding variable rate loan balance for the Term Facility at December 25, 2022, a potential change from a hypothetical 100 basis point increase/decrease in short-term interest rates would cause an increase or decrease in interest expense of approximately \$1.8 million over the next 12 months.

Item 8. Financial Statements and Supplementary Data

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Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of First Watch Restaurant Group, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of First Watch Restaurant Group, Inc. and its subsidiaries (the “Company”) as of December 25, 2022 and December 26, 2021, and the related consolidated statements of operations and comprehensive income (loss), of equity and of cash flows for each of the three years in the period ended December 25, 2022, including the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 25, 2022 and December 26, 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 25, 2022 in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits of these consolidated financial statements in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated 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 consolidated 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 consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP
Tampa, Florida
March 7, 2023

We have served as the Company’s auditor since 1999.

FIRST WATCH RESTAURANT GROUP, INC.
CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE AMOUNTS)

	DECEMBER 25, 2022	DECEMBER 26, 2021
Assets		
Current assets:		
Cash and cash equivalents	\$ 49,672	\$ 51,864
Restricted cash	251	251
Accounts receivable	6,164	4,450
Inventory	5,028	4,023
Prepaid expenses	5,800	5,677
Other current assets	373	1,432
Total current assets	67,288	67,697
Goodwill	345,219	345,219
Intangible assets, net	143,151	143,000
Operating lease right-of-use assets	352,373	324,995
Property, fixtures and equipment, net of accumulated depreciation of \$145,720 and \$115,582, respectively	195,117	164,695
Other long-term assets	1,298	1,311
Total assets	\$ 1,104,446	\$ 1,046,917
Liabilities and Equity		
Current liabilities:		
Accounts payable	\$ 7,590	\$ 11,060
Accrued liabilities	22,729	15,889
Accrued compensation and deferred payroll taxes	17,899	21,196
Deferred revenues	5,193	4,654
Current portion of operating lease liabilities	38,936	38,186
Current portion of long-term debt	6,257	3,186
Note payable	1,376	2,352
Total current liabilities	99,980	96,523
Operating lease liabilities	366,113	330,495
Long-term debt, net	94,668	99,753
Deferred income taxes	17,166	12,489
Other long-term liabilities	3,384	3,228
Total liabilities	581,311	542,488
Commitments and contingencies (Note 15)		
Equity:		
Preferred stock; \$0.01 par value; 10,000,000 shares authorized; none issued and outstanding	—	—
Common stock; \$0.01 par value; 300,000,000 shares authorized; 59,211,019 and 59,048,446 shares issued and outstanding at December 25, 2022 and December 26, 2021, respectively	592	590
Additional paid-in capital	620,675	608,878
Accumulated deficit	(98,132)	(105,039)
Total equity	523,135	504,429
Total liabilities and equity	\$ 1,104,446	\$ 1,046,917

The accompanying notes are an integral part of these consolidated financial statements.

FIRST WATCH RESTAURANT GROUP, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

	FISCAL YEAR		
	2022	2021	2020
Revenues:			
Restaurant sales	\$ 719,181	\$ 592,343	\$ 337,433
Franchise revenues	10,981	8,850	4,955
Total revenues	<u>730,162</u>	<u>601,193</u>	<u>342,388</u>
Operating costs and expenses:			
Restaurant operating expenses (exclusive of depreciation and amortization shown below):			
Food and beverage costs	172,561	134,201	76,975
Labor and other related expenses	238,257	189,167	120,380
Other restaurant operating expenses	114,476	94,847	61,821
Occupancy expenses	59,919	55,433	49,450
Pre-opening expenses	5,414	3,310	3,880
General and administrative expenses	84,959	70,388	46,322
Depreciation and amortization	34,230	32,379	30,725
Impairments and loss on disposal of assets	920	381	315
Transaction expenses (income), net	2,513	(1,156)	(258)
Total operating costs and expenses	<u>713,249</u>	<u>578,950</u>	<u>389,610</u>
Income (Loss) from operations	16,913	22,243	(47,222)
Interest expense	(5,232)	(20,099)	(22,815)
Other income (expense), net	910	(1,774)	483
Income (Loss) before income taxes	12,591	370	(69,554)
Income tax (expense) benefit	(5,684)	(2,477)	19,873
Net income (loss) and total comprehensive income (loss)	<u>\$ 6,907</u>	<u>\$ (2,107)</u>	<u>\$ (49,681)</u>
Net income (loss) per common share - basic	\$ 0.12	\$ (0.04)	\$ (1.10)
Net income (loss) per common share - diluted	\$ 0.11	\$ (0.04)	\$ (1.10)
Weighted average number of common shares outstanding - basic	59,097,512	48,213,995	45,013,784
Weighted average number of common shares outstanding - diluted	60,140,045	48,213,995	45,013,784

The accompanying notes are an integral part of these consolidated financial statements.

FIRST WATCH RESTAURANT GROUP, INC.
CONSOLIDATED STATEMENTS OF EQUITY
(IN THOUSANDS, EXCEPT SHARE AMOUNTS)

	Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Equity
	Shares	Amount	Shares	Amount			
Balance at December 29, 2019	—	\$ —	45,013,784	\$ 450	\$ 382,598	\$ (53,251)	\$ 329,797
Share issuance	266,667	3	—	—	39,997	—	40,000
Net loss	—	—	—	—	—	(49,681)	(49,681)
Stock-based compensation	—	—	—	—	750	—	750
Balance at December 27, 2020	266,667	\$ 3	45,013,784	\$ 450	\$ 423,345	\$ (102,932)	\$ 320,866
Common stock issuance	—	—	10,877,850	109	176,965	—	177,074
Conversion of preferred shares	(266,667)	(3)	3,156,812	31	(28)	—	—
Net loss	—	—	—	—	—	(2,107)	(2,107)
Stock-based compensation	—	—	—	—	8,596	—	8,596
Balance at December 26, 2021	—	\$ —	59,048,446	\$ 590	\$ 608,878	\$ (105,039)	\$ 504,429
Common stock issued upon exercise of stock options, net	—	—	162,573	2	1,423	—	1,425
Net income	—	—	—	—	—	6,907	6,907
Stock-based compensation	—	—	—	—	10,374	—	10,374
Balance at December 25, 2022	—	\$ —	59,211,019	\$ 592	\$ 620,675	\$ (98,132)	\$ 523,135

The accompanying notes are an integral part of these consolidated financial statements.

FIRST WATCH RESTAURANT GROUP, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)

	FISCAL YEAR		
	2022	2021	2020
Cash flows from operating activities:			
Net income (loss)	\$ 6,907	\$ (2,107)	\$ (49,681)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	34,230	32,379	30,725
Stock-based compensation	10,374	8,596	750
Non-cash operating lease costs	16,122	13,052	11,727
Non-cash portion of gain on lease modifications	(83)	(961)	—
Deferred income taxes	4,677	2,176	(19,991)
Amortization of debt discount and deferred issuance costs	445	1,088	1,282
Loss on extinguishment of debt	—	2,403	—
Impairments and loss on disposal of assets	920	381	315
Gain on insurance proceeds	(219)	—	—
Changes in assets and liabilities:			
Accounts receivable	(1,714)	(535)	1,826
Inventory	(1,005)	(1,108)	(203)
Prepaid expenses	(123)	(3,187)	619
Deferred offering costs	—	—	1,307
Other assets, current and long-term	1,072	169	(446)
Accounts payable	(3,470)	6,700	(866)
Accrued liabilities and other long-term liabilities	4,739	5,335	(3,670)
Accrued compensation and deferred payroll taxes, current and long-term	(3,297)	7,007	2,929
Deferred revenues, current and long-term	719	648	(3,060)
Operating lease liabilities	(7,048)	(9,760)	8,073
Other liabilities	(309)	695	—
Net cash provided by (used in) operating activities	62,937	62,971	(18,364)
Cash flows from investing activities:			
Insurance proceeds	219	—	—
Capital expenditures	(62,219)	(35,311)	(26,749)
Purchase of intangible assets	(1,111)	(371)	(225)
Net cash used in investing activities	(63,111)	(35,682)	(26,974)

The accompanying notes are an integral part of these consolidated financial statements.

FIRST WATCH RESTAURANT GROUP, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS - continued
(IN THOUSANDS)

	FISCAL YEAR		
	2022	2021	2020
Cash flows from financing activities:			
Note payable borrowing	\$ 1,892	\$ 2,874	\$ —
Repayments of note payable	(2,868)	(522)	—
Proceeds from issuance of long-term debt	—	100,000	54,600
Repayments of long-term debt, including finance lease liabilities	(2,389)	(291,602)	(4,286)
Proceeds from common stock issuance, net of underwriting discounts and commissions	—	182,095	—
Proceeds from exercise of stock options, net of employee taxes paid	1,425	—	—
Proceeds from preferred stock issuance	—	—	40,000
Proceeds from borrowings on revolving credit facility	—	—	22,000
Repayments of borrowings on revolving credit facility	—	—	(39,000)
Contingent consideration payment	(78)	(9)	—
Payment of initial public offering costs	—	(4,881)	—
Payment of debt discount and deferred issuance costs	—	(2,226)	—
Net cash (used in) provided by financing activities	(2,018)	(14,271)	73,314
Net (decrease) increase in cash and cash equivalents and restricted cash	(2,192)	13,018	27,976
Cash and cash equivalents and restricted cash:			
Beginning of period	52,115	39,097	11,121
End of period	\$ 49,923	\$ 52,115	\$ 39,097
Supplemental cash flow information:			
Cash paid for interest	\$ 3,368	\$ 16,152	\$ 19,821
Cash paid for income taxes, net of refunds	\$ 915	\$ 79	\$ 163
Supplemental disclosures of non-cash investing and financing activities:			
Interest converted to long-term debt	\$ —	\$ 3,063	\$ 1,583
Leased assets obtained in exchange for new operating lease liabilities	\$ 45,979	\$ 33,857	\$ 21,333
Leased assets obtained in exchange for new finance lease liabilities	\$ 127	\$ 217	\$ 277
Remeasurements and terminations of operating lease assets and lease liabilities	\$ (2,563)	\$ (3,070)	\$ (4,561)
Remeasurements and terminations of finance lease assets and lease liabilities	\$ (197)	\$ 6	\$ 164
Increase (Decrease) in liabilities from acquisition of property, fixtures and equipment	\$ 2,463	\$ 144	\$ (860)

The accompanying notes are an integral part of these consolidated financial statements.

FIRST WATCH RESTAURANT GROUP, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Nature of Business and Organization

First Watch Restaurant Group, Inc. (collectively with its wholly-owned subsidiaries, “the Company” or “Management”) is a Delaware holding company. The Company operates and franchises restaurants in 29 states operating under the “First Watch” trade name, which are focused on made-to-order breakfast, brunch and lunch. The Company does not operate outside of the United States and all of its assets are located in the United States. The Company’s outstanding stock was purchased by funds affiliated with or managed by Advent International Corporation on August 21, 2017 (the “Advent Acquisition”).

The Company operates restaurants through its wholly owned subsidiary, First Watch Restaurants, Inc., and is a franchisor through its wholly owned subsidiary, First Watch Franchise Development Co. As of December 25, 2022 and December 26, 2021, the Company operated 366 company-owned restaurants and 341 company-owned restaurants, respectively, and had 108 franchise-owned restaurants and 94 franchise-owned restaurants, respectively.

Initial Public Offering

The Company completed its initial public offering (“IPO”) on October 5, 2021, in which the Company sold 10,877,850 shares of common stock, which included the underwriters’ full exercise of their option to purchase up to an additional 1,418,850 shares of common stock, at the initial public offering price of \$18.00 per share. The Company received aggregate net proceeds of \$182.1 million after deducting underwriting discounts and commissions of \$13.7 million.

2. Summary of Significant Accounting Policies

Basis of Presentation

The Company reports financial information on a 52- or 53-week fiscal year ending on the last Sunday of each calendar year. The fiscal years ended December 25, 2022 (“Fiscal 2022”), December 26, 2021 (“Fiscal 2021”) and December 27, 2020 (“Fiscal 2020”) contained 52 weeks. The accompanying consolidated financial statements of the Company have been prepared by the Company in accordance with generally accepted accounting principles in the United States of America (“GAAP”).

Comprehensive income (loss) is a measure of net income (loss) and all other changes in equity that result from transactions other than with equity holders, and would normally be recorded in the Consolidated Statements of Equity and the Consolidated Statements of Comprehensive Income (Loss). The Company does not have any components of other comprehensive income (loss) recorded within its consolidated financial statements. Accordingly, there is no difference between net income (loss) and comprehensive income (loss).

Principles of Consolidation

The Company’s consolidated financial statements include the accounts of its wholly owned subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

The Company does not hold ownership interests in any franchisee and does not provide financial support to franchisees. As a result, the Company’s franchise relationships are not variable interest entities and are not consolidated.

Use of Estimates

The preparation of consolidated financial statements in accordance 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 consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from the estimates and such differences could be material.

Segment Reporting

Management determined the Company's single operating segment on the basis that the Company's Chief Operating Decision Maker (the "CODM"), the Chief Executive Officer, assesses performance and allocates resources at the Company's consolidated level. The Company does not have any customer that represents more than 10.0% of total revenues for the periods presented.

Business Combinations

The Company's business combinations are accounted for using the purchase method of accounting. The consideration transferred in a business combination, identifiable assets acquired and liabilities assumed are measured at their estimated fair value as of the date of the acquisition. Goodwill is recognized for the amount by which the purchase consideration exceeds the fair values of the net assets acquired. Costs incurred in connection with business combinations are expensed as incurred.

Fair Value of Financial Instruments

Certain assets and liabilities are carried at fair value. Fair value is the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date.

Financial assets and liabilities carried at fair value are classified and disclosed in one of the following three levels of the fair value hierarchy, of which the first two are considered observable inputs and the last is considered unobservable. The classification of a financial asset or liability within the hierarchy is determined based on the lowest level input that is significant to the fair value measurement.

Level 1	Quoted prices (unadjusted) in active markets for identical assets or liabilities
Level 2	Observable inputs available other than quoted prices included in Level 1
Level 3	Unobservable inputs based on assumptions that cannot be determined by observable market data

The carrying amounts of the Company's financial instruments, including cash equivalents, accounts receivable, accounts payable, accrued expenses, note payable and other current liabilities, approximate their fair values due to their short-term maturities.

Cash and Cash Equivalents and Restricted Cash

Cash and cash equivalents include all cash balances and highly liquid investments with an original maturity of three months or less. Amounts receivable from credit card processors are considered cash equivalents because they are highly liquid and are typically converted to cash within three business days.

Amounts included in restricted cash represent those required to be set aside by a contractual agreement for the settlement of insurance claims.

Concentrations of Credit Risk

Financial instruments, which potentially subject the Company to concentrations of market and credit risk, are cash and cash equivalents and restricted cash. At times, cash balances may be in excess of the Federal Deposit Insurance Corporation insurance limits. The Company has not experienced any losses to date as a result of these risks. Management periodically assesses the quality of the financial institutions and believes that the risk related to these deposits is minimal.

Accounts Receivable

Accounts receivable consist primarily of receivables from franchisees, receivables from third-party delivery providers, receivables from gift card sales and vendor rebates. The Company believes all amounts to be collectible based on a variety of factors it evaluates, including historical experience, current economic conditions and other factors. Accordingly, no allowance for credit losses or doubtful accounts has been recorded as of December 25, 2022 and December 26, 2021.

Inventory

Inventory consists primarily of food and beverage costs and is stated at the lower of cost (determined by the first-in, first-out method) or net realizable value. Adjustments are not deemed necessary to reduce inventory to net realizable value due to the rapid turnover and utilization of inventory.

Deferred Offering Costs

Certain legal, professional accounting, and other third-party fees that are directly associated with in-process equity financings are capitalized as deferred offering costs until such financings are consummated. After consummation of the equity financing, these costs are recorded in equity as a reduction of additional paid-in capital generated as a result of the offering. The Company incurred \$5.0 million of costs in connection with the IPO in Fiscal 2021, which were recorded in equity as a reduction of additional paid in capital. The Company incurred \$2.0 million in deferred offering costs in Fiscal 2020, which were expensed in General and administrative expenses as a result of halting the Company's public registration of equity in Fiscal 2020.

Leases

The Company's restaurant facilities, corporate offices and certain restaurant equipment are leased under various agreements having initial terms expiring between 2023 and 2037. Restaurant facility leases generally have renewal periods of five to 20 years, exercisable at the option of the Company. At the commencement of each lease, an evaluation is performed to determine whether (i) the contract involves the use of property or equipment, (ii) the Company controls the use of the asset and (iii) the Company has the right to direct the use of the asset. Management determines the classification of lease contracts as operating or finance leases. The majority of the Company's real estate leases are classified as operating leases and the majority of the Company's equipment leases are classified as finance leases.

For operating leases with lease terms greater than twelve months, a lease liability is recognized for future fixed lease payments and a corresponding right-of-use asset is recognized representing the Company's right to use the underlying asset during the lease term. The lease liability is initially measured as the present value of the future fixed lease payments that will be made over the lease term using the Company's incremental borrowing rate as there are no implicit rates provided in the lease contracts. The Company's incremental borrowing rate is based on a market yield implied by the Company's outstanding secured term loan interpolated for various maturities using the Company's synthetic credit rating, which was determined using a regression analysis of rated publicly-traded comparable companies and their financial data. Occupancy expense, which includes the effects of free rent periods and rent escalation clauses within certain of the Company's leases, is recognized on a straight-line basis over the lease term. Tenant improvement allowances are amortized on a straight-line basis over the term of the lease as a reduction of lease expense. The lease term, which commences on the date the Company has the right to control the use of the property, includes the Company's options to extend the lease to the extent it is reasonably certain that the renewal options will be exercised.

Leases with indexed rent escalation clauses are recorded using the index that existed at lease commencement or upon the latest modification requiring remeasurement. Subsequent changes in the index are recorded as variable lease expense. Contingent rent payments, which are based on a percentage of sales for certain restaurant facilities, are recorded as variable lease expense when the Company determines that such sales levels will be achieved. In addition to fixed lease payments, certain of the Company's real estate leases also require payment of a proportionate share of property taxes, insurance and maintenance costs, which are expensed as incurred in the Consolidated Statements of Operations and Comprehensive Income (Loss) and future variable rent obligations are not included within the lease liabilities on the Consolidated Balance Sheets.

FIRST WATCH RESTAURANT GROUP, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

The operating lease right-of-use asset is measured at the amount of the lease liability with adjustments for (i) rent prepayments made prior to or at lease commencement, (ii) landlord incentives and (iii) favorable and unfavorable leasehold positions. The depreciable life of an operating lease right-of-use asset is limited by the lease term. The Company's leases do not contain any material residual value guarantees or material restrictive covenants.

Fixed lease and non-lease components of the Company's restaurant facility leases are accounted for as a single lease component. Leases with an initial term of 12 months or less are not recorded on the Consolidated Balance Sheets, however, they are recognized on a straight-line basis over the lease term in the Consolidated Statements of Operations and Comprehensive Income (Loss).

In Fiscal 2020, Management renegotiated numerous lease agreements that primarily resulted in rent abatements or rent deferrals during the period of the closures of the company-owned restaurants as a result of the COVID-19 pandemic. Management elected the practical expedient for COVID-19 related rent concessions pursuant to the question and answer document issued by the Financial Accounting Standards Board (the "FASB") in April 2020 and remeasured the lease liabilities using the original discount rate with a corresponding adjustment to the right-of-use assets. Rent deferrals increased the lease liabilities and right-of use assets until amounts are paid with no impact to lease expense. Rent abatements were recognized on a straight-line basis over the respective remaining lease term.

Finance lease liabilities and corresponding finance lease assets are recognized at an amount equal to the present value of the minimum lease payments over the lease term. The amortization of finance lease assets is recognized over the shorter of the lease term or useful life of the underlying asset within Depreciation and amortization. The interest expense related to finance leases, including any variable lease payments, is recognized in Interest expense. Finance lease assets are classified in Property, fixtures and equipment, net and current maturities and long-term portions of finance lease liabilities are classified within Current portion of long-term debt and Long-term debt, net, respectively.

Property, Fixtures and Equipment

Property, fixtures and equipment, including capitalized software, are stated at cost less accumulated depreciation. Refurbishments and improvements that increase the productive capacity or extend the useful life of assets are capitalized and depreciated over their estimated useful lives. Repair and maintenance costs are expensed as incurred. Leasehold improvements are depreciated over the shorter of their useful life or the lease term. The carrying amount of assets sold, replaced or retired and the related accumulated depreciation are eliminated at the time of disposal and any resulting gains and losses on disposal are recognized in the Consolidated Statements of Operations and Comprehensive Income (Loss).

Direct internal costs associated with the acquisition, development, design and construction of company-owned restaurants are capitalized as these costs have a future benefit to the Company. Once a restaurant opens, these costs are depreciated and recorded in Depreciation and amortization. Direct internal costs of \$0.7 million and \$0.5 million were capitalized in Fiscal 2022 and Fiscal 2021, respectively.

Depreciation is computed using the straight-line method over the following estimated useful lives:

Building and land improvements	30 to 40 years
Leasehold improvements	3 to 20 years
Furniture and fixtures	2 to 10 years
Equipment (including capitalized software)	2 to 15 years
Vehicles	3 to 10 years

Goodwill and Indefinite-lived Intangible Assets

Goodwill and indefinite-lived intangible assets are evaluated for impairment annually on the first day of the fourth quarter of the fiscal year, or whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. The Company has one reporting unit for goodwill impairment testing purposes.

Management may elect to perform a qualitative assessment to determine whether it is more likely than not that the reporting unit and/or asset group is impaired. If the qualitative assessment is not performed, or if it is not more likely than not that the estimated fair value of the reporting unit and indefinite-lived intangible assets exceeds the respective carrying value, a quantitative analysis is required.

Prior to the IPO, Management's quantitative assessment for determining the fair value of the reporting unit used a blend of the market capitalization approach and the income approach. The market capitalization approach used Management's selection of peer companies to estimate fair value. The income approach used the discounted cash flow method estimating

future cash flow, sales and traffic growth rates, operating margins and new restaurant openings, each of which are inputs that fall within Level 3 of the fair value hierarchy.

The fair value of the indefinite-lived intangibles is determined through a relief from royalty method using certain unobservable inputs that fall within Level 3 of the fair value hierarchy. The respective carrying values are compared to the related estimated fair values and an impairment loss is recognized in an amount equal to the excess of the carrying value over estimated fair values.

Management performed a qualitative annual impairment assessment for goodwill and indefinite-lived intangible assets as of the first day of the fourth quarter of Fiscal 2022 and Fiscal 2021 and concluded that impairment of both goodwill and indefinite-lived intangible assets was not more likely than not. As a result, a quantitative assessment was not required.

Definite-Lived Intangible Assets

Intangible assets with definite lives consist of franchise rights which arose from the purchase price allocation in connection with the Advent Acquisition and also include reacquired rights from the Company's acquisitions of franchised restaurants. Definite-lived intangible assets are amortized over their estimated useful lives and are tested for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable.

When evaluating the carrying amount for recoverability, the total future undiscounted net cash flows expected to be generated by the asset are compared to the carrying amount. If the total future undiscounted net cash flows are less than the carrying amount, this may be an indicator of impairment. An impairment loss is recognized when the asset's carrying value exceeds its estimated fair value. Fair value is generally estimated using a discounted cash flow model using unobservable inputs that fall within Level 3 of the fair value hierarchy. No impairment loss was recorded for definite-lived intangible assets in Fiscal 2022, Fiscal 2021 and Fiscal 2020.

Impairment Assessment of Long-lived Assets

Long-lived assets deployed at company-owned restaurants include (i) property, fixtures and equipment, (ii) operating lease right-of-use asset, net of the related operating lease liability and (iii) reacquired rights to the extent the restaurant had been previously acquired by the Company.

When circumstances indicate that the carrying value may not be recoverable, an evaluation for impairment is performed at the lowest level of identifiable cash flows, which is at the individual restaurant level. If the total future undiscounted net cash flows are less than the carrying value of the long-lived assets at the individual restaurant level, the fair value is determined based on discounted future net cash flows expected to result from the use and eventual disposition of the assets, which are unobservable inputs that fall within Level 3 of the fair value hierarchy. An impairment loss is recognized in an amount equal to the excess of the carrying value over the estimated fair value. No impairment loss was recorded for long-lived assets in Fiscal 2022, Fiscal 2021 and Fiscal 2020.

Self-Insurance Reserves

The Company is self-insured primarily for employee group health claims and for workers' compensation in Ohio. The Company holds stop-loss insurance which funds individual health claims in excess of \$125,000 per occurrence and workers' compensation claims in Ohio in excess of \$500,000 per occurrence annually. The Consolidated Statements of Operations and Comprehensive Income (Loss) include expenses related to the costs of claims reported and an estimate of claims incurred but not reported. A liability of \$1.5 million and \$1.4 million for estimated unpaid claims and other insurance liabilities is recorded within Accrued liabilities as of December 25, 2022 and December 26, 2021, respectively.

Revenue Recognition

Revenues from food and beverage sales are reported, net of discounts and taxes. For in-restaurant dining and take-out sales, revenues are recognized when payment is tendered. For delivery sales made through the Company's mobile application and website, the Company controls the delivery services and recognizes revenue, including delivery fees, when the delivery partner transfers the food and beverage to the customer. With respect to sales made through the delivery partner's mobile application or website, the Company recognizes revenue, excluding delivery fees collected by the delivery partner, when control of the food and beverage is transferred to the delivery partner. Payment is received from the delivery partner subsequent to the transfer of food and beverage and the payment terms are short-term.

Franchise revenues include initial franchise fees and ongoing sales-based royalty and system fund contributions, which are used for advertising, marketing and public relations programs and materials. The license granted to develop and operate a restaurant is the distinct performance obligation that is transferred to the franchisee. Ancillary promised services, such as training, which are not considered distinct within the context of the franchise agreement, are combined with the franchise license and are considered one distinct performance obligation. Payments for initial franchise fees are received either upon execution of the franchise agreement and/or upon opening of the restaurant. These payments are deferred and recognized as revenue throughout the contractual term of the related franchise agreement. Unamortized deferred franchise fees are recognized as revenue upon the termination of franchise agreements with franchisees. The short-term and long-term unamortized portion of these liabilities are included in Deferred revenues and in Other long-term liabilities, respectively.

Royalty and system fund contributions from franchisees are based on a percentage of sales and are recognized as revenue in the period the sales occurred.

Gift cards are sold at restaurants and certain retail venues. Deferred revenues include liabilities established for the value of the gift cards when sold. Revenue is recognized from gift card sales upon redemption by the customer. Management estimates the amount of gift cards for which the likelihood of redemption is remote, referred to as "breakage," using historical gift card redemption patterns. The estimated breakage, less an administrative fee, is recognized over the expected period of redemption as the remaining gift card values are redeemed, which is generally over a period of two years. Utilizing this method, Management estimates both the breakage and the time period of redemption. If actual redemption patterns vary from these estimates, actual gift card breakage income may differ from the amounts recorded. Estimates of the redemption period and breakage rate applied are updated periodically. Gift card liabilities are included in Deferred revenues.

Food and Beverage Costs

The components of food and beverage costs at company-owned restaurants fluctuate directly with sales volumes and are impacted by changes in commodity prices or promotional activities.

Pre-opening Expenses

Pre-opening expenses are costs incurred to open new company-owned restaurants. Pre-opening expenses include pre-opening rent expense, which is recognized during the period between the date of possession of the restaurant facility and the restaurant opening date. In addition, pre-opening expenses include manager salaries, recruiting expenses, employee payroll and training costs, which are recognized in the period in which the expense was incurred. Pre-opening expenses can fluctuate from period to period, based on the number and timing of new company-owned restaurant openings.

Consideration Received from Vendors

The Company receives consideration from certain vendors for volume rebates and allowances. The Company accounts for consideration from a vendor as a reduction of the purchase price of the goods or services acquired from the vendor.

Advertising Costs

Advertising costs are recognized as incurred or, in the case of advertisements, when the advertisement occurs. Advertising costs were \$6.4 million, \$4.8 million and \$3.3 million during Fiscal 2022, Fiscal 2021 and Fiscal 2020, respectively, and are included in General and administrative expenses and in Other restaurant operating expenses.

Debt Discount and Deferred Issuance Costs

Debt discount and deferred issuance costs incurred in connection with the issuance of long-term debt are recorded as reductions of long-term debt and are amortized over the term of the related debt. Amortization expense of debt discount and deferred issuance costs is included in Interest expense.

Income Taxes

Income taxes are accounted for under the asset and liability method of accounting. Under this method, deferred tax assets or liabilities are recognized for the estimated future tax effects attributable to temporary differences between the carrying value and the tax basis of assets and liabilities as well as tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to be applicable in the years in which the differences are expected to be recovered or settled. Changes in deferred tax assets or liabilities are recognized in Income tax (expense) benefit.

Deferred tax assets are recognized for all deductible temporary differences to the extent that it is probable that taxable income will be available against which the deductible temporary differences can be utilized. Realization of deferred tax assets is dependent upon the availability of taxable income and a valuation allowance for deferred tax assets is provided when it is more likely than not that a portion of the deferred tax assets will not be realized. In the assessment for realization of deferred tax assets, Management considers all sources of taxable income including (i) taxable income in any available carry back period, (ii) scheduling of anticipated reversal of taxable temporary differences, (iii) tax-planning strategies and (iv) taxable income expected to be generated in the future other than from reversing temporary differences and carryforwards. Management continues to evaluate the rationale for recording a valuation allowance on its deferred tax assets and as the Company increases earnings and utilizes deferred tax assets, it is possible the valuation allowance could be reduced or eliminated.

Interest and penalties, when incurred, are recognized in Other (expense) income, net.

Stock-Based Compensation

Stock-based compensation expense is recognized for stock option awards granted and is based on the fair value of the stock option awards on the date of grant. The fair value of stock option awards is determined using the Black-Scholes option pricing model. The fair value of performance-based stock option awards is recognized as expense when the achievement of the performance condition is probable. Forfeitures of stock option awards are recognized as they occur. Determining the fair value of stock option awards at the grant date requires judgment, including estimating the expected term that the stock option awards will be outstanding prior to exercise, volatility, dividend yield and risk-free interest rate. Stock-based compensation expense is included in General and administrative expenses. Stock option exercises are settled with authorized but unissued shares of the Company's common stock.

Fair Value of Common Stock

In Fiscal 2021, prior to the IPO, the Company's equity value was determined using the probability weighted expected return method ("PWERM"), or the hybrid method. Under the hybrid method, multiple valuation approaches are used and then combined into a single probability weighted valuation using a PWERM, which considers the probability of an initial public offering and sale scenarios. The results of the valuation approaches were weighted based on a variety of factors, including the current macroeconomic environment, current industry conditions and length of time since arms-length market transaction events. Additionally, a discount for lack of marketability was applied to account for the lack of access to an active public market. The resulting value was then allocated to outstanding equity using an option-pricing model. This process involved the use of estimates, judgments, and assumptions that are highly complex and subjective, such as those regarding our expected future revenue, expenses and future cash flows, discount rates, market multiples, the selection of comparable companies, and the probability of possible future events. The assumptions underlying these valuations represented Management's best estimate, which involved inherent uncertainties and the application of Management's judgment. As a result, if Management had used significantly different assumptions or estimates, the fair value of our common stock and our stock-based compensation expense could have been materially different.

FIRST WATCH RESTAURANT GROUP, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

Summary of Recently Issued Accounting Pronouncements

In March 2020, the Financial Accounting Standards Board (“FASB”) issued ASU 2020-04, “*Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*” (“ASU 2020-04”). The guidance provides optional expedients and exceptions to apply to contracts, hedging relationships and other transactions affected by reference rate reform if certain criteria are met. ASU 2020-04 was effective beginning March 12, 2020 and may be applied prospectively to contract modifications made and hedging relationships entered into or evaluated on or before December 31, 2022. In December 2022, ASU 2022-06, “*Reference Rate Reform (Topic 848): Deferral of the Sunset Date of Topic 848*” (“ASU 2022-06”) was issued which defers the sunset date referenced in Topic 848 from December 31, 2022 to December 31, 2024, after which companies will no longer be permitted to apply the relief in Topic 848. This standard and the optional expedients will not have a material impact to the Company. In February 2023, the Company amended its credit agreement dated as of October 6, 2021 (the “Credit Agreement”) to replace the London interbank offer rate (“LIBOR”) with a secured overnight financing rate (“SOFR”) pursuant to the terms and LIBOR fallback language in the Credit Agreement. All outstanding borrowings under the Credit Agreement will continue to bear interest at LIBOR until the end of the current interest period or payment period pursuant to the terms of the Credit Agreement.

Recent accounting guidance not discussed herein is not applicable, did not have, or is not expected to have a material impact to the Company.

3. Revenues

The following tables include a detail of liabilities from contracts with customers:

<i>(in thousands)</i>	DECEMBER 25, 2022	DECEMBER 26, 2021
Deferred revenues:		
Deferred gift card revenue	\$ 4,897	\$ 4,410
Deferred franchise fee revenue - current	296	244
Total current deferred revenues	\$ 5,193	\$ 4,654
Other long-term liabilities:		
Deferred franchise fee revenue - non-current	\$ 2,472	\$ 2,292

Changes in deferred gift card contract liabilities were as follows:

<i>(in thousands)</i>	FISCAL YEAR		
	2022	2021	2020
Deferred gift card revenue:			
Balance, beginning of period	\$ 4,410	\$ 4,024	\$ 6,902
Gift card sales	9,627	8,286	5,197
Gift card redemptions	(8,225)	(7,152)	(6,924)
Gift card breakage	(915)	(748)	(1,151)
Balance, end of period	\$ 4,897	\$ 4,410	\$ 4,024

Gift cards are combined in one homogeneous pool and are not separately identifiable. As such, the revenue recognized consists of gift cards that were part of the deferred revenue balance at the beginning of the period as well as gift cards that were issued during the period.

Changes in deferred franchise fee contract liabilities were as follows:

<i>(in thousands)</i>	FISCAL YEAR		
	2022	2021	2020
Deferred franchise fee revenue:			
Balance, beginning of period	\$ 2,536	\$ 2,274	\$ 2,456
Cash received	530	537	158
Franchise revenues recognized	(298)	(275)	(340)
Balance, end of period	\$ 2,768	\$ 2,536	\$ 2,274

FIRST WATCH RESTAURANT GROUP, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

Revenues recognized disaggregated by type were as follows:

<i>(in thousands)</i>	FISCAL YEAR		
	2022	2021	2020
Restaurant sales:			
In-restaurant dining sales	\$ 571,048	\$ 452,989	\$ 257,029
Third-party delivery sales	82,049	70,486	38,524
Take-out sales	66,084	68,868	41,880
Total restaurant sales	\$ 719,181	\$ 592,343	\$ 337,433
Franchise revenues:			
Royalty and system fund contributions	\$ 10,683	\$ 8,575	\$ 4,615
Initial fees	298	275	340
Total franchise revenues	\$ 10,981	\$ 8,850	\$ 4,955
Total revenues	\$ 730,162	\$ 601,193	\$ 342,388

Deferred revenues as of December 25, 2022 are expected to be recognized as follows:

Fiscal year	<i>(in thousands)</i>
2023	\$ 5,193
2024	\$ 395
2025	\$ 365
2026	\$ 355
2027	\$ 326
Thereafter	\$ 1,031

4. Accounts Receivable

Accounts receivable consisted of the following:

<i>(in thousands)</i>	DECEMBER 25, 2022	DECEMBER 26, 2021
Receivables from third-party delivery providers	\$ 974	\$ 1,021
Receivables from franchisees	1,076	927
Receivables from vendors	920	428
Receivables related to gift card sales	1,565	1,453
Other receivables	1,629	621
Total accounts receivable	\$ 6,164	\$ 4,450

FIRST WATCH RESTAURANT GROUP, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

5. Intangible Assets, Net

Intangible assets, net consisted of the following:

<i>(in thousands)</i>	Weighted Average Useful Lives	DECEMBER 25, 2022		
		Gross Carrying Value	Accumulated Amortization	Net Carrying Value
Registered trademarks, trade names, domains, liquor licenses	Indefinite	\$ 139,258	\$ (316)	\$ 138,942
Franchise rights	9 years	9,404	(5,195)	4,209
		<u>\$ 148,662</u>	<u>\$ (5,511)</u>	<u>\$ 143,151</u>

<i>(in thousands)</i>	Weighted Average Useful Lives	DECEMBER 26, 2021		
		Gross Carrying Value	Accumulated Amortization	Net Carrying Value
Registered trademarks, trade names, domains, liquor licenses	Indefinite	\$ 138,143	\$ (316)	\$ 137,827
Franchise rights	9 years	9,404	(4,231)	5,173
		<u>\$ 147,547</u>	<u>\$ (4,547)</u>	<u>\$ 143,000</u>

Total amortization expense related to definite-lived intangible assets was \$1.0 million, \$1.0 million and \$1.1 million in Fiscal 2022, Fiscal 2021 and Fiscal 2020, respectively.

Estimated future amortization of definite-lived intangible assets as of December 25, 2022 is as follows:

Fiscal year	<i>(in thousands)</i>
2023	\$ 809
2024	\$ 809
2025	\$ 809
2026	\$ 635
2027	\$ 433
Thereafter	\$ 714

6. Property, Plant and Equipment

<i>(in thousands)</i>	DECEMBER 25, 2022	DECEMBER 26, 2021
Building and land improvements	\$ 1,354	\$ 1,354
Leased land asset	1,190	1,190
Leasehold improvements	178,893	146,583
Furniture, fixtures and equipment (including capitalized software)	145,397	118,734
Financing lease assets	3,066	3,320
Vehicles	455	455
Total property, fixtures and equipment	330,355	271,636
Accumulated depreciation	(145,720)	(115,582)
Construction-in-progress	10,482	8,641
Total property, fixtures and equipment, net	\$ 195,117	\$ 164,695

Depreciation expense was \$33.3 million, \$31.3 million and \$29.6 million during Fiscal 2022, Fiscal 2021 and Fiscal 2020, respectively.

The Company did not recognize an impairment loss in Fiscal 2022, Fiscal 2021 and Fiscal 2020. Loss on disposals of assets recognized of \$0.9 million, \$0.4 million and \$0.3 million during Fiscal 2022, Fiscal 2021 and Fiscal 2020, respectively, primarily related to the write-off of assets retired as a result of restaurant closures or replacements of assets.

As of December 25, 2022 and December 26, 2021, Property, fixtures and equipment, net included \$1.2 million in land related to sale and leaseback transactions accounted for as financing obligations.

7. Accrued Liabilities

Accrued liabilities consisted of the following:

<i>(in thousands)</i>	DECEMBER 25, 2022	DECEMBER 26, 2021
Construction liabilities	\$ 6,908	\$ 4,445
Sales tax	3,791	3,337
Self-insurance and general liability reserves	1,529	1,353
Utilities	1,468	1,306
Legal	379	105
Credit card fees	1,043	940
Property tax	951	638
Contingent rent	811	628
Common area maintenance	680	482
Other	5,169	2,655
Total accrued liabilities	\$ 22,729	\$ 15,889

8. Debt

Long-term debt, net consisted of the following:

<i>(in thousands)</i>	DECEMBER 25, 2022		DECEMBER 26, 2021	
	Balance	Interest Rate	Balance	Interest Rate
Term Facility	\$ 98,125	5.89%	\$ 100,000	2.71%
Finance lease liabilities	1,433		2,017	
Financing obligation	3,050		3,050	
Less: Unamortized debt discount and deferred issuance costs	(1,683)		(2,128)	
Total Debt, net	100,925		102,939	
Less: Current portion of long-term debt	(6,257)		(3,186)	
Long-term debt, net	\$ 94,668		\$ 99,753	

Credit Facilities

FWR Holding Corporation, (“FWR”), an indirect subsidiary of the Company, is the borrower under the Credit Agreement, which provides for (i) a \$100.0 million term loan A facility (the “Term Facility”) and (ii) a \$75.0 million revolving credit facility (the “Revolving Credit Facility” and, together with the Term Facility, collectively, the “Credit Facilities”). The Revolving Credit Facility was undrawn at December 25, 2022 and December 26, 2021. The Credit Facilities mature on October 6, 2026.

The Term Facility is subject to amortization of principal, payable in quarterly installments on the last business day of each fiscal quarter, commencing on March 27, 2022, equal to (i) 2.5% of the original principal amount of the term loans in fiscal year ended December 25, 2022, (ii) 5.0% of the original principal amount of the term loans in fiscal year ended December 31, 2023, (iii) 5.0% of the original principal amount of the term loans in fiscal year ended December 29, 2024, (iv) 7.5% of the original principal amount of the term loans in fiscal year ended December 28, 2025 and (v) 10.0% of the original principal amount of the term loans in fiscal year ended December 27, 2026. The remaining aggregate principal amount outstanding (together with accrued and unpaid interest on the principal amount) under the Term Facility is payable at the maturity of the Term Facility.

Borrowings under the Credit Facilities bear interest, at the option of FWR at either (i) the base rate plus a margin of between 125 and 200 basis points depending on the total rent adjusted net leverage ratio of FWR and its restricted subsidiaries on a consolidated basis (the “Total Rent Adjusted Net Leverage Ratio”) or (ii) LIBOR plus a margin of between 225 and 300 basis points depending on the Total Rent Adjusted Net Leverage Ratio. In addition, an unused commitment fee of between 25 and 50 basis points will be paid on the undrawn commitments under the Revolving Credit Facility, also depending on the Total Rent Adjusted Net Leverage Ratio.

In February 2023, the Company amended its Credit Agreement to replace LIBOR with SOFR pursuant to the terms and LIBOR fallback language in the Credit Agreement. All outstanding borrowings under the Credit Agreement will continue to bear interest at LIBOR until the end of the current interest period or payment period pursuant to the terms of the Credit Agreement.

The aggregate net proceeds from the IPO, the proceeds from borrowings under the Term Facility and cash on hand were used to repay in full the outstanding borrowings under our previous senior credit facilities in October 2021. This repayment was accounted for as a debt extinguishment for accounting purposes and a loss on debt extinguishment of \$2.4 million was recorded in the fourth fiscal quarter of 2021 in Other income (expense), net.

Fair Value of Debt

The estimated fair value of the outstanding debt, excluding finance lease obligations and financing obligations, is classified as Level 3 in the fair value hierarchy and was estimated using discounted cash flow models, market yield and yield volatility. At December 25, 2022, the estimated fair value of the outstanding debt under the Credit Facilities was \$97.1 million.

Principal payments due on the outstanding debt, excluding finance lease liabilities and financing obligations, as of December 25, 2022 are as follows:

FIRST WATCH RESTAURANT GROUP, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

Fiscal Year	<i>(in thousands)</i>
2023	\$ 5,625
2024	5,000
2025	7,500
2026	80,000
	\$ 98,125

Letter of Credit

The Company utilizes a standby letter of credit to satisfy workers' compensation requirements. The contract amount of the letter of credit approximates its fair value. As of December 25, 2022 and December 26, 2021, the open letter of credit was approximately \$0.2 million and \$0.4 million, respectively, and there were no draws against the letter of credit. The Company pays participation fees for the letter of credit based on a varying percentage of the amount not drawn.

Debt Covenants

The Credit Facilities are guaranteed by all of FWR's wholly-owned domestic restricted subsidiaries, subject to customary exceptions, and by AI Fresh Parent, Inc., a Delaware corporation and the direct parent company of FWR ("Holdings"), and are secured by associated collateral agreements that pledge a lien on substantially all of FWR's and each guarantor's assets, including fixed assets and intangibles, in each case, subject to customary exceptions.

Under the Credit Agreement, FWR (and in certain circumstances, Holdings) and its restricted subsidiaries are subject to customary affirmative, negative and financial covenants, maintenance of certain ratios, restrictions on additional indebtedness and events of default for facilities of this type (with customary grace periods, as applicable, and lender remedies). FWR was in compliance with covenants under the Credit Agreement as of December 25, 2022 and December 26, 2021.

Note Payable

In October 2022, the Company entered into an agreement for the financing of insurance premiums in a total amount of approximately \$1.9 million. The note payable bears interest of 6.04% and is payable in monthly installments of \$0.2 million through September 30, 2023. As of December 25, 2022, the balance on the note payable was \$1.4 million.

In October 2021, the Company entered into a financing agreement for the financing of insurance premiums in a total amount of approximately \$3.0 million that bears interest of 2.41% and was payable in monthly installments of \$0.3 million through August 30, 2022. As of December 26, 2021, the balance on the note payable was \$2.4 million.

9. Leases

The following table includes a detail of lease assets and liabilities:

<i>(in thousands)</i>	Consolidated Balance Sheets Classification	DECEMBER 25, 2022	DECEMBER 26, 2021
Operating lease right-of-use assets	Operating lease right-of-use assets	\$ 352,373	\$ 324,995
Finance lease assets	Property, fixtures and equipment, net	1,332	1,892
Total lease assets		\$ 353,705	\$ 326,887
Operating lease liabilities ⁽¹⁾ - current	Current portion of operating lease liabilities	38,936	38,186
Operating lease liabilities - non-current	Operating lease liabilities	366,113	330,495
Finance lease liabilities - current	Current portion of long-term debt	632	686
Finance lease liabilities - non-current	Long-term debt, net	801	1,331
Total lease liabilities		\$ 406,482	\$ 370,698

(1) Excludes all variable lease expense.

FIRST WATCH RESTAURANT GROUP, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

The components of lease expense were as follows:

<i>(in thousands)</i>	Consolidated Statements of Operations and Comprehensive Income (Loss) Classification	FISCAL YEAR		
		2022	2021	2020
Operating lease expense	Other restaurant operating expenses Occupancy expenses Pre-opening expenses General and administrative expenses	\$ 49,620	\$ 44,906	\$ 41,813
Variable lease expense	Food and beverage costs Occupancy expenses General and administrative expenses	14,642	12,811	9,692
Finance lease expense:				
Amortization of leased assets	Depreciation and amortization	521	543	501
Interest on lease liabilities	Interest expense	130	174	184
Total lease expense ⁽¹⁾		<u>\$ 64,913</u>	<u>\$ 58,434</u>	<u>\$ 52,190</u>

(1) Includes contingent rent expense of \$1.6 million and \$1.1 million and \$0.1 million during Fiscal 2022, Fiscal 2021 and Fiscal 2020, respectively.

Supplemental cash flow information related to leases was as follows:

<i>(in thousands)</i>	FISCAL YEAR		
	2022	2021	2020
Cash paid for amounts included in the measurement of lease liabilities:			
Operating cash flows - operating leases	\$ 39,546	\$ 40,601	\$ 22,011
Operating cash flows - finance leases	\$ 130	\$ 174	\$ 184
Financing cash flows - finance leases	\$ 514	\$ 507	\$ 339

Supplemental information related to leases was as follows:

	FISCAL YEAR	
	2022	2021
Weighted-average remaining lease term (in years)		
Operating leases	14.6	15.4
Finance leases	2.8	3.5
Weighted-average discount rate ⁽¹⁾		
Operating leases	8.6 %	9.0 %
Finance leases	7.6 %	7.9 %

(1) Based on the Company's incremental borrowing rate.

FIRST WATCH RESTAURANT GROUP, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

As of December 25, 2022, future minimum lease payments for operating and finance leases consisted of the following:

<i>(in thousands)</i>	OPERATING LEASES		FINANCE LEASES	
Fiscal year				
2023	\$	40,562	\$	652
2024		50,198		610
2025		49,850		233
2026		49,659		44
2027		49,059		32
Thereafter		503,240		19
Total future minimum lease payments ⁽¹⁾		742,568		1,590
Less: imputed interest		(337,519)		(157)
Total present value of lease liabilities	\$	405,049	\$	1,433

(1) Excludes approximately \$38.3 million of executed operating leases that have not commenced as of December 25, 2022.

Sale-Leaseback Transactions

In 2015, Management entered into an agreement relating to the sale and leaseback of the land for use in restaurant operations and received cash proceeds of \$3.1 million. As the Company had continuing involvement with the property, the sale of the land did not qualify for sale accounting. As a result, the cash proceeds were recorded as a financing obligation. The balance of the financing obligation was \$3.1 million as of December 25, 2022 and December 26, 2021.

10. Transaction Expenses (Income), Net

Transaction expenses (income), net consisted of the following:

<i>(in thousands)</i>	FISCAL YEAR		
	2022	2021	2020
Secondary offering and Registration Statement on Form S-3 costs	\$ 1,957	\$ —	\$ —
Gain on lease modification	—	(1,961)	—
Contingent consideration liability revaluation	165	801	(293)
Conversion costs	—	2	71
Loss (Gain) on restaurant closures/relocations	391	2	(36)
Total transaction expenses (income), net	\$ 2,513	\$ (1,156)	\$ (258)

During Fiscal 2022, a total of \$2.0 million of costs was incurred by the Company in connection with the secondary public offering of the Company's common stock by entities affiliated with our majority owner, Advent International Corporation (the "Secondary Offering") and for the Registration Statement on Form S-3 that allows the Company to sell up to 5,000,000 shares of common stock from time to time in one or more offerings.

The Company revalued the contingent consideration liability initially recognized in connection with the Advent Acquisition (see Note 11, *Income Taxes*, for additional information) and recorded a loss of \$0.2 million in Fiscal 2022, a loss of \$0.8 million in Fiscal 2021 and a gain of \$0.3 million in Fiscal 2020.

A gain on lease modification of \$2.0 million was recognized in Fiscal 2021 in connection with a lease termination for the redevelopment of a restaurant facility by a landlord. Pursuant to the agreement, the Company received \$1.0 million in December 2021 and received an additional \$1.0 million after vacating the leased restaurant facility in December 2022.

11. Income Taxes

Income tax (expense) benefit consisted of the following:

<i>(in thousands)</i>	FISCAL YEAR		
	2022	2021	2020
Current provision:			
Federal	\$ —	\$ —	\$ —
State	(1,007)	(301)	(118)
Total current provision	(1,007)	(301)	(118)
Deferred (provision) benefit:			
Federal	(4,562)	(1,825)	18,458
State	(115)	(351)	1,533
Total deferred (provision) benefit	(4,677)	(2,176)	19,991
Income tax (expense) benefit	\$ (5,684)	\$ (2,477)	\$ 19,873

A reconciliation of the federal statutory income tax rate to the Company's effective income tax rate is as follows:

	FISCAL YEAR		
	2022	2021	2020
Income taxes at federal statutory rate	21.0 %	21.0 %	21.0 %
State income taxes, net of federal tax effect	12.5	2.4	4.1
FICA tip credit	(44.2)	(1,200.2)	4.7
Valuation allowance for federal and state	46.7	1,528.2	(1.8)
Stock-based compensation	4.2	275.9	—
Secondary Offering and Registration Statement on Form S-3 costs	3.2	—	—
Other permanent items	0.6	57.6	—
Rate change	1.7	(17.3)	0.1
Other	(0.6)	1.9	0.5
Total	45.1 %	669.5 %	28.6 %

The effective income tax rate for Fiscal 2022, Fiscal 2021 and Fiscal 2020 was different than the blended federal and state statutory rate mainly due to (i) the change in the valuation allowance, (ii) the benefit of the tax credits for FICA taxes on certain employee tips, (iii) impacts of executive stock-based compensation and (iv) non-deductible costs associated with the Secondary Offering and the Registration Statement on Form S-3. The effective income tax rate for Fiscal 2021 was also different than the blended federal and state statutory rate as a result of the pre-vesting forfeiture of performance-based stock option awards for which the market condition was not satisfied upon the Company's IPO (see Note 14, *Stock-Based Compensation*, for additional information).

FIRST WATCH RESTAURANT GROUP, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

The components of deferred tax assets and liabilities were as follows:

<i>(in thousands)</i>	DECEMBER 25, 2022	DECEMBER 26, 2021
Deferred income tax assets		
FICA tip credit	\$ 41,556	\$ 34,266
Net operating loss	30,672	34,619
Operating lease liabilities	101,927	91,768
Organizational costs	549	673
Interest limitation	797	596
Accrued compensation	1,750	2,903
Deferred revenues	682	618
Stock-based compensation	3,693	1,843
Other	1,210	919
Valuation allowance	(41,754)	(35,863)
Total deferred income tax assets	141,082	132,342
Deferred income tax liabilities		
Operating lease right-of-use assets	(87,154)	(80,401)
Depreciation	(34,577)	(28,479)
Intangible assets	(36,517)	(35,951)
Total deferred income tax liabilities	(158,248)	(144,831)
Net deferred income tax liabilities	\$ (17,166)	\$ (12,489)

Based upon an evaluation of the Company's deferred tax assets, Management has recognized a valuation allowance of \$41.8 million and \$35.9 million as of December 25, 2022 and December 26, 2021, respectively. The valuation allowance primarily relates to the Company's federal tax credit carryforwards that are not expected to be realized prior to the statutory expiration of the carryforward. The valuation allowance will be maintained until sufficient positive evidence exists to support its reversal, including but not limited to, the magnitude and duration of the Company's historical losses as compared to potential future profits within taxing jurisdictions to overcome such negative evidence.

Tax Carryforwards

The amount and expiration dates of federal tax loss carryforwards as of December 25, 2022 are as follows:

<i>(in thousands)</i>	Expiration Date	Amount
Federal net operating loss carryforwards	Indefinite	\$ 120,208
Federal net operating loss carryforwards	2036 - 2037	\$ 16,152

The Company also has state net operating loss carryforwards of \$42.7 million at December 25, 2022. In addition, the Company has general business tax credits of \$41.7 million at December 25, 2022, which can be carried forward 20 years and will expire between 2027 and 2042.

There were certain federal loss carryforward, state loss carryforward and general business credits that were accumulated from operations prior to the Advent Acquisition in August 2017. To the extent that these are utilized to reduce taxes payable, the Company is required to pay the previous stockholders an amount equal to tax savings. This requirement lapses with respect to any tax year, or portion thereof, beginning after December 31, 2024, or if a change in control event occurs. In connection with the Advent Acquisition, a contingent consideration liability of \$1.2 million was initially recognized for expected payments to be made to the previous stockholders. As of December 25, 2022, the contingent consideration liability was \$1.2 million, of which \$0.6 million was recorded within Accrued liabilities and \$0.6 million was recorded within Other long-term liabilities. As of December 26, 2021, the contingent consideration liability was \$1.1 million, of which \$0.2 million was recorded within Accrued liabilities and \$0.9 million was recorded within Other long-term liabilities.

Changes in the deferred tax asset valuation allowance were as follows:

(in thousands)

Balance as of December 29, 2019	\$	(28,975)
Increase		(1,239)
Balance as of December 27, 2020		(30,214)
Increase		(5,649)
Balance as of December 26, 2021		(35,863)
Increase		(5,891)
Balance as of December 25, 2022	\$	(41,754)

The Company is subject to examination by federal, state and local jurisdictions, where applicable. As of December 25, 2022, the tax years that remain subject to examination by major tax jurisdictions under the statute of limitations are from the year 2013 and forward.

On March 27, 2020, the U.S. government enacted the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) to provide certain relief as a result of COVID-19. The CARES Act provides tax relief, along with other stimulus measures, including a retroactive technical correction of prior tax legislation for tax depreciation of certain qualified improvement property, among other changes. A total of \$59.3 million of accelerated tax depreciation deductions was recognized related to qualified assets placed in service in Fiscal 2020, Fiscal 2019 and Fiscal 2018. Furthermore, the CARES Act made favorable changes to the Section 163(j) interest limitation and as a result, the Company was able to deduct additional interest totaling \$18.9 million and \$8.6 million for Fiscal 2020 and Fiscal 2019, respectively. In addition, Management began deferring the employer-paid portion of social security taxes as permitted by the CARES Act in the second quarter of Fiscal 2020. A total of \$6.7 million was deferred, of which \$3.3 million was paid in Fiscal 2021. The remaining balance was paid in Fiscal 2022. Furthermore, the CARES Act provided for refundable employee retention tax credits, which can be used to offset payroll tax liabilities. As a result, a credit of \$0.9 million was recorded as an offset to payroll tax expense in Fiscal 2020.

12. Stockholders’ Equity

In Fiscal 2020, the Company had issued 266,667 preferred stock shares having a par value of \$0.01 per share to existing stockholders, including Advent International Corporation, directors and executive officers. The proceeds from the issuance of the preferred stock were used to repay a portion of borrowings under our previous senior credit facilities and for working capital and general corporate purposes in Fiscal 2020. The preferred stock was automatically converted into 3,156,812 shares of common stock immediately prior to and in connection with the consummation of the Company’s IPO in October 2021.

The Company is authorized to issue 300,000,000 common stock shares with a par value of \$0.01 per share and 10,000,000 preferred stock shares with a par value of \$0.01 per share pursuant to the Company’s Amended and Restated Certificate of Incorporation.

Each share of common stock entitles the holder to one vote for each share of common stock held and common stockholders will not have cumulative voting rights. Common stockholders are entitled to receive dividends, as and if declared by the board of directors. In addition, all common stockholders are entitled to share equally on a share-for-share basis in any assets available for distribution to common stockholders upon liquidation, dissolution, or winding up of the Company after payment is made to the preferred stockholders.

During Fiscal 2022, funds managed by the Company’s majority owner, Advent International Corporation, sold 4,500,000 shares of the Company’s common stock in the Secondary Offering. The selling stockholders sold an additional 675,000 shares of common stock on October 6, 2022 pursuant to the terms of the underwriters option associated with the Secondary Offering. All net proceeds from the sale of the shares of common stock were distributed to the selling stockholders.

No cash dividends were declared or paid in Fiscal 2022, Fiscal 2021 and Fiscal 2020.

13. Defined Contribution Plan

The Company sponsors a defined contribution 401(k) savings plan (“401(k) Plan”) which requires the Company to match contributions for participants with at least one year of service 25% of the first 6% of the employees’ wages deferred into the 401(k) Plan. The 401(k) Plan also allows for additional profit-sharing contributions by the Company at the sole discretion of Management. All Company contributions vest over a five-year period. Total expense for the Company’s contributions to the 401(k) Plan was \$0.6 million, \$0.5 million and \$0.3 million in Fiscal 2022, Fiscal 2021 and Fiscal 2020, respectively.

14. Stock-Based Compensation

Stock Option Awards

Stock-based awards are granted to employees and non-employee directors. The Company has two compensation plans that provide for the granting of stock options and other share-based awards to key employees and non-employee members of the board of directors. The 2017 Omnibus Equity Incentive Plan (the “2017 Equity Plan”) and the 2021 Equity Incentive Plan (the “2021 Equity Plan”) provide for the grant of incentive stock options, non-qualified stock options, restricted stock awards, restricted stock units, stock appreciation rights and stock-based awards.

2021 Equity Plan

The number of shares of common stock reserved for issuance under the 2021 Equity Plan is 4,034,072 common shares (“Share Reserve”) at December 25, 2022. The number of shares of common stock that may be issued under the 2021 Equity Plan will automatically increase on the first day of each fiscal year, beginning on December 26, 2022 and continuing for each fiscal year until, and including, the fiscal year ending on (and including) December 29, 2030, equal to the least of (i) 2.0% of the total number of shares of common stock actually issued and outstanding on the last day of the preceding fiscal year, (ii) a number of shares of common stock determined by the board of directors; and (iii) the number of shares of common stock equal to the Share Reserve. If any award granted under the 2021 Equity Plan is cancelled, expired, forfeited, or surrendered without consideration or otherwise terminated without delivery of the shares to the participant, then such unissued shares will be returned to the 2021 Equity Plan and be available for future awards under the 2021 Equity Plan. Shares that are withheld from any award in payment of the exercise, base or purchase price or taxes related to such an award, not issued or delivered as a result of the net settlement of any award, or repurchased by the Company on the open market with the proceeds of a stock option will be deemed to have been delivered under the 2021 Equity Plan and will not be available for future awards under the 2021 Equity Plan. A total of 1,018,975 non-qualified time-based stock option awards were granted under the 2021 Equity Plan during Fiscal 2022, which vest over a three-year requisite service period from the date of grant and expire 10 years after the grant date. Stock-based compensation expense is recognized on a straight-line recognition method over the requisite service period.

2017 Equity Plan

The 2017 Equity Plan authorizes stock-based awards to be granted for up to 6,138,240 shares of common stock. The awards granted under the 2017 Equity Plan consisted of non-qualified stock options that generally vest based over a five-year requisite service period from the date of grant (the “time-based option awards”), as well as upon the occurrence of certain events and if certain market conditions were achieved, the (“performance-based option awards”). Stock-based compensation expense related to the stock option awards issued under the 2017 Plan is recognized on an accelerated recognition method over the requisite service period. All stock options have an exercisable life of no more than 10 years from the date of grant. No awards were granted under the 2017 Equity Plan during Fiscal 2022 and the Company does not intend to grant any further awards under the 2017 Equity Plan.

Modification of Performance-Based Option Awards - 2017 Equity Plan

On August 31, 2021, the Company’s board of directors amended the 2017 Equity Plan such that the performance-based option awards that convert into time-based option awards upon an initial public offering no longer vest over a period of three years, but instead vest one-third (1/3rd) on each of the first two anniversaries of an initial public offering and one-third (1/3rd) on the 273rd day following the second anniversary of an initial public offering. This was accounted for as a modification, resulting in a new fair value for all the performance-based option awards using an option-pricing model as of the modification date.

On September 19, 2021, the Company's board of directors modified performance-based option awards that contained a market condition granted under the 2017 Equity Plan, such that the vesting terms for one such tranche were amended to waive the market condition. Accordingly, upon the Company's IPO, such tranche converted into time-based option awards and vest one-third (1/3rd) on each of the first two anniversaries of the Company's IPO and one-third (1/3rd) on the 273rd day following the second anniversary of the Company's IPO. This was accounted for as a modification resulting in a new fair value using the option-pricing model for such performance-based option awards as of the modification date.

On September 19, 2021, the Company's board of directors modified the terms of performance-based option awards granted under the 2017 Equity Plan to the Company's Chairman Emeritus. The modification accelerated the vesting period of the performance-based option awards that convert into time-based option awards upon an initial public offering such that they no longer vest one-third (1/3rd) on each of the first two anniversaries of an initial public offering and one-third (1/3rd) on the 273rd day following the second anniversary of an initial public offering, but instead will vest on August 1, 2022. Additionally, the exercise period of these time-based and performance-based vested option awards was modified such that any vested option may be exercised at any time prior to the 10th anniversary of the original grant date. These actions were accounted for as modifications and resulted in an increase of \$0.3 million to the fair value of these awards.

Upon the consummation of the Company's IPO in October 2021, certain performance-based option awards converted into time-based option awards and stock compensation expense of \$2.4 million was recognized in the fourth quarter of Fiscal 2021. The remaining expense is being recognized on an accelerated recognition method over the remaining service period. An immediate one-time charge of \$5.6 million was recognized upon closing of the IPO, which included (i) the expense from the date of the modifications through the IPO date and (ii) the expense related to performance-based option awards for which the market condition was not satisfied upon the IPO.

FIRST WATCH RESTAURANT GROUP, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

A summary of stock option activity during Fiscal 2022 is as follows:

	<u>NUMBER OF OPTIONS</u>	<u>WEIGHTED AVERAGE EXERCISE PRICE</u>	<u>AGGREGATE INTRINSIC VALUE</u> <i>(in thousands)</i>	<u>WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE</u> <i>(in years)</i>
Outstanding, December 26, 2021	4,409,331	\$ 9.48	\$ 28,598	5.9
Granted	1,018,975	\$ 12.67		
Forfeited	(150,059)	\$ 10.24		
Exercised	(162,573)	\$ 8.76		
Outstanding, December 25, 2022	<u>5,115,674</u>	<u>\$ 10.12</u>	\$ 20,981	6.1
Exercisable, December 25, 2022	2,791,358	\$ 9.15	\$ 14,134	5.1

The aggregate intrinsic value is based on the difference between the exercise price of the stock option and the closing price of the Company's common stock on the Nasdaq Global Select Market.

A summary of the non-vested stock option activity during Fiscal 2022 is as follows:

	<u>NUMBER OF OPTIONS</u>	<u>WEIGHTED AVERAGE GRANT DATE FAIR VALUE</u>
Nonvested, December 26, 2021	2,633,391	\$ 7.03
Granted	1,018,975	\$ 6.81
Vested	(1,177,991)	\$ 6.25
Forfeited	(150,059)	\$ 7.29
Nonvested, December 25, 2022	<u>2,324,316</u>	\$ 7.31

The weighted average grant date fair value of options granted during Fiscal 2022, Fiscal 2021 and Fiscal 2020 was \$6.81, \$6.35 and \$1.02, respectively. The total fair value of stock options vested during Fiscal 2022, Fiscal 2021 and Fiscal 2020 was \$7.4 million, \$0.9 million and \$0.9 million, respectively.

Fair value of Stock Options

The fair value of stock option awards is estimated on the date of grant using the Black-Scholes valuation model. The assumptions utilized to estimate the grant date fair value of the stock option awards granted were as follows:

	<u>FISCAL YEAR</u>		
	<u>2022</u>	<u>2021</u>	<u>2020</u>
Weighted average expected term (years)	6.5	4.6	4.5
Weighted average expected volatility	52.4 %	50.3 %	41.2 %
Risk-free interest rate	2.6 %	1.0 %	0.6 %
Expected dividend yield	—	—	—

The Company does not have sufficient historical stock option exercise activity and therefore the expected term of stock options granted in Fiscal 2022 was estimated using the simplified method, which represents the mid-point between the vesting period and the contractual term for each grant. In Fiscal 2021 and Fiscal 2020, the expected term of stock option awards had been determined based on data from publicly traded companies. For Fiscal 2022, Fiscal 2021 and Fiscal 2020, the expected volatility of stock options is based on the historical volatilities of a set of publicly traded peer companies in a similar industry as the Company lacks company-specific historical or implied volatility information. The risk-free interest rate is determined by reference to the U.S. Treasury yield curve for time periods approximately equal to the expected term of the stock option award. The expected dividend yield is based on the fact that the Company has never paid cash dividends and does not have intentions of paying dividends in the foreseeable future.

Restricted Stock Units

During Fiscal 2022, a total of 38,311 restricted stock units were granted under the 2021 Equity Plan at the weighted average grant date fair value of \$14.36. The restricted stock units will vest over a one-year requisite service period from the date of grant and the fair value of restricted stock units was determined based on the closing market price of the Company's common stock on the date of grant. Stock-based compensation expense related to the restricted stock units is recognized on a straight-line basis over the vesting period. There were no forfeitures of restricted stock units in Fiscal 2022.

Stock-Based Compensation Expense

Stock-based compensation expense was \$10.4 million, \$8.6 million and \$0.8 million during Fiscal 2022, Fiscal 2021 and Fiscal 2020, respectively.

The total related income tax benefit for stock-based compensation expense was \$2.1 million, \$0.9 million and \$0.2 million for Fiscal 2022, Fiscal 2021 and Fiscal 2020, respectively.

Cash received from stock options exercised was \$1.4 million and the tax benefit realized from the option exercises was \$0.3 million in Fiscal 2022. The total intrinsic value of stock options exercised during Fiscal 2022 was \$1.1 million. There were no stock option exercises in Fiscal 2021 and 2020.

Unrecognized Stock-Based Compensation Expense

The following represents unrecognized stock-based compensation expense and the remaining weighted average vesting period as of December 25, 2022:

	UNRECOGNIZED STOCK-BASED COMPENSATION EXPENSE <i>(in thousands)</i>	REMAINING WEIGHTED AVERAGE VESTING PERIOD <i>(in years)</i>
Stock options	\$ 9,602	1.6
Restricted stock units	\$ 234	0.4

15. Commitments and Contingencies

Purchase Commitments

We enter into various purchase obligations in the ordinary course of business, generally of a short-term nature. These purchase obligations include commitments for inventory purchases, marketing-related contracts, corporate sponsorships, software/license commitments and service contracts. We also enter into long-term, exclusive contracts with vendors to supply us with certain goods and services, however, they generally do not include firm minimum purchase commitments.

In July 2022, Management entered into an agreement with a vendor to purchase product. The agreement will remain in effect through the later of (i) the purchase of 585,940 gallons of product or (ii) five years from the effective date of the agreement. The remaining minimum purchase commitment as of December 25, 2022 was approximately \$9.1 million.

Legal Proceedings

The Company is subject to legal proceedings, claims and liabilities that arise in the ordinary course of business. The amount of the ultimate liability with respect to these matters was not material as of December 25, 2022. In the event any litigation losses become probable and estimable, the Company will recognize any anticipated losses.

Unclaimed Property

The Company is subject to unclaimed or abandoned property (escheat) laws which require it to turn over to state governmental authorities the property of others held by the Company that has been unclaimed for specified periods of time. Property subject to escheat laws generally relates to uncashed checks, trade accounts receivable credits and unredeemed gift card balances. During the first quarter of 2022, the Company received a letter from the Delaware Secretary of State inviting the Company to participate in the Delaware Secretary of State's Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program to avoid being sent an audit notice by the Delaware Department of Finance. On August 31, 2022, the Company was accepted into Delaware's Voluntary Disclosure Agreement Program, entitling it to certain benefits and protections offered to participants in the program. The Company intends to work in good faith to complete a review of its books and records related to unclaimed or abandoned property during the periods required under the program. The Company will continue to examine its options regarding the escheat laws of Delaware including completing Delaware's Voluntary Disclosure Agreement Program or proceeding to audit. Any potential loss, or range of loss, that may result from this matter is not currently reasonably estimable.

As of December 26, 2022, Management believes the Company is not currently required to remit any amounts relating to future unredeemed gift cards to states as the Company's subsidiary that is the issuer of our gift cards was re-domiciled in Florida, which exempts gift cards from the abandoned and unclaimed property laws.

16. Net Income (Loss) Per Common Share

The following table sets forth the computations of basic and diluted net income (loss) per common share:

<i>(in thousands, except share and per share data)</i>	FISCAL YEAR		
	2022	2021	2020
Numerator:			
Net income (loss)	\$ 6,907	\$ (2,107)	\$ (49,681)
Denominator:			
Weighted average common shares outstanding - basic	59,097,512	48,213,995	45,013,784
Weighted average common shares outstanding - diluted	60,140,045	48,213,995	45,013,784
Net income (loss) per common share - basic	\$ 0.12	\$ (0.04)	\$ (1.10)
Net income (loss) per common share - diluted	\$ 0.11	\$ (0.04)	\$ (1.10)
Stock options outstanding not included in diluted net income (loss) per common share as their effect is anti-dilutive	1,787,517	4,409,331	5,143,229

Diluted net income (loss) per common share is calculated by adjusting the weighted average shares outstanding for the theoretical effect of potential common shares that would be issued for preferred stock using the two-class method, as well as for stock options and restricted stock units outstanding and unvested as of the respective periods using the treasury method.

All stock option awards outstanding were excluded from the calculation of diluted net loss per common share because of their anti-dilutive impact for Fiscal 2021 and Fiscal 2020. All preferred stock shares were excluded from the calculation of diluted net loss per common share because of their anti-dilutive impact for Fiscal 2021 and Fiscal 2020. As a result, there was no difference between basic and diluted net loss per common share attributable to First Watch Restaurant Group, Inc. during Fiscal 2021 and Fiscal 2020.

During Fiscal 2020, the performance-based stock options that were granted under the 2017 Equity Plan, certain of which were converted into time-based stock options upon the Company's IPO, were excluded from the diluted net loss per common share calculation as the performance condition was not considered probable of being met.

FIRST WATCH RESTAURANT GROUP, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

17. Condensed Financial Information of Registrant (Parent Company Only)

FIRST WATCH RESTAURANT GROUP, INC.
(PARENT COMPANY ONLY)
CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE AMOUNTS)

	DECEMBER 25, 2022	DECEMBER 26, 2021
Assets		
Investment in subsidiaries	\$ 523,135	\$ 504,429
Equity		
Preferred stock; \$0.01 par value; 10,000,000 shares authorized; none issued and outstanding	\$ —	\$ —
Common stock; \$0.01 par value; 300,000,000 shares authorized; 59,211,019 and 59,048,446 shares issued and outstanding at December 25, 2022 and December 26, 2021, respectively	592	590
Additional paid-in capital	620,675	608,878
Accumulated deficit	(98,132)	(105,039)
Total equity attributable to First Watch Restaurant Group, Inc.	\$ 523,135	\$ 504,429

FIRST WATCH RESTAURANT GROUP, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE AMOUNTS)

	FISCAL YEAR		
	2022	2021	2020
Equity in net income (loss) of subsidiaries			
Net income (loss) and comprehensive income (loss)	\$ 6,907	\$ (2,107)	\$ (49,681)
Net income (loss) per common share attributable to First Watch Restaurant Group, Inc. - basic	\$ 0.12	\$ (0.04)	\$ (1.10)
Net income (loss) per common share attributable to First Watch Restaurant Group, Inc. - diluted	\$ 0.11	\$ (0.04)	\$ (1.10)
Weighted average number of common shares outstanding - basic	59,097,512	48,213,995	45,013,784
Weighted average number of common shares outstanding - diluted	60,140,045	48,213,995	45,013,784

Statements of cash flows have not been presented as First Watch Restaurant Group, Inc. did not have any cash as of, or for Fiscal 2022, Fiscal 2021 and Fiscal 2020.

Basis of Presentation

The Company is a holding company without any operations of its own (the "Parent Company"). Pursuant to the terms of the Credit Agreement discussed in Note 8, *Debt*, the Company and certain subsidiaries of the Company have restrictions on their ability to, among other things, (i) incur additional indebtedness, pay dividends or make certain intercompany loans and advances, and (ii) exceed a maximum total rent adjusted net leverage ratio or fall below a minimum fixed charge coverage ratio. As a result of these restrictions, these parent company financial statements have been prepared in accordance with Rule 12-04 of Regulation S-X, as restricted net assets of the Company's subsidiaries (as defined in Rule 4-08(e)(3) of Regulation S-X) exceed 25% of the Company's consolidated net assets as of December 25, 2022 and December 26, 2021.

These condensed financial statements have been prepared on a "parent-only" basis. These condensed parent company financial statements have been prepared using the same accounting principles and policies described in the notes to the Company's consolidated financial statements, with the only exception being that the parent company accounts for its subsidiaries using the equity method. Certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted. The accompanying financial information

should be read in conjunction with the accompanying Company's consolidated financial statements and related notes thereto.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We are responsible for establishing and maintaining disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act, such as this Annual Report on Form 10-K, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

Disclosure controls and procedures also include, without limitation, controls and procedures that are designed to ensure that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Annual Report on Form 10-K. Due to the material weaknesses in our internal control over financial reporting discussed below, our Chief Executive Officer and Chief Financial Officer concluded that, as of December 25, 2022, our disclosure controls and procedures were not effective. In light of this fact, our management has performed additional analyses, reconciliations, and other post-closing procedures and has concluded that, notwithstanding the material weaknesses in our internal control over financial reporting, the consolidated financial statements for the periods covered by and included in this Annual Report on Form 10-K fairly present, in all material respects, our financial position, results of operations and cash flows for the periods presented in conformity with GAAP.

Management's Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f) and 15d-15(f). Under the supervision and with the participation of our management, including our CEO and CFO, we conducted an evaluation of the effectiveness of our internal control over financial reporting. Management has adopted the framework in "Internal Control-Integrated Framework" (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO").

Based on management's assessment of the effectiveness of the Company's internal control over financial reporting as of December 25, 2022 based on the COSO framework, management has determined that the Company's internal control over financial reporting as of December 25, 2022 was not effective.

We identified material weaknesses in our internal control over financial reporting. The material weaknesses we identified were as follows:

We did not design and maintain an effective internal control environment commensurate with the financial reporting requirements of a public company. Specifically, we lacked a sufficient complement of personnel with an appropriate level of knowledge, experience and training in internal control over financial reporting and the reporting requirements of a public company. Additionally, we did not formally delegate authority or establish appropriate segregation of duties in our finance and accounting functions. As a result, we did not perform an effective risk assessment nor did we design and maintain internal controls in response to the risks of material misstatement. These material weaknesses contributed to the following material weaknesses:

- We did not design and maintain effective controls over the period-end financial reporting process, including controls over the preparation and review of account reconciliations and journal entries, and the appropriate classification and presentation of accounts and disclosures in the consolidated financial statements. This material weakness resulted in adjustments to accruals and within the statement of cash flows in our fiscal 2018

consolidated financial statements, which were recorded prior to the issuance of our fiscal 2018 consolidated financial statements.

- We did not design and maintain effective controls over the accounting for income taxes over the recording of deferred income taxes and the assessment of the realization of deferred tax assets. This material weakness resulted in adjustments to the income tax benefit, deferred taxes, goodwill, and liabilities in our fiscal 2018 consolidated financial statements, which were recorded prior to issuance. This material weakness also resulted in immaterial adjustments to the income tax benefit and deferred taxes and related disclosures in the fiscal 2017 and 2019 consolidated financial statements, which were corrected in the fiscal 2019 and 2020 consolidated financial statements, respectively. This material weakness also resulted in adjustments to the income tax expense and deferred taxes in our fiscal 2021 consolidated financial statements, which were recorded prior to issuance.
- We did not design and maintain effective controls over information technology general controls for information systems and applications that are relevant to the preparation of the consolidated financial statements. Specifically, we did not design and maintain: sufficient user access controls to ensure appropriate segregation of duties and adequately restrict user and privileged access to financial applications, programs and data to appropriate Company personnel; program change management controls to ensure that information technology program and data changes affecting financial information technology applications and underlying accounting records are identified, tested, authorized and implemented appropriately; computer operations controls to ensure that critical batch jobs are monitored, privileges are appropriately granted, and data backups are authorized and monitored; and testing and approval controls for program development to ensure that new software development is aligned with business and information technology requirements. The deficiencies, when aggregated, could impact our ability to maintain effective segregation of duties, as well as the effectiveness of information technology-dependent controls (such as automated controls that address the risk of material misstatement to one or more assertions, along with the information technology controls and underlying data that support the effectiveness of system-generated data and reports) that could result in misstatements potentially impacting all financial statement accounts and disclosures that would result in a material misstatement to the annual or interim consolidated financial statements that would not be prevented or detected. Therefore, we concluded the information technology deficiencies resulted in a material weakness. However, these information technology deficiencies did not result in any misstatements to the consolidated financial statements.

Additionally, each of the aforementioned material weaknesses could result in a misstatement of the consolidated financial statements that would result in a material misstatement to the annual or interim consolidated financial statements that would not be prevented or detected.

Our independent registered public accounting firm will not be required to opine on the effectiveness of our internal control over financial reporting until we are no longer an “emerging growth company” as defined in the JOBS Act.

Remediation Efforts

We have taken certain measures to remediate the material weaknesses described above, including the following:

- Hired new and reassigned existing financial reporting, accounting, and information technology leadership with public company experience to enhance public company financial reporting, technical accounting, and information technology services and solutions.
- Augmented financial reporting capabilities by staffing professionals with special skills in income tax, internal audit, information technology, and legal.
- Established various policies, including a formal delegation of authority policy defining the protocols for reviewing and authorizing commitments, contracts, invoices, and transactions as well as a comprehensive set of information technology policies to govern the Company’s information technology practices.
- Formalized certain roles and review responsibilities, including ensuring appropriate segregation of duties.
- Designed and implemented period-end financial reporting controls, such as controls over the preparation and review of account reconciliations, financial statement disclosures, and the consolidated financial statements as

well as establishing a formal management Disclosure Committee to review the draft financial statements and disclosures prior to release, including a sub-certification process from various functional groups.

- Designed and implemented controls over the accounting for income taxes to ensure the appropriate recording of deferred income taxes, income taxes and related disclosures.
- Designed sufficient user access controls to ensure appropriate segregation of duties and adequately restrict user and privileged access to financial applications, programs and data to appropriate Company personnel.
- Designed and implemented change management controls to ensure that information technology program and data changes affecting financial information technology applications and underlying accounting records are identified, tested, authorized, and implemented appropriately.
- Designed and implemented computer operation controls to ensure critical jobs are monitored and privileges are appropriately granted.
- Implemented a new backup and recovery platform to monitor data backups for all relevant systems in accordance with the applicable policy as well as manage a test recovery process.

As we continue to evaluate and work to improve our internal control over financial reporting, we may take additional measures to address control deficiencies, or we may modify certain of the remediation measures described above. The material weaknesses will not be considered remediated until the applicable controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively.

Item 9B. Other Information

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

We have adopted a Code of Ethics and Business Conduct that applies to, among others, our chief executive officer, chief financial officer (who is also our principal accounting officer), and other finance and accounting leaders, which is a “code of ethics” as defined by applicable rules of the SEC. This code is publicly available on our website. The Internet address for our website is www.firstwatch.com, and the Code of Ethics and Business Conduct may be found on our main webpage by clicking first on “Investors” and then on “Corporate Governance” and next on “Code of Ethics and Business Conduct.” If we make any amendments to this code other than technical, administrative or other non-substantive amendments, or grant any waivers, including implicit waivers, from a provision of this code to our chief executive officer, chief financial officer (who is also our principal accounting officer), or other finance and accounting leaders, we will disclose the nature of the amendment or waiver, its effective date and to whom it applies on our website as specified above or in a report on Form 8-K filed with the SEC.

The remaining information required by this item is incorporated herein by reference to the sections entitled “Proposal 1: Director Election Proposal,” “Information Regarding the board of directors and Corporate Governance,” and “Executive Officers” in our definitive Proxy Statement for the Annual Meeting of Stockholders expected to be held on May 23, 2023 (the “Proxy Statement”).

We will provide disclosure of delinquent Section 16(a) reports, if any, in our Proxy Statement, and such disclosure, if any, is incorporated herein by reference.

Item 11. Executive Compensation

The information required by this item is incorporated by reference to the sections entitled “Executive Compensation,” “Outstanding Equity Awards at Fiscal Year-End,” and “Director Compensation” in the Proxy Statement.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this item is incorporated by reference to the section entitled “Security Ownership of Certain Beneficial Owners and Management” in the Proxy Statement.

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by this item is incorporated by reference to the section entitled “Certain Relationships and Related Transactions” and “Information Regarding the board of directors and Corporate Governance” in the Proxy Statement.

Item 14. Principal Accountant Fees and Services

The information required by this item is incorporated by reference to the sections entitled “Proposal 2: Auditor Ratification Proposal,” “Auditors Fees and Services” and “Policy for Approval of Audit and Permitted Non-Audit Services” in the Proxy Statement.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) Documents filed as part of this Annual Report on Form 10-K:

1. Financial Statements

Consolidated financial statements filed as part of this report are listed under Item 8, “Financial Statements and Supplementary Data.”

2. Financial Statement Schedules

No schedules are required because either the required information is not present or is not present in amounts sufficient to require submission of the schedule, or because the information required is included in the consolidated financial statements or notes thereto.

3. Exhibits

Exhibit No.	DESCRIPTION	FILINGS REFERENCED FOR INCORPORATION BY REFERENCE
3.1	Amended and Restated Certificate of Incorporation of First Watch Restaurant Group, Inc.	October 6, 2021 Form 8-K, Exhibit 3.1
3.2	Amended and Restated Bylaws of First Watch Restaurant Group, Inc.	October 6, 2021 Form 8-K, Exhibit 3.2
4.1	Form of Certificate of Common Stock	September 7, 2021 Form S-1, Exhibit 4.1
4.2	Registration Rights Agreement by and among First Watch Restaurant Group, Inc. and the other parties thereto, dated as of October 1, 2021	March 23, 2022, Form 10-K, Exhibit 4.2
4.3	Description of First Watch Restaurant Group, Inc. Securities Credit Agreement, dated as of October 6, 2021, by and among FWR Holding Corporation, AI Fresh Parent, Inc., the lenders party thereto, the other parties therein and Bank of America, N.A., as administrative agent	March 23, 2022, Form 10-K, Exhibit 4.3
10.1	Amendment No. 1 to Credit Agreement dated as of February 24, 2023, between FWR Holding Corporation as Borrower, the lenders party therto, the other parties therein and Bank of America N.A., as administrative agent	October 6, 2021, Form 8-K, Exhibit 10.1
10.2	Credit Agreement, dated as of August 21, 2017, between FWR Holding Corporation as Borrower, the lenders party thereto, and Golub Capital Markets LLC, as administrative agent	Filed herewith
10.2(a)		September 7, 2021, Form S-1, Exhibit 10.1(a)

10.2(b)	First Amendment to Credit Agreement, dated as of February 28, 2019, between FWR Holding Corporation as Borrower, the lenders party thereto, and Golub Capital Markets LLC, as administrative agent	September 7, 2021, Form S-1, Exhibit 10.1(b)
10.2(c)	Second Amendment to Credit Agreement, dated as of December 20, 2019, between FWR Holding Corporation as Borrower, the lenders party thereto, and Golub Capital Markets LLC, as administrative agent	September 7, 2021, Form S-1, Exhibit 10.1(c)
10.2(d)	Third Amendment to Credit Agreement, dated as of April 27, 2020, between FWR Holding Corporation as Borrower, the lenders party thereto, and Golub Capital Markets LLC, as administrative agent	September 7, 2021, Form S-1, Exhibit 10.1(d)
10.2(e)	Fourth Amendment to Credit Agreement, dated as of August 14, 2020, between FWR Holding Corporation as Borrower, the lenders party thereto, and Golub Capital Markets LLC, as Administrative Agent	September 7, 2021, Form S-1, Exhibit 10.1(e)
10.3*	Employment Agreement, dated March 9, 2022, by and between First Watch Restaurants, Inc. and Christopher A. Tomasso	March 11, 2022, Form 8-K, Exhibit 10.1
10.4*	Employment Agreement, dated August 21, 2017, by and between First Watch Restaurants, Inc. and Laura Sorensen	September 7, 2021, Form S-1, Exhibit 10.4
10.6*	Letter Agreement, dated February 1, 2021, by and between First Watch Restaurants, Inc. and Kenneth L. Pendery, Jr.	September 7, 2021, Form S-1, Exhibit 10.8
10.7*	Letter Agreement, dated July 12, 2018, by and between First Watch Restaurants, Inc. and Mel Hope	March 23, 2022, Form 10-K, Exhibit 10.7
10.8*	First Watch Restaurant Group, Inc. 2017 Omnibus Equity Incentive Plan (formerly known as the AI Fresh Super Holdco, Inc. 2017 Omnibus Equity Incentive Plan)	September 7, 2021, Form S-1, Exhibit 10.3
10.9*	First Watch Restaurant Group, Inc. 2021 Equity Incentive Plan	March 23, 2022, Form 10-K, Exhibit 10.9
10.10*	Form of 2022 Stock Option Agreement	March 23, 2022, Form 10-K, Exhibit 10.10
10.11*	Form of 2023 Restricted Stock Unit Award Agreement	Filed herewith
10.12*	Form of Director and Officer Indemnification Agreement	September 7, 2021, Form S-1, Exhibit 10.7
10.13	Form of Restricted Unit Award Agreement for Directors	Filed herewith
21.1	List of subsidiaries	Filed herewith
23.1	Consent of Independent Registered Public Accounting Firm	Filed herewith
31.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	Filed herewith
31.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	Filed herewith
32.1	Certification of 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	Furnished herewith
101	The financial information from First Watch Restaurant Group, Inc.'s Annual Report on Form 10-K for the fiscal year ended December 25, 2022, filed on March 7, 2023, formatted in Inline Extensible Business Reporting Language ("iXBRL")	Filed herewith
104	Cover Page Interactive Data File (formatted as iXBRL and contained in Exhibit 101)	Filed herewith

* Denotes a management contract or compensatory plan or arrangement.

** This certification is not deemed to be "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section. This certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates them by reference.

Item 16. Form 10-K Summary

None.

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.

FIRST WATCH RESTAURANT GROUP, INC.

By: /s/ Mel Hope
Name Mel Hope
Title: Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Christopher A. Tomasso</u> Christopher A. Tomasso	President, Chief Executive Officer and Director (Principal Executive Officer)	March 7, 2023
<u>/s/ Mel Hope</u> Mel Hope	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	March 7, 2023
<u>/s/ Ralph Alvarez</u> Ralph Alvarez	Director and Chairman of the Board	March 7, 2023
<u>/s/ Julie M.B. Bradley</u> Julie M.B. Bradley	Director	March 7, 2023
<u>/s/ Tricia Glynn</u> Tricia Glynn	Director	March 7, 2023
<u>/s/ Stephanie Lilak</u> Stephanie Lilak	Director	March 7, 2023
<u>/s/ William Kussell</u> William Kussell	Director	March 7, 2023
<u>/s/ Lisa Price</u> Lisa Price	Director	March 7, 2023
<u>/s/ Michael White</u> Michael White	Director	March 7, 2023

AMENDMENT NO. 1 TO CREDIT AGREEMENT

This AMENDMENT NO. 1 TO CREDIT AGREEMENT, dated as of February 24, 2023 (this “Amendment”), by and among FWR Holding Corporation, a Delaware corporation (the “Borrower”), the Lenders party hereto and Bank of America, N.A., in its capacities as administrative agent for the Lenders (as defined in the Existing Credit Agreement referred to below) and collateral agent for the Secured Parties (as defined in the Existing Credit Agreement) (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender (as each such term is defined in the Existing Credit Agreement). Capitalized terms used herein but not defined herein shall have the meanings given to them in the Existing Credit Agreement.

RECITALS

WHEREAS, the Borrower, AI Fresh Parent, Inc., a Delaware corporation (“Holdings”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto, the Swingline Lender and the Administrative Agent have entered into that certain Credit Agreement, dated as of October 6, 2021 (as amended, modified, extended, restated, replaced, or supplemented from time to time prior to the date hereof, the “Existing Credit Agreement”; and the Existing Credit Agreement, as amended by this Amendment, the “Credit Agreement”);

WHEREAS, certain loans and/or other extensions of credit denominated in Dollars under the Existing Credit Agreement incur or are permitted to incur interest, fees, commissions and/or other amounts based on the LIBO Rate in accordance with the terms of the Existing Credit Agreement; and

WHEREAS, pursuant to Section 9.02(b) of the Existing Credit Agreement, the Borrower has requested, and the Issuing Banks party hereto, constituting all of the Issuing Banks under the Existing Credit Agreement (individually, each a “Consenting Issuing Bank”, and, collectively, the “Consenting Issuing Banks”), the Lenders party hereto, constituting all of the Lenders under the Existing Credit Agreement (individually, each a “Consenting Lender”, and, collectively, the “Consenting Lenders”), and the Administrative Agent have agreed, to replace the LIBO Rate for Loans denominated in Dollars with a successor rate based on Term SOFR (as defined in the Credit Agreement) and to make certain other amendments to the Existing Credit Agreement as set forth herein, in each case, upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Amendments to Existing Credit Agreement and Exhibits to Existing Credit Agreement.

(a) Existing Credit Agreement. Effective as of the Amendment Effective Date (as defined below), the Existing Credit Agreement is hereby amended to (i) delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and (ii) add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text), in each case as set forth in the pages of the Credit Agreement attached as Annex A hereto.

(b) Exhibits. Effective as of the Amendment Effective Date, each of Exhibits B, H, L and Q to the Existing Credit Agreement is hereby amended and restated in their entirety to read as set forth in Annex B hereto, as applicable.

SECTION 2. Conditions Precedent. This Amendment shall be effective on the first date on which each of the following conditions in this Section 2 have been satisfied (the date of satisfaction of such conditions being referred to herein as the “Amendment Effective Date”):

(a) Execution. The Administrative Agent shall have received counterparts of this Amendment executed by (i) the Borrower, (ii) each Consenting Issuing Bank, (iii) each Consenting

Lender and (iv) the Administrative Agent. Each Consenting Issuing Bank and each Consenting Lender that submits an executed counterpart hereto acknowledges and agrees that the submission of an executed counterpart hereto is irrevocable.

(b) Expenses. The Administrative Agent shall have received all reasonable and documented out-of-pocket expenses incurred on or prior to the Amendment Effective Date in connection with the preparation, execution and delivery of this Amendment and any other matters in connection herewith that are payable pursuant to Section 9.03 of the Existing Credit Agreement, to the extent invoiced at least three Business Days prior to the Amendment Effective Date (or such later date to which the Borrower may agree).

For purposes of determining whether the conditions specified in this Section 2 have been satisfied on the Amendment Effective Date, by executing and delivering its signature page(s), each Consenting Issuing Bank, each Consenting Lender and the Administrative Agent, as applicable, shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Administrative Agent, such Consenting Issuing Bank or such Consenting Lender, as the case may be.

SECTION 3. Representations and Warranties. The Borrower hereby represents and warrants to the Administrative Agent, each Consenting Issuing Bank and each Consenting Lender party hereto that:

(a) The execution, delivery and performance by the Borrower of this Amendment (i) are within the Borrower's corporate or other organizational power and (ii) have been duly authorized by all necessary corporate or other organizational action of the Borrower. This Amendment has been duly executed and delivered by the Borrower and is a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to the Legal Reservations.

(b) The execution and delivery of this Amendment by the Borrower and the performance by the Borrower of its obligations hereunder (i) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (A) such as have been obtained or made and are in full force and effect, (B) in connection with the Perfection Requirements and (C) such consents, approvals, registrations, filings, or other actions the failure to obtain or make which would not be reasonably expected to have a Material Adverse Effect, (ii) will not violate any (A) of the Borrower's Organizational Documents or (B) Requirement of Law applicable to the Borrower, which violation, in the case of this clause (ii)(B), would reasonably be expected to have a Material Adverse Effect and (iii) will not violate or result in a default under any material Contractual Obligation to which the Borrower is a party, which violation, in the case of this clause (iii), would reasonably be expected to result in a Material Adverse Effect.

SECTION 4. Conversion to Term SOFR Borrowings. Each of the parties hereto agrees that from and after the Amendment Effective Date, any request for a new Loan (as defined in the Credit Agreement) denominated in Dollars, or for a continuation of any existing LIBO Rate Loan denominated in Dollars, shall be deemed to be a request for a new Loan (as defined in the Credit Agreement) bearing interest at Term SOFR (as defined in the Credit Agreement); provided that, to the extent any LIBO Rate Loan is outstanding on the Amendment Effective Date, such Loan shall continue to bear interest at the LIBO Rate until the end of the current Interest Period or payment period applicable to such Loan.

SECTION 5. Miscellaneous.

(a) Reference to and Effect on the Existing Credit Agreement and the Other Loan Documents.

(i) On and after the Amendment Effective Date, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to the "Credit Agreement", "thereunder", "thereof", "therein" or words of like import referring to the Credit

Agreement, in each case, shall mean and be a reference to the Existing Credit Agreement as amended hereby.

(ii) The Credit Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed.

(iii) By executing and delivering a copy hereof, (A) the Borrower hereby agrees that all Secured Obligations shall continue to be guaranteed pursuant to the Loan Guaranty in accordance with the terms and provisions thereof and shall continue to be secured pursuant to the Collateral Documents in accordance with the terms and provisions thereof, and (B) the Borrower hereby (x) reaffirms its and any other Loan Party's prior grant and the validity of the Liens granted by it pursuant to the Collateral Documents, (y) agrees that, notwithstanding the effectiveness of this Amendment, after giving effect to this Amendment, the guaranty pursuant to the Loan Guaranty and the Liens created pursuant to the Collateral Documents for the benefit of the Secured Parties continue to be in full force and effect and (z) affirms, acknowledges and confirms all of its and each other Loan Party's obligations and liabilities under the Loan Documents to which each such entity is a party, in each case after giving effect to this Amendment, all as provided in such Loan Documents, and acknowledges and agrees that such obligations and liabilities continue in full force and effect in respect of, and to secure, the Secured Obligations under the Credit Agreement and the other Loan Documents, in each case after giving effect to this Amendment.

(iv) The execution, delivery and performance of this Amendment shall not constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Administrative Agent, any Lender or any Issuing Bank under, the Existing Credit Agreement or any of the other Loan Documents. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Existing Credit Agreement or any other Loan Document or instruments securing the same, which shall remain in full force and effect.

(b) Loan Document. For the avoidance of doubt, this Amendment constitutes a Loan Document.

(c) Headings. Section and subsection headings used herein are for convenience of reference only, are not part of this Amendment and shall not affect the construction of, or be taken into consideration in interpreting, this Amendment.

(d) Applicable Law. THIS AMENDMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AMENDMENT, WHETHER IN TORT, CONTRACT (AT LAW OR IN EQUITY) OR OTHERWISE, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(e) Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY SUIT, ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HERETO (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(f) Jurisdiction; Service of Process. The provisions of Sections 9.10(b), (c) and (d) of the Existing Credit Agreement are hereby incorporated by reference, *mutatis mutandis*, as if set forth in full herein.

(g) Counterparts. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Amendment by facsimile or by email as a “.pdf” or “.tif” attachment shall be effective as delivery of a manually executed counterpart of this Amendment. It is understood and agreed that, subject to any Requirement of Law, the words “execution”, “signed”, “signature”, “delivery” and words of like import in or relating to this Amendment shall be deemed to include any Electronic Signature, delivery or the keeping of any record in electronic form, each of which shall have the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system to the extent and as provided for in any applicable Requirement of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state laws based on the Uniform Electronic Transactions Act.

(h) Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

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Each of the parties hereto has caused a counterpart of this Amendment to be duly executed and delivered as of the date first above written.

FWR HOLDING CORPORATION,
as the Borrower

By: /s/ Henry Melville Hope III
Name: Henry Melville Hope, III
Title: Chief Financial Officer, Executive Vice President and Treasurer

[Signature Page to Amendment No. 1 to Credit Agreement]

BANK OF AMERICA, N.A.,
as the Administrative Agent, as the Swingline Lender, as an Issuing Bank and as a Lender

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

[Signature Page to Amendment No. 1 to Credit Agreement]

Barclays Bank PLC,,
as a Lender and as an Issuing Bank

By: /s/ Warren Veech III
Name: Warren Veech III
Title: Vice President

[SECOND SIGNATURE BLOCK IF NEEDED]

By: _____
Name:
Title:

[Signature Page to Amendment No. 1 to Credit Agreement]

Citibank, N.A.,
as a Lender and as an Issuing Bank

By: /s/ Robert J. Kane
Name: Robert Kane
Title: Managing Director

[Signature Page to Amendment No. 1 to Credit Agreement]

Goldman Sachs Bank USA,
as a Lender

By: /s/ Keshia Leday
Name: Keshia Leday
Title: Authorized Signatory

[Signature Page to Amendment No. 1 to Credit Agreement]

JEFFERIES FINANCE LLC,
as a Lender and as an Issuing Bank

By: /s/ J R Young
Name: J R Young
Title: Managing Director

[Signature Page to Amendment No. 1 to Credit Agreement]

MUFG Bank, Ltd.,
as a Lender and as an Issuing Bank

By: /s/ R. Shawn Janko
Name: R. Shawn Janko
Title: Managing Director

[Signature Page to Amendment No. 1 to Credit Agreement]

PNC BANK, NATIONAL ASSOCIATION,
as a Lender and as an Issuing Bank

By: /s/ Carmen Campise Jr.
Name: Carmen Campise Jr.
Title: Senior Vice President

[Signature Page to Amendment No. 1 to Credit Agreement]

SYNOVUS BANK
as a Lender and as an Issuing Bank

By: /s/ Scott C. Tocci
Name: Scott C. Tocci
Title: Senior Director

[Signature Page to Amendment No. 1 to Credit Agreement]

Annex A
Credit Agreement

[see attached]

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Published Deal CUSIP Number: 30322UAA9
Published Revolver CUSIP Number: 30322UAB7
Published Term Loan A CUSIP Number: 30322UAC5

CREDIT AGREEMENT

dated as of October 6, 2021,
[as amended by Amendment No. 1, dated as of February 24, 2023,](#)

among

FWR HOLDING CORPORATION,
as the Borrower,

AI FRESH PARENT, INC.,
as Holdings,

THE FINANCIAL INSTITUTIONS PARTY HERETO,
as Lenders and Issuing Banks,

and

BANK OF AMERICA, N.A.,
as Administrative Agent, an Issuing Bank and Swingline Lender,

BOFA SECURITIES, INC.
and
PNC BANK, NATIONAL ASSOCIATION
as Joint Lead Arrangers and Joint Bookrunners

PNC BANK, NATIONAL ASSOCIATION
as Syndication Agent

MUFG BANK LTD.
and
SYNOVUS BANK
as Co-Documentation Agents

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DEFINITIONS

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CREDIT AGREEMENT

CREDIT AGREEMENT, dated as of October 6, 2021 (this “Agreement”), by and among FWR Holding Corporation, a Delaware corporation (the “Borrower”), AI Fresh Parent, Inc., a Delaware corporation (“Holdings”), the Lenders from time to time party hereto, the Issuing Banks from time to time party hereto and Bank of America, N.A. (including its branches and correspondents) (“Bank of America”), in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender.

RECITALS

A. Prior to or substantially concurrently with the occurrence of the Closing Date, First Watch Restaurant Group, Inc., a Delaware corporation (the “Parent”), an indirect parent entity of the Borrower, will consummate an initial public offering of its Capital Stock (the “IPO”).

B. Substantially concurrently with the occurrence of the Closing Date, all outstanding indebtedness for borrowed money of the Borrower and its subsidiaries under that certain Credit Agreement, dated as of August 21, 2017 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the “Existing Credit Agreement”), among, *inter alios*, Holdings, the Borrower, the subsidiary guarantors party thereto, the lenders party thereto and Golub Capital Markets LLC, 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”).

C. To fund a portion of the Closing Date Refinancing, the Borrower has requested that the Lenders extend credit under this Agreement in the form of (x) Initial Term Loans in an aggregate principal amount on the Closing Date of \$100,000,000 and (y) an Initial Revolving Facility with an available amount of \$75,000,000.

D. The Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

SECTION 1. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“ABR”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Alternate Base Rate.

“ABR Term SOFR Determination Day” has the meaning set forth in the definition of “Term SOFR”.

“Acceptable Debtor-In-Possession Financing” means any debtor-in-possession or similar financing (a) incurred by Holdings, the Borrower or a Restricted Subsidiary following a voluntary petition by Holdings, the Borrower or any of its Restricted 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.

“ACH” means automated clearing house transfers.

“Additional Agreement” has the meaning assigned to such term in Section 8.10.

“Additional Commitment” means any commitment hereunder added pursuant to Sections 2.22, 2.23 and/or 9.02(c).

“Additional Loans” means any Additional Revolving Loan and any Additional Term Loan.

“Additional Revolving Credit Commitments” means any revolving credit commitment added pursuant to Sections 2.22, 2.23 and/or 9.02(c)(ii).

“Additional Revolving Credit Exposure” means, with respect to any Lender at any time, the aggregate Outstanding Amount at such time of all Additional Revolving Loans of such Lender, plus the aggregate outstanding amount at such time of such Lender’s LC Exposure and Swingline Exposure, in each case, attributable to its Additional Revolving Credit Commitment.

“Additional Revolving Lender” means any Lender with an Additional Revolving Credit Commitment or any Additional Revolving Credit Exposure.

“Additional Revolving Loans” means any revolving loan added hereunder pursuant to Section 2.22, 2.23 and/or 9.02(c)(ii).

“Additional Term Lender” means any Lender with an Additional Term Loan Commitment or an outstanding Additional Term Loan.

“Additional Term Loan Commitment” means any term commitment added pursuant to Sections 2.22, 2.23 and/or 9.02(c)(i).

“Additional Term Loans” means any term loan added pursuant to Section 2.22, 2.23 and/or 9.02(c)(i).

“Adjusted Consolidated Net Income” means, in respect of any period, an amount determined for the Borrower and its Restricted Subsidiaries, on a consolidated basis, equal to (a) Consolidated Net Income for such period plus (b) the sum, without duplication (and to the extent deducted and not added back in calculating Consolidated Net Income for such period), for such period of:

- (i) (A) any depreciation and/or amortization (including amortization of goodwill, software and other intangible assets), (B) any impairment Charge, including any bad debt expense, and (C) any asset write-off and/or write-down; plus
- (ii) any amount that may be added back in the calculation of Consolidated Adjusted EBITDA for such period pursuant to clause (c)(viii) of the definition thereof.

~~“Adjustment” has the meaning assigned to such term in Section 1.13.~~

“Adjusted Daily Simple SOFR” means, for any day, (a) Daily Simple SOFR for such day plus (b) the Daily Simple SOFR Adjustment; provided that if Adjusted Daily Simple SOFR determined as provided above shall ever be less than the Floor, then Adjusted Daily Simple SOFR shall be deemed to be the Floor.

“Adjusted Term SOFR” means, for any day, (a) Term SOFR for such day plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR determined as provided above shall ever be less than 0.00%, then Adjusted Term SOFR shall be deemed to be the Floor.

“Adjustment Date” means the date of delivery of financial statements required to be delivered pursuant to Section 5.01(a) or Section 5.01(b), as applicable.

“Administrative Agent” has the meaning assigned to such term in the preamble to this Agreement.

“Administrative Questionnaire” means a customary administrative questionnaire in the form provided by the Administrative Agent.

“Adverse Proceeding” means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Holdings, the Borrower or any of its Restricted Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claim), whether pending or, to the knowledge of Holdings, the Borrower or any of its Restricted Subsidiaries, threatened in writing, against or affecting Holdings, the Borrower or any of its Restricted Subsidiaries or any property of Holdings, the Borrower or any of its Restricted Subsidiaries.

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

“Affiliate” means, as applied to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with, that Person. No Person shall be an “Affiliate” of the Borrower and/or any Restricted Subsidiary solely because it is an unrelated portfolio company of any Sponsor and none of the Administrative Agent, the Arrangers, any Lender (other than any Affiliated Lender or any Debt Fund Affiliate) or any of their respective Affiliates shall be considered an Affiliate of the Borrower or any subsidiary thereof. For purposes of this Agreement and the other Loan Documents, Jefferies LLC and its Affiliates shall be deemed to be Affiliates of Jefferies Finance LLC and its Affiliates.

“Affiliated Lender” means any Non-Debt Fund Affiliate, Holdings, the Borrower and/or any subsidiary of the Borrower.

“Affiliated Lender Assignment and Assumption” means (a) an assignment and assumption entered into by a Lender and an Affiliated Lender (with the consent of any party whose consent is required by Section 9.05) and accepted by the Administrative Agent in the form of Exhibit A-1 and/or (b) any other form approved by the Administrative Agent and the Borrower.

“Affiliated Lender Cap” has the meaning assigned to such term in Section 9.05(g)(iv).

“Agreement” has the meaning assigned to such term in the preamble to this Credit Agreement.

“Agreement Currency” has the meaning assigned to such term in Section 9.25.

“Alternate Base Rate” means, for any day, a rate per annum equal to the highest of (a) the Federal Funds Effective Rate in effect on such day plus 0.50%, (b) ~~to the extent ascertainable, the Published LIBO Rate (which rate shall be calculated based upon an Interest Period of one month and shall be determined on a daily basis and, for the avoidance of doubt, the Published LIBO Rate for any day shall be based on the rate determined on such day at 11 a.m. (London time))~~ Adjusted Term SOFR for a one-month tenor in effect on such day plus 1.00%, (c) the Prime Rate and (d) solely in the case of Initial Revolving Loans and Initial Term Loans, 1.00%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or ~~the Published LIBO Rate~~ Adjusted Term SOFR, as the case may be, shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or ~~the Published LIBO Rate~~ Adjusted Term SOFR, as the case may be.

“Amendment No. 1” means that certain Amendment No. 1 to Credit Agreement, dated as of February 24, 2023, by and among the Borrower, the Issuing Banks party thereto, the Lenders party thereto and the Administrative Agent.

“Applicable Percentage” means, (a) with respect to any Term Lender of any Class, a percentage equal to a fraction the numerator of which is the aggregate outstanding principal amount of the Term Loans and unused Additional Term Loan Commitments of such Term Lender under the applicable Class and the denominator of which is the aggregate outstanding principal amount of the Term Loans and unused Term Commitments of all Term Lenders under the applicable Class and (b) with respect to any Revolving Lender of any Class, the percentage of the aggregate amount of the Revolving Credit

Commitments of such Class represented by such Lender's Revolving Credit Commitment of such Class; provided that, for purposes of Section 2.21 and otherwise herein (except with respect to Section 2.11(a)(ii)), when there is a Defaulting Lender, such Defaulting Lender's Revolving Credit Commitment shall be disregarded for any relevant calculation. In the case of clause (b), in the event that the Revolving Credit Commitments of any Class have expired or been terminated, the Applicable Percentage of any Revolving Lender of such Class shall be determined on the basis of the Revolving Credit Exposure of such Revolving Lender attributable to its Revolving Credit Commitment of such Class, giving effect to any assignment thereof.

"Applicable Rate" means, for any day, (a) with respect to any Initial Term Loan, the rate per annum applicable to the relevant Class of Loans in the table set forth below under the caption "ABR Spread for Initial Term Loans" or "~~LIBO-Rate~~Term SOFR Spread for Initial Term Loans", as the case may be, based upon the Total Rent Adjusted Net Leverage Ratio and (b) with respect to any Initial Revolving Loan, the rate per annum applicable to the relevant Class of Loans in the table set forth below under the caption "ABR Spread for Initial Revolving Loans" or "~~LIBO-Rate~~Term SOFR Spread for Initial Revolving Loans", as the case may be, based upon the Total Rent Adjusted Net Leverage Ratio; provided that, until the first Adjustment Date following the completion of at least one full Fiscal Quarter ending

after the Closing Date, the “Applicable Rate” for any Initial Term Loan and/or any Initial Revolving Loan shall be the applicable rate per annum set forth below in Category 3 of the table set forth below:

<u>Total Rent Adjusted Net Leverage Ratio</u>	<u>ABR Spread for Initial Term Loans</u>	<u>LIBO Rate Term SOFR Spread for Initial Term Loans</u>	<u>ABR Spread for Initial Revolving Loans (including Swingline Loans)</u>	<u>LIBO Rate Term SOFR Spread for Initial Revolving Loans</u>
<u>Category 1</u> Greater than 5.00 to 1.00	2.00%	3.00%	2.00%	3.00%
<u>Category 2</u> Greater than 4.50 to 1.00 but less than or equal to 5.00 to 1.00	1.75%	2.75%	1.75%	2.75%
<u>Category 3</u> Greater than 4.00 to 1.00 but less than or equal to 4.50 to 1.00	1.50%	2.50%	1.50%	2.50%
<u>Category 4</u> Less than or equal to 4.00 to 1.00	1.25%	2.25%	1.25%	2.25%

The Applicable Rate with respect to any Initial Term Loan and Initial Revolving Loan (including any Swingline Loan) shall be adjusted quarterly on a prospective basis on each Adjustment Date based upon the Total Rent Adjusted Net Leverage Ratio in accordance with the table above; provided that, at the election of the Required Lenders or the Required Revolving Lenders, as applicable, if financial statements are not delivered when required pursuant to Section 5.01(a) or (b), as applicable, the “Applicable Rate” for any Initial Term Loan or Initial Revolving Loan shall be the rate per annum set forth above in Category 1 until such financial statements are delivered in compliance with Section 5.01(a) or (b), as applicable.

“Applicable Revolving Credit Percentage” means, with respect to any Revolving Lender at any time, the percentage of the Total Revolving Credit Commitment at such time represented by such Revolving Lender’s Revolving Credit Commitments at such time; provided that for purposes of Section 2.21, when there is a Defaulting Lender, any such Defaulting Lender’s Revolving Credit Commitment shall be disregarded in the relevant calculations. In the event that (a) the Revolving Credit Commitments of any Class have expired or been terminated in accordance with the terms hereof (other

than pursuant to Article 7), the Applicable Revolving Credit Percentage shall be recalculated without giving effect to the Revolving Credit Commitments of such Class or (b) the Revolving Credit Commitments of all Classes have terminated (or the Revolving Credit Commitments of any Class have terminated pursuant to Article 7), the Applicable Revolving Credit Percentage shall be determined based upon the Revolving Credit Commitments (or the Revolving Credit Commitments of such Class) most recently in effect, giving effect to any assignments thereof.

“Approved Fund” means, with respect to any Lender, any Person (other than a natural person (or any holding company, investment vehicle or trust for, or owned and operated by, or for the primary benefit of, one or more natural persons)) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities and is administered, advised or managed by (a) such Lender, (b) any Affiliate of such Lender or (c) any entity or any Affiliate of any entity that administers, advises or manages such Lender.

“Arrangers” means BofA Securities, Inc. and PNC Bank, National Association, in their respective capacities as joint lead arrangers and joint bookrunners hereunder.

“Assignment Agreement” means, collectively, each Assignment and Assumption and each Affiliated Lender Assignment and Assumption.

“Assignment and Assumption” means (a) an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.05), and accepted by the Administrative Agent in the form of Exhibit A-2 and/or (b) any other form approved by the Administrative Agent and the Borrower.

“Available Amount” means, at any time, an amount equal to, without duplication:

(a) the sum of:

(i) [reserved]; plus

(ii) an amount, not less than zero for any period, equal to the CNI Growth Amount (provided that no amount shall be available pursuant to this clause (ii), (x) unless the Total Rent Adjusted Net Leverage Ratio does not exceed 4.50:1.00 on a Pro Forma Basis and (y) for any Restricted Payment made in reliance on Section 6.04(a)(iii)(A) if an Event of Default under Section 7.01(a), (f) or (g) exists); plus

(iii) (A) the amount of any capital contribution in respect of Qualified Capital Stock or the proceeds of any issuance of Qualified Capital Stock after the Closing Date that are Not Otherwise Applied (other than any amount (1) constituting a Cure Amount or an Available Excluded Contribution Amount, (2) received from the Borrower or any Restricted Subsidiary or (3) consisting of the proceeds of any loan or advance made pursuant to Section 6.06(h)(ii)) received or deemed to be received as Cash equity by the Borrower or any of its Restricted Subsidiaries), plus (B) the fair market value, as determined by the Borrower in good faith, of Cash Equivalents, marketable securities or other property received or deemed to be received by the Borrower as a capital contribution in respect of Qualified Capital Stock or in return for any issuance of Qualified Capital Stock that are Not Otherwise Applied (other than any amount (1) constituting a Cure Amount or an Available Excluded Contribution Amount or (2) received from the Borrower or any Restricted Subsidiary), in each case, during the period from and including the day immediately following the Closing Date through and including such time; plus

(iv) the aggregate principal amount of any Indebtedness (including any Disqualified Capital Stock), of the Borrower or any Restricted Subsidiary issued after the Closing Date (other than Indebtedness or such Disqualified Capital Stock issued to the Borrower or any Restricted Subsidiary), which has been converted into or exchanged for Capital Stock of the Borrower or any Parent Company that does not constitute

Disqualified Capital Stock, together with the fair market value of any Cash Equivalents and the fair market value (as determined by the Borrower in good faith) of any assets received by the Borrower or such Restricted Subsidiary upon such exchange or conversion, in each case, during the period from and including the day immediately following the Closing Date through and including such time; plus

(v) the Net Proceeds received by the Borrower or any Restricted Subsidiary during the period from and including the day immediately following the Closing Date through and including such time in connection with the Disposition to any Person (other than the Borrower or any Restricted Subsidiary) of any Investment made pursuant to Section 6.06(r)(i) (up to the original amount of the Investment permitted in reliance on such clause); plus

(vi) to the extent not already reflected as a return of capital with respect to such Investment for purposes of determining the amount of such Investment (pursuant to the definition thereof), the proceeds received (or deemed to be received) by the Borrower or any Restricted Subsidiary during the period from and including the day immediately following the Closing Date through and including such time in connection with cash returns, cash profits, cash distributions and similar cash amounts, including cash principal repayments and interest payments of loans, in each case, received in respect of any Investment made after the Closing Date pursuant to Section 6.06(r)(i) (up to the original amount of the Investment permitted in reliance on such clause); plus

(vii) an amount equal to the sum of (A) the amount of any Investment made by the Borrower or any Restricted Subsidiary in any Unrestricted Subsidiary or any other Person (other than the Borrower or any Restricted Subsidiary) that has been re-designated as or has become, as applicable, a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or is liquidated, wound up or dissolved into, the Borrower or any Restricted Subsidiary and (B) an amount equal to the fair market value (as determined by the Borrower in good faith) of the assets (including cash or Cash Equivalents) of any Unrestricted Subsidiary or any other Person (other than the Borrower or any Restricted Subsidiary) that have been distributed, conveyed or otherwise transferred to the Borrower or any Restricted Subsidiary, in each case, during the period from and including the day immediately following the Closing Date through and including such time, in case of clauses (A) and (B), to the extent the original Investment in such Person was made pursuant to Section 6.06(r)(i) (up to the original amount of the Investment permitted in reliance on such clause); plus

(viii) to the extent not already included in the CNI Growth Amount, the aggregate amount of any Cash dividend or other Cash distribution received (or deemed received) by the Borrower or any Restricted Subsidiary from any Unrestricted Subsidiary after the Closing Date (up to the original amount of the Investment permitted in reliance on Section 6.06(r)(i)); plus

(ix) the amount of any Declined Proceeds; plus

(x) [reserved]; plus

(xi) [reserved]; plus

(xii) the fair market value of any First Lien Debt and/or Junior Lien Debt that has been contributed to the Borrower and/or any of its Restricted Subsidiaries in accordance with Section 9.05(g) (or any comparable provision under any definitive documentation governing such First Lien Debt or Junior Lien Debt, as applicable); plus

(xiii) the aggregate face amount of any Indebtedness of the Borrower and/or any Restricted Subsidiary that is cancelled, released or otherwise terminated by virtue of

the incurrence or assumption by any Unrestricted Subsidiary of any such Indebtedness, including by way of an “exchange” or similar transaction; plus

(xiv) the value of any transaction consideration in any Permitted Acquisition or other Investment attributable in the good faith determination of the Borrower to the Qualified Capital Stock of the Borrower or its applicable Parent Company issued in connection with such Permitted Acquisition or other Investment that is Not Otherwise Applied up to the fair market value (as determined by the Borrower in good faith) of the assets acquired by the Borrower and its Restricted Subsidiaries as a result of such Permitted Acquisition or other Investment; minus

(b) an amount equal to the sum of (i) Restricted Payments made pursuant to Section 6.04(a)(iii)(A), plus (ii) Restricted Debt Payments made pursuant to Section 6.04(b)(vi)(A), plus (iii) Investments made pursuant to Section 6.06(r)(i), in each case, after the Closing Date and prior to such time or contemporaneously therewith.

“Available Excluded Contribution Amount” means the aggregate amount of Cash or Cash Equivalents or the fair market value of other assets (as determined by the Borrower in good faith, but excluding any Cure Amount) received (or deemed received) by the Borrower or any of its Restricted Subsidiaries after the Closing Date from:

(c) contributions (or deemed contributions) of assets (including cash) in respect of Qualified Capital Stock of the Borrower (other than any amount received from any Restricted Subsidiary) that are Not Otherwise Applied; and

(d) the sale or issuance of Qualified Capital Stock of the Borrower that are Not Otherwise Applied (other than (x) to any Restricted Subsidiary, (y) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or (z) with the proceeds of any loan or advance made pursuant to Section 6.06(h)(ii)),

in each case, designated by the Borrower as an Available Excluded Contribution Amount on or promptly after the date on which the relevant capital contribution is made (or deemed to be made) or the relevant proceeds are received (or deemed to be received), as the case may be, and which are excluded from the calculation of the Available Amount.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.14(b).

“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 I 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 affiliate (other than through liquidation, administration or other insolvency proceedings).

“Bank of America” has the meaning assigned to such term in the preamble to this Agreement.

“Banking Services” means each and any of the following services: commercial credit cards, stored value cards, purchasing cards, treasury management services, netting services, overdraft protections, check drawing services, automated payment services (including depository, overdraft, controlled disbursement, ACH transactions, return items and interstate depository network services), employee credit card programs, cash pooling services, supply chain and/or supplier financing services and any arrangement and/or service similar to any of the foregoing and/or otherwise in connection with Cash management and Deposit Accounts.

“Banking Services Obligations” means any and all obligations of any Loan Party, whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under any arrangement in connection with Banking Services that is in effect on the Closing Date or entered into at any time on or after the Closing Date between any Loan Party and (a) a counterparty that is (or is an Affiliate of) the Administrative Agent, any Lender or any Arranger as of the Closing Date or at the time such arrangement is entered into and/or (b) any other Person, in each case of the Persons described in the foregoing clauses (a) and (b), that is designated in writing by the Borrower to the Administrative Agent as a provider of Banking Services Obligations for purposes of the Loan Documents, it being understood that each counterparty provider of Banking Services Obligations shall be deemed (A) to appoint the Administrative Agent as its agent under the applicable Loan Documents and (B) to agree to be bound by the provisions of Article 8, Section 9.03 and Section 9.10 and any applicable Intercreditor Agreement as if it were a Lender.

“Bankruptcy Code” means Title 11 of the United States Code (11 USC § 101 *et seq.*), as it has been, or may be, amended, from time to time.

“Benchmark” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.14(b).

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(a) Adjusted Daily Simple SOFR; or

(b) the sum of (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor for any Class, such Benchmark Replacement for such Class will be deemed to be the Floor for such Class for purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Date” means, with respect to any Benchmark, the earlier to occur of the following events with respect to such then-current Benchmark:

(c) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); and

(d) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which all Available Tenors of such Benchmark (or the published component used in the calculation thereof) have been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) above with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(e) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(f) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(g) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, with respect to any Benchmark, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14(b) and (b) ending at the time that a Benchmark

[Replacement has replaced the then-current Benchmark for all purposes hereunder and under any other Loan Document in accordance with Section 2.14\(b\).](#)

“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.

“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”.

“Board” means the Board of Governors of the Federal Reserve System of the US.

“Borrower” has the meaning assigned to such term in the preamble to this Agreement and shall, for the avoidance of doubt, include any Successor Borrower.

“Borrower Materials” has the meaning assigned to such term in [Section 9.01\(d\)](#).

“Borrowing” means any Loans of the same Type and Class made, converted or continued on the same date and, in the case of ~~LIBO~~ [Rate Term SOFR](#) Loans, as to which a single Interest Period is in effect.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with [Section 2.03](#) and substantially in the form attached hereto as [Exhibit B](#) or such other form that is reasonably acceptable to the Administrative Agent and the Borrower, including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent and the Borrower, in each case, appropriately completed and signed by a Responsible Officer of the Borrower.

“Burdensome Agreement” has the meaning assigned to such term in [Section 6.05](#).

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that when used in connection with a ~~LIBO~~ [Rate Term SOFR](#) Loan, the term “Business Day” shall also exclude any day ~~on which banks are not open for dealings in Dollar deposits in the London interbank market~~ [that is not a U.S. Government Securities Business Day](#).

“Business Optimization Initiative” has the meaning assigned to such term in the definition of “Consolidated Adjusted EBITDA”.

“Capital Expenditures” means, with respect to the Borrower and its Restricted Subsidiaries for any period, the aggregate amount, without duplication, of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capital Leases) that would, in accordance with GAAP, be, or are required to be included as, capital expenditures on the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries for such period.

“Capital Lease” means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person; provided that for the avoidance of doubt, the amount of obligations attributable to any Capital Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“Capital Stock” means any and all shares, interests, participations, preferred equity certificates, convertible preferred equity certificates or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including

partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing, but excluding for the avoidance of doubt any Indebtedness convertible into or exchangeable for any of the foregoing.

“Captive Insurance Subsidiary” means any Restricted Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Restricted Subsidiary thereof).

“Cash” means money, currency or a credit balance in any Deposit Account, in each case determined in accordance with GAAP.

“Cash Equivalents” means, as at any date of determination, (a) readily marketable securities (i) issued or directly and unconditionally guaranteed or insured as to interest and principal by the ~~U~~S~~S. government or (ii) issued by any agency or instrumentality of the US the obligations of which are backed by the full faith and credit of the US, in each case maturing within one year after such date and, in each case, repurchase agreements and reverse repurchase agreements relating thereto, (b) readily marketable direct obligations issued by any state of the US or any political subdivision of any such state or any public instrumentality thereof or by any foreign government, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody’s or at least “A” from Fitch (or, if at any time none of S&P, Moody’s or Fitch rates such obligations, an equivalent rating from another nationally recognized statistical rating agency) and, in each case, repurchase agreements and reverse repurchase agreements relating thereto, (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P, at least P-2 from Moody’s or at least “F2” from Fitch (or, if at any time none of S&P, Moody’s or Fitch rates such obligations, an equivalent rating from another nationally recognized statistical rating agency), (d) deposits, money market deposits, time deposit accounts, certificates of deposit or bankers’ acceptances (or similar instruments) maturing within one year after such date and issued or accepted by any Lender or by any bank organized under, or authorized to operate as a bank under, the laws of the US, any state thereof or the District of Columbia or any political subdivision thereof or any foreign bank or its branches or agencies in each case organized under, or authorized to operate as bank under, the laws of any jurisdiction in which any subsidiary is organized or has operations and that has capital and surplus of not less than \$100,000,000 and, in each case, repurchase agreements and reverse repurchase agreements relating thereto, (e) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank having capital and surplus of not less than \$100,000,000, (f) shares of any investment fund that has (i) substantially all of its assets invested in the types of investments referred to in clauses (a) through (e) above, (ii) net assets of not less than \$250,000,000 and (iii) a rating of at least A-2 from S&P, at least P-2 from Moody’s or at least “A” from Fitch (or, if at any time either S&P, Moody’s or Fitch are not rating such fund, an equivalent rating from another nationally recognized statistical rating agency) and (g) solely with respect to any Captive Insurance Subsidiary, any investment that such Captive Insurance Subsidiary is not prohibited to make in accordance with applicable law. “Cash Equivalents” shall also include (x) Investments of the type and maturity described in clauses (a) through (g) above of foreign obligors, which Investments or obligors (or the parent companies thereof) have the ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (y) other short-term Investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in Investments that are analogous to the Investments described in clauses (a) through (g) and in this paragraph.~~

“Cash Interest Expense Amount” has the meaning assigned to such term in the definition of “Consolidated Fixed Charges”.

“Change in Law” means (a) the adoption of any law, treaty, rule or regulation after the Closing Date, (b) any change in any law, treaty, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender or any Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or such Issuing Bank or by such Lender’s or such Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date (other than any such request, guideline or directive to comply with any law, rule or regulation that was in effect on the Closing Date). For purposes of this definition and Section 2.15, (x) the Dodd-Frank

Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or US or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case described in clauses (a), (b) and (c) above, be deemed to be a Change in Law, regardless of the date enacted, adopted, issued or implemented.

“Change of Control” means:

(a) a Responsible Officer of the Borrower becomes aware of the acquisition of the beneficial ownership by any Person or group (as used in this definition, within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) (including any group acting for the purpose of acquiring, holding or disposing of Securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), but excluding (i) any employee benefit plan and/or Person acting as the trustee, agent or other fiduciary or administrator therefor, (ii) one or more Permitted Holders and (iii) underwriters in connection with any offering of Capital Stock), of voting common stock representing more than the greater of (x) 35% of the total voting power of all of the outstanding voting common stock of the Parent and (y) the percentage of the total voting power of all of the outstanding voting common stock of the Parent owned, directly or indirectly, beneficially by the Permitted Holders; provided that notwithstanding the provisions of this clause (a), no “Change of Control” shall be deemed to have occurred under this clause (a) if the Permitted Holders have the right, by voting power, contract or otherwise, to elect or designate for election at least a majority of the board of directors of the Parent; and

(b) the Parent ceasing to control, directly or indirectly, 100% of the voting Capital Stock of the Borrower (other than as a result of a merger of the Borrower into the Parent or of the Parent into the Borrower).

For purposes of this definition, (1) a Person or group shall not be deemed to beneficially own Capital Stock or voting power subject to a stock or asset purchase agreement, merger agreement or similar agreement (or voting or similar agreement related thereto) until the consummation of the acquisition of the Capital Stock or voting power pursuant to the transactions contemplated by such agreement, (2) if any group includes one or more Permitted Holders, the issued and outstanding Capital Stock of the relevant Person that is directly or indirectly owned by the Permitted Holders that are part of such group shall not be treated as being beneficially owned by such group or any other member of such group for purposes of this definition, (3) a Person or group will not be deemed to beneficially own the Capital Stock of another Person as a result of its ownership of the Capital Stock or other securities of such other Person’s parent company (or any related contractual right) unless it beneficially owns or controls 50% or more of the total voting power of the Capital Stock entitled to vote for the election of directors of such Person’s parent company having a majority of the aggregate votes on the board of directors (or equivalent governing body) of such Person’s parent company and (4) it is understood and agreed that any transaction resulting in a Successor Borrower or Successor Holdings in accordance with the terms hereof shall not give rise to a Change of Control.

“Charge” means any fee, charge, expense, cost, accrual, reserve or loss of any kind.

“Charged Amounts” has the meaning assigned to such term in Section 9.19.

“Class”, when used with respect to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Initial Term Loans, Additional Term Loans of any series established as a separate “Class” pursuant to Section 2.22, 2.23 and/or 9.02(c)(i), Initial Revolving Loans, Additional Revolving Loans of any series established as a separate “Class” pursuant to Section 2.22, 2.23 and/or 9.02(c)(ii) or Swingline Loans, (b) any Commitment, refers to whether such Commitment is an Initial Term Loan Commitment, an Additional Term Loan Commitment of any series established as a separate “Class” pursuant to Section 2.22, 2.23 and/or 9.02(c)(i), an Initial Revolving Credit Commitment, an Additional Revolving Credit Commitment of any series established as a separate “Class” pursuant to Section 2.22, 2.23 and/or 9.02(c)(ii) or a commitment to make Swingline Loans, (c) any

Lender, refers to whether such Lender has a Loan or Commitment of a particular Class and (d) any Revolving Credit Exposure, refers to whether such Revolving Credit Exposure is attributable to a Revolving Credit Commitment of a particular Class.

“Closing Date” means October 6, 2021, the date on which the conditions specified in Section 4.01 were satisfied (or waived in accordance with Section 9.02).

“Closing Date Refinancing” has the meaning assigned to such term in the recitals to this Agreement.

“CNI Growth Amount” means, at any date of determination, for the period (treated as one accounting period) from the first day of the Fiscal Quarter of the Borrower during which the Closing Date occurs and ending with the last Fiscal Quarter of the Borrower included in the most recently ended Test Period, an amount (which amount shall not be less than zero for any Fiscal Quarter) determined on a cumulative basis equal to 50% of Adjusted Consolidated Net Income for each such Fiscal Quarter included in such period (if Adjusted Consolidated Net Income for such Fiscal Quarter is positive).

“Code” means the Internal Revenue Code of 1986.

“Collateral” means any and all property of any Loan Party subject (or purported to be subject) to a Lien under any Collateral Document and any and all other property of any Loan Party, now existing or hereafter acquired, that is or becomes subject (or purported to be subject) to a Lien pursuant to any Collateral Document to secure the Secured Obligations. For the avoidance of doubt, in no event shall “Collateral” include any Excluded Asset.

“Collateral and Guarantee Requirement” means, at any time, subject to (x) the applicable limitations set forth in this Agreement and/or any other Loan Document and the terms of any applicable Intercreditor Agreement and (y) the time periods (and extensions thereof) set forth in Section 5.12 and/or Section 5.15, as applicable, the requirement that:

(c) on the Closing Date, the Administrative Agent shall have received (A) each Collateral Document and Loan Guaranty listed on Schedule 1.01(c), duly executed by each Loan Party party thereto, (B) a pledge of all of the Capital Stock (together, in the case of Capital Stock that is certificated, with undated stock or similar powers for each such certificate executed in blank by a Responsible Officer of the pledgor thereof) listed on Schedule 3 to the Perfection Certificate, (C) each Material Debt Instrument listed on Schedule 4 to the Perfection Certificate, endorsed (without recourse) in blank or accompanied by executed transfer form in blank by the pledgor thereof and (D) Uniform Commercial Code financing statements in appropriate form for filing in the jurisdiction of organization of each Loan Party; and

(d) after the Closing Date, in the case of any Restricted Subsidiary that is required to become (or otherwise becomes) a Loan Party after the Closing Date the Administrative Agent shall have received:

(i) (A) a Joinder Agreement, (B) if the respective Restricted Subsidiary required to comply with the requirements set forth in this definition pursuant to Section 5.12 owns registrations of or applications for US Patents, Trademarks and/or Copyrights that constitute Collateral, an Intellectual Property Security Agreement, (C) a completed Perfection Certificate, (D) Uniform Commercial Code financing statements in appropriate form for filing in such jurisdictions as the Administrative Agent may reasonably request and (E) an executed joinder to each applicable Intercreditor Agreement in substantially the form attached as an exhibit thereto or such other form to which the Administrative Agent may reasonably agree;

(ii) each item of Collateral that such Restricted Subsidiary is required to deliver under Section 4.02 of the Security Agreement (which, for the avoidance of doubt, shall be delivered within the time periods set forth in Section 5.12(a)); and

(iii) in the case of any subsidiary that has been designated as a Discretionary Guarantor (A) with respect to any such subsidiary that is a Domestic Subsidiary, the documents described in clause (b)(i) above and (B) with respect to any such subsidiary that is a Foreign Subsidiary, (1) a Joinder Agreement and (2) such other documentation relating to such categories of assets (other than Excluded Assets) as the Borrower and Administrative Agent may reasonably agree;

“Collateral Documents” means, collectively, (a) the Security Agreement (and any supplement thereto delivered to the Administrative Agent), (b) each Intellectual Property Security Agreement, and (c) each of the other instruments and documents pursuant to which any Loan Party grants (or purports to grant) a Lien on any Collateral as security for payment of the Secured Obligations.

“Commercial Letter of Credit” means any letter of credit issued pursuant to this Agreement for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by the Borrower or any of its subsidiaries in the ordinary course of business of such Person.

“Commercial Tort Claim” has the meaning set forth in Article 9 of the UCC.

“Commitment” means, with respect to each Lender, such Lender’s Initial Term Loan Commitment, Initial Revolving Credit Commitment and any Additional Commitment, as applicable, in effect as of such time.

“Commitment Fee Rate” means, on any date (a) with respect to the Initial Revolving Credit Commitments, the applicable rate per annum set forth below based upon the Total Rent Adjusted Net Leverage Ratio; provided that, until the first Adjustment Date following the completion of at least one full Fiscal Quarter ending after the Closing Date, “Commitment Fee Rate” shall be the applicable rate per annum set forth below in Category 2 and (b) with respect to Additional Revolving Credit Commitments of any Class, the rate or rates per annum specified in the applicable Refinancing Amendment, Incremental Facility Amendment or Extension Amendment:

<u>Total Rent Adjusted Net Leverage Ratio</u>	<u>Commitment Fee Rate</u>
<u>Category 1</u> Greater than 5.00 to 1.00	0.50%
<u>Category 2</u> Greater than 4.00 to 1.00 but less than or equal to 5.00:1.00	0.375%
<u>Category 3</u> Less than or equal to 4.00 to 1.00	0.25%

The Commitment Fee Rate with respect to the Initial Revolving Credit Commitment shall be adjusted quarterly on a prospective basis on each Adjustment Date based upon the Total Rent Adjusted Net Leverage Ratio in accordance with the table set forth above; provided that if financial statements are not delivered when required pursuant to Section 5.01(a) or (b), as applicable, at the election of the Required Revolving Lenders, the Commitment Fee Rate shall be the rate per annum set forth above in Category 1 until such financial statements are delivered in compliance with Section 5.01(a) or (b), as applicable.

“Commitment Schedule” means the Schedule attached hereto as Schedule 1.01(a).

“Commodity Exchange Act” means the Commodity Exchange Act (7 USC § 1 *et seq.*).

“Company Competitor” means any competitor of the Borrower and/or any of its subsidiaries.

“Competitor Debt Fund Affiliate” means, with respect to any Company Competitor or any Affiliate thereof, any debt fund, investment vehicle, regulated bank entity or unregulated lending entity (in each case, other than any Disqualified Lending Institution or any Excluded Party) that is (a) primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business for financial investment purposes (but not with a view towards (i) owning the borrower or issuer of any such loan or similar extension of credit or (ii) investing in special or opportunistic situations) and (b) managed, sponsored or advised by any person that is controlling, controlled by or under common control with the relevant Company Competitor or Affiliate thereof, but only to the extent that no personnel involved with the investment in the relevant Company Competitor or its Affiliates, or the management, control or operation thereof, (i) makes (or has the right to make or participate with others in making) investment decisions on behalf of, or otherwise cause the direction of the investment policies of, such debt fund, investment vehicle, regulated bank entity or unregulated entity or (ii) has access to any information (other than information that is publicly available) relating to the Borrower and/or any entity that forms part of its business (including any of its subsidiaries).

“Compliance Certificate” means a Compliance Certificate substantially in the form of Exhibit D or such other form to which the Borrower and the Administrative Agent may reasonably agree.

“Confidential Information” has the meaning assigned to such term in Section 9.13.

“Conforming Changes” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational change (including any change to the definitions of “Alternate Base Rate”, “Business Day”, “U.S. Government Securities Business Day”, “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides (in consultation with the Borrower) may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides (in consultation with the Borrower) is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Consolidated Adjusted EBITDA” means, with respect to any Person on a consolidated basis for any period, the sum of:

- (a) Consolidated Net Income for such period; plus
- (b) to the extent not otherwise included in the determination of Consolidated Net Income for such period, the amount of any proceeds of any business interruption insurance policy (whether or not then received so long as such Person in good faith expects to receive such proceeds); plus
- (c) without duplication, those amounts which, in the determination of Consolidated Net Income for such period, have been deducted for:
 - (i) Consolidated Interest Expense; plus
 - (ii) [reserved]; plus

(iii) Taxes paid in respect of, and any provision for, federal, state, local and foreign income Taxes; plus

(iv) (A) all depreciation and amortization (including amortization of goodwill, software and other intangible assets), (B) all impairment Charges, including any bad debt expense, and (C) all asset write-offs and/or write-downs, including any amortization or write-off of (1) intangible assets and non-cash organization costs, (2) deferred financing and debt issuance fees, costs and expenses, (3) capitalized expenditures (including capitalized software expenditures), customer acquisition costs and incentive payments, (4) media development costs, conversion costs and contract acquisition costs, (5) the amortization of original issue discount resulting from the issuance or incurrence of Indebtedness at less than par and/or (6) the amortization of favorable or unfavorable lease assets or liabilities; plus

(v) any earn-out and/or contingent consideration obligation (including those accounted for as bonuses, compensation or otherwise) and any adjustment thereof incurred in connection with the Transactions and/or any acquisition and/or other Investment (whether or not consummated) which is paid or accrued during such period and, in each case, adjustments thereof; plus

(vi) any non-cash Charge, including the excess of GAAP rent expense over actual cash rent paid during such period due to the use of straight line rent for GAAP purposes (provided that to the extent that any such non-cash Charge represents an accrual or reserve for any potential cash item in any future period, (A) such Person may elect not to add back such non-cash Charge in the current period and (B) to the extent such Person elects to add back such non-cash Charge in the current period, the cash payment in respect thereof in such future period shall be deducted from Consolidated Adjusted EBITDA to such extent in such future period); plus

(vii) any non-cash compensation Charge and/or any other non-cash Charge arising from the granting of any stock option or similar arrangement (including any profits interest), the granting of any stock appreciation right and/or similar arrangement (including any repricing, amendment, modification, substitution or change of any such stock option, stock appreciation right, profits interest or similar arrangement); plus

(viii) (A) Transaction Costs, (B) any non-recurring Charge incurred in connection with any transaction (in each case, whether or not consummated and whether or not permitted under this Agreement), including (1) any issuance and/or incurrence of Indebtedness (including any Charge that would constitute a Public Company Cost), and/or any issuance and/or offering of Capital Stock (including, in each case, by any Parent Company), any acquisition or other Investment, any Disposition, any recapitalization, any merger, consolidation or amalgamation, any option buyout or any repayment, redemption, refinancing, amendment or modification of Indebtedness (including any amortization or write-off of debt issuance or deferred financing costs, premiums and prepayment penalties) or any similar transaction and/or (2) equipment leases and/or equipment financings, (C) the amount of any non-recurring Charge that is actually reimbursed or reimbursable by any third party pursuant to any indemnification or reimbursement provision or similar agreement (including any purchase price adjustment) or insurance; provided that in respect of any Charge that is added back in reliance on this clause (C), the relevant Person in good faith expects to receive reimbursement for such Charge and/or (D) non-recurring Public Company Costs; plus

(ix) [reserved]; plus

(x) without duplication of any amount referred to in clause (b) above, the amount of (A) any Charge to the extent that a corresponding amount is received in cash by such Person from a Person other than such Person or any Restricted Subsidiary of such Person under any agreement providing for reimbursement of such Charge or (B) any

Charge with respect to any liability or casualty event, business interruption or any product recall, (i) so long as such Person has submitted in good faith, and reasonably expects to receive payment in connection with, a claim for reimbursement of such amounts under its relevant insurance policy or (ii) without duplication of any amount included in a prior period under clause (B)(i) above, to the extent such Charge is covered by insurance proceeds received in cash during such period; plus

(xi) (A) the amount of payments to outside directors of the Borrower, Holdings or any other Parent Company actually paid by or on behalf of, or accrued by, such Person or any of its subsidiaries; provided that, in each case, such payment is permitted under this Agreement and (B) to the extent the relevant payment is permitted hereunder, the amount of any payment to any holder of any option in respect of the Capital Stock of the Borrower, Holdings and/or any other Parent Company in lieu of a Restricted Payment, which payment is made to compensate such optionholder as if it was an equity holder at the time of the relevant Restricted Payment; plus

(xii) any Charge attributable to the undertaking and/or implementation of new initiatives, business optimization activities, cost savings initiatives, cost rationalization programs, operating improvements and/or expense reductions and/or synergies and/or similar initiatives and/or programs (including, in connection with any integration, operational improvement, restructuring or transition, any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, including unused warehouse restaurant, store or Unit Locations), any inventory optimization program and/or any curtailment, any business optimization Charge, any Charge relating to the destruction of equipment, any restructuring Charge and/or integration Charge (including any Charge relating to any tax restructuring), any Charge relating to the closure, consolidation or relocation of any facility, restaurant, store or Unit Location (including but not limited to rent termination costs, moving costs and legal costs), any systems implementation Charge, any severance Charge, any Charge relating to entry into any new market, any Charge relating to any strategic initiative, any signing Charge, any Charge relating to any retention or completion bonus, any expansion and/or relocation Charge, any Charge associated with any modification to any pension and post-retirement employee benefit plan, any Charge associated with system design, update and/or establishment, any upgrade Charge, any platform optimization Charge, any new system implementation Charge, any startup and/or expansion Charge (including administrative, overhead, staffing and related costs and expenses), any Charge in connection with new and/or expanded operations, any Charge in connection with unused warehouse space, any Charge relating to a new contract, any consulting Charge, or any corporate development Charge, any Charge incurred in connection with software, product and/or intellectual property development, any Charge relating to any distribution network and/or sales channel, any Charge in connection with any exit from, wind down or termination of any line of business, any Charge related to any customer dispute, any Charge in connection with the implementation, replacement, development or upgrade of any operational, reporting and/or information technology system and/or technology initiative, in each case, other than any such Charge incurred in the ordinary course of business (as determined by the Borrower in good faith); provided that the amount included in Consolidated Adjusted EBITDA in any four Fiscal Quarter period in reliance on this clause (c)(xii), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 25% Adjustments, shall not exceed 25% of Consolidated Adjusted EBITDA (calculated after giving full effect to the Specified 5% Adjustment, the Specified 15% Adjustments and the Specified 25% Adjustments and all other permitted pro forma adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of "Consolidated Adjusted EBITDA" or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act); plus

(xiii) any Charge incurred or accrued in connection with any single or one-time event, including any such Charges incurred or accrued in connection with (A) acquisitions or similar investments, (B) the consolidation or reconfiguration of any facility, (C) litigation or other legal matter (including actual or prospective legal settlements, fines, judgments or orders) and/or (D) Charges arising from insurance claims and settlements; provided that the amount included in Consolidated Adjusted EBITDA in any four Fiscal Quarter period in reliance on this clause (c)(xiii) (other than such Charges of the type described in the foregoing clause (A) and/or any other one-time Disposition or issuance of debt or equity), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 15% Adjustments, shall not exceed 15% of Consolidated Adjusted EBITDA (calculated after giving full effect to the Specified 5% Adjustment, the Specified 15% Adjustments and the Specified 25% Adjustments and all other permitted pro forma adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act); plus

(xiv) [reserved]; plus

(xv) [reserved]; plus

(xvi) any add-back, adjustment and/or exclusion reflected in (A) the Financial Model and/or (B) any quality of earnings report prepared by any independent registered public accountant of recognized national standing or any other accounting firm reasonably acceptable to the Administrative Agent (a “Quality of Earnings Report”), in each case, delivered to the Administrative Agent (including, for the avoidance of doubt, in connection with any acquisition or similar investment prior to or after the Closing Date); provided that the amount included in Consolidated Adjusted EBITDA in any four Fiscal Quarter period in reliance on this clause (c)(xvi)(B), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 25% Adjustments, shall not exceed 25% of Consolidated Adjusted EBITDA (calculated after giving full effect to the Specified 5% Adjustment, the Specified 15% Adjustments and the Specified 25% Adjustments and all other permitted pro forma adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act); plus

(xvii) [reserved]; plus

(xviii) any loss of operating income that is attributable to any facility, restaurant, store or Unit Location that is temporarily closed for a period not to exceed (or reasonably expected not to exceed) 12 months for remodeling, construction, refurbishment and/or rebuilds; provided that such losses shall be determined based on the store level profits and losses based on the average of six consecutive four-week reporting periods immediately preceding such closure; provided, further, that the amount included in Consolidated Adjusted EBITDA in any four Fiscal Quarter period in reliance on this clause (c)(xviii) shall not exceed 5% of Consolidated Adjusted EBITDA (calculated after giving effect to the adjustments set forth in this clause (c)(xviii), the Specified 15% Adjustments and the Specified 25% Adjustments, and all other permitted pro forma adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model

(without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act); plus

(d) to the extent not included in Consolidated Net Income for such period, cash actually received (or any netting arrangement resulting in reduced cash expenditures) during such period in respect of any non-cash income or gain that was deducted in the calculation of Consolidated Adjusted EBITDA (including any component definition) pursuant to clause (j), below for any previous period and not added back; plus

(e) the full pro forma “run rate” expected cost savings, operating expense reductions, operational improvements, business optimization, restructurings, and/or cost synergies (collectively, “Run-Rate Synergies”) (net of actual amounts realized) that are reasonably identifiable (in the good faith determination of such Person) related to (i) the Transactions, (ii) any asset sale, merger or other business combination, Investment, Disposition, operating improvement, expense reduction, restructuring, cost savings initiative, and/or any initiative similar to any of the foregoing (including the entry into or renegotiation of, or in respect of which binding commitments have been entered for, any contract and/or other arrangement) and/or specified transaction (each, a “Business Optimization Initiative”), in each case, consummated or implemented prior to or on the Closing Date and (iii) any Business Optimization Initiative consummated or implemented after the Closing Date; provided that, with respect to this clause (iii), the relevant Business Optimization Initiative resulting in (or substantial steps toward the relevant Business Optimization Initiative that would result in) such Run-Rate Synergies (x) must either be taken or expected to be taken within 18 months following the applicable date of determination and (y) the amounts added back in any four Fiscal Quarter period in reliance on this clause (e)(iii), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 25% Adjustments, shall not exceed 25% of Consolidated Adjusted EBITDA (calculated after giving full effect to the Specified 5% Adjustment, the Specified 15% Adjustments and the Specified 25% Adjustments and all other permitted pro forma adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act); plus

(f) [reserved]; plus

(g) Consolidated Restaurant Pre-Opening Costs; plus

(h) to the extent not otherwise included in calculating Consolidated Net Income, the amount of any distribution received by such Person from any Unrestricted Subsidiary; plus

(i) [reserved]; minus

(j) any amount which, in the determination of Consolidated Net Income for such period, has been added for any non-cash income or non-cash gain (including the excess of actual cash rent paid over GAAP rent expense during such period to the use of straight line rent for GAAP purposes), all as determined in accordance with GAAP; provided that if any non-cash income or non-cash gain represents an accrual or deferred income in respect of potential cash items in any future period, such Person may determine not to deduct the relevant non-cash gain or income in the then-current period; minus

(k) the amount of any cash payment made during such period in respect of any non-cash accrual, reserve or other non-cash Charge that (A) is accounted for in a prior period, (B) was added to Consolidated Net Income to determine Consolidated Adjusted EBITDA for such prior period and (C) does not otherwise reduce Consolidated Net Income for the current period; minus

(l) any tax benefit received during such period in respect of any federal, state, local and foreign income Taxes.

Notwithstanding anything to the contrary herein, it is agreed that for the purpose of calculating the First Lien Rent Adjusted Net Leverage Ratio, the Secured Rent Adjusted Net Leverage Ratio, the Total Rent Adjusted Net Leverage Ratio and/or the amount of any basket based on a percentage of Consolidated Adjusted EBITDA for any period that includes any Fiscal Quarter listed in the table set forth below, Consolidated Adjusted EBITDA for any Fiscal Quarter referenced in the table set forth below shall be the amount set forth opposite such Fiscal Quarter in the table set forth below, in each case as such amount may be adjusted on a Pro Forma Basis. It is understood and agreed for the avoidance of doubt that the “deemed” Consolidated Adjusted EBITDA numbers set forth below shall not reduce the amount available under any cap set forth in this definition of “Consolidated Adjusted EBITDA”.

<u>Fiscal Quarter Ended</u>	<u>Consolidated Adjusted EBITDA</u>
September 27, 2020	\$5,000,000
December 27, 2020	\$4,400,000
March 28, 2021	\$13,200,000
June 27, 2021	\$22,400,000

“Consolidated Adjusted EBITDAR” means, as of any date of determination, an amount equal to (without duplication) (a) Consolidated Adjusted EBITDA for such Test Period plus (b) Consolidated Cash Rental Expense for such Test Period.

“Consolidated Cash Rental Expense” means, as of any date of determination, (a) all rental expense of the Borrower and its Restricted 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 Capital 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 First Lien Debt” means, as to any Person at any date of determination, the aggregate principal amount of Consolidated Total Debt outstanding on such date that is secured by a Lien on substantially all of the Collateral and that constitutes First Lien Debt.

“Consolidated Fixed Charges” means, as of any date of determination, the sum of the following determined on a consolidated basis for such period, without duplication, for the Borrower and its Restricted Subsidiaries in accordance with GAAP: (a)(i) consolidated cash interest expense relating to Consolidated Total Debt (excluding, among other things, (A) amortization of deferred financing fees, (B) any expense arising from any financing fee (including agency and commitment fees), (C) any expense arising from the discounting of indebtedness in connection with the application of recapitalization and/or acquisition accounting, (D) any penalty and/or interest relating to any tax and (E) any non-cash interest expense attributable to any movement in the mark-to-market valuation of any hedging or other derivative obligation and/or any payment obligation arising under any hedge agreement or other derivative instrument (other than any interest rate hedge agreement or other derivative instrument)) (this clause (a)(i), the “Cash Interest Expense Amount”) minus (ii) cash interest income, plus (b) Consolidated Cash Rental Expense plus (c) regularly scheduled cash payments of principal of any outstanding Indebtedness for borrowed money (with respect to any Test Period containing any period ended prior to the Closing Date, calculated excluding principal payments in respect of the Existing Credit Agreement, including the Closing Date Refinancing), other than any such payments financed with the proceeds of or refinanced through the incurrence of any additional Indebtedness permitted hereunder (other than any Revolving Loans) (this clause (c), the “Scheduled Cash Principal Payments Amount” and, together with the Cash Interest Expense Amount, collectively, the “Specified Fixed Charges Components”); provided that, notwithstanding anything to the contrary in the foregoing, each Specified Fixed Charges Component

shall be determined by annualizing such Specified Fixed Charges Component for each of the first three full Fiscal Quarters ending after the Closing Date (*i.e.*, (1) each Specified Fixed Charges Component for the first full Fiscal Quarter ending after the Closing Date shall equal the applicable Specified Fixed Charges Component for such Fiscal Quarter multiplied by four, (2) each Specified Fixed Charges Component for the second full Fiscal Quarter ending after the Closing Date shall equal the applicable Specified Fixed Charges Component for the first full Fiscal Quarter ending after the Closing Date plus the applicable Specified Fixed Charges Component for the second full Fiscal Quarter ending after the Closing Date multiplied by two, and (3) each Specified Fixed Charges Component for the third full Fiscal Quarter ending after the Closing Date shall equal the applicable Specified Fixed Charges Component for the first full Fiscal Quarter ending after the Closing Date plus the applicable Specified Fixed Charges Component for the second full Fiscal Quarter ending after the Closing Date plus the applicable Specified Fixed Charges Component for the third full Fiscal Quarter ending after the Closing Date multiplied by 4/3) and thereafter shall be calculated based on the actual applicable Specified Fixed Charges Component for each Fiscal Quarter comprising the applicable Test Period.

“Consolidated Interest Expense” means, with respect to any Person for any period, the sum of (a) consolidated total interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued and whether or not capitalized, (including, without duplication, amortization of any debt issuance cost, original issue discount, any premium paid to obtain payment, financial assurance or similar bonds, any interest capitalized during construction, any non-cash interest payment, the interest component of any deferred payment obligation, the interest component of any payment under any Capital Lease (regardless of whether accounted for as interest expense under GAAP), any commission, discount and/or other fee or charge owed with respect to any letter of credit and/or bankers’ acceptance, any fee and/or expense paid to the Administrative Agent in connection with its services hereunder, any other bank, administrative agency (or trustee) and/or financing fee, to the extent not otherwise included in consolidated total interest expense, customary commissions, discounts, yield and other fees and charges (including interest expense) relating to any cost associated with any surety bond in connection with financing activities (whether amortized or immediately expensed)) plus (b) any cash dividend paid or payable in respect of Disqualified Capital Stock during such period other than to such Person or any Restricted Subsidiary, plus (c) any net losses or obligations arising from any Hedge Agreement and/or other derivative financial instrument issued by such Person for the benefit of such Person or its subsidiaries, in each case, determined on a consolidated basis for such period. For purposes of this definition, interest in respect of any Capital Lease shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capital Lease in accordance with GAAP.

“Consolidated Net Income” means, in respect of any period and as determined for any Person (the “Subject Person”) on a consolidated basis, an amount equal to the sum of net income, determined in accordance with GAAP, but excluding:

(m) (i) the income of any Person (other than the Subject Person or a Restricted Subsidiary of the Subject Person) in which any other Person (other than the Subject Person or any Restricted Subsidiary of the Subject Person) has a joint interest, except to the extent of the amount of dividends, distributions or other payments (including any ordinary course dividend, distribution or other payment) paid in cash (or to the extent converted into cash) to the Subject Person or any of its Restricted Subsidiaries by such Person during such period and (ii) the loss of any Person (other than the Subject Person or a Restricted Subsidiary of the Subject Person (or a Person who, if a subsidiary of the Subject Person, would be a Restricted Subsidiary of the Subject Person)) in which any other Person (other than the Subject Person or any of its Restricted Subsidiaries) has a joint interest, other than to the extent that the Subject Person or any of its Restricted Subsidiaries has contributed Cash or Cash Equivalents to such Person in respect of such loss during such period;

(n) any gain or Charge attributable to any asset Dispositions (including asset retirement costs and including any abandonment of assets) or of returned surplus assets outside the ordinary course of business;

(o) (i) any Charge from (A) any extraordinary item (as determined in good faith by such Person) and/or (B) any unusual, non-recurring, infrequent and/or exceptional item (as determined in good faith by such Person) and/or (ii) any Charge attributable to and/or payment of any actual or prospective legal settlement, fine, judgment or order; provided that any Charges excluded from Consolidated Net Income pursuant to this clause (c), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 15% Adjustments, shall not exceed 15% of Consolidated Adjusted EBITDA (calculated after giving full effect to the Specified 5% Adjustment, the Specified 15% Adjustments and the Specified 25% Adjustments and all other permitted pro forma adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act);

(p) any net gain or Charge with respect to, or in connection with, (i) any disposed, abandoned, divested and/or discontinued asset, property or operation (other than, at the option of such Person, any gain or Charge relating to any asset, property or operation held for sale or pending the divestiture and/or termination thereof), (ii) any disposal, abandonment, divestiture and/or discontinuation of any asset, property or operation outside the ordinary course of business (including any asset retirement cost) (other than, at the option of such Person, any gain or Charge relating to assets or properties held for sale or pending the divestiture or termination thereof) and/or (iii) any facility that has been closed during such period; provided that any Charges excluded from Consolidated Net Income pursuant to this clause (d)(iii), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 25% Adjustments, shall not exceed 25% of Consolidated Adjusted EBITDA (calculated after giving full effect to the Specified 5% Adjustment, the Specified 15% Adjustments and the Specified 25% Adjustments and all other permitted pro forma adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act);

(q) (i) any write-off or amortization made of any deferred financing cost and/or premium paid and (ii) any Charge attributable to the early extinguishment of Indebtedness (and the termination of any associated Hedge Agreement);

(r) (i) any non-recurring Charge incurred as a result of, pursuant to or in connection with any management equity plan, bonus or other incentive plan, profits interest plan or stock option plan or any other management or employee benefit plan or agreement, pension plan or other long-term or post-employment plan (including any post-employment benefit scheme which has been agreed with the relevant pension trustee), any stock subscription or shareholder agreement, any employee benefit trust, any employment benefit scheme or any similar equity plan or agreement (including any deferred compensation arrangement) and (ii) any Charge incurred in connection with the rollover, acceleration or payout of Capital Stock held by management; provided that, in the case of clause (ii), to the extent that any such Charge is a cash charge, such Charge shall only be excluded to the extent the same is funded with net cash proceeds contributed to relevant Person as a capital contribution or as a result of the sale or issuance of Qualified Capital Stock;

(s) any Charge (other than recurring Public Company Costs) that is established, adjusted and/or incurred, as applicable, (i) within 12 months after the Closing Date that is required to be established, adjusted or incurred, as applicable, as a result of the Transactions in accordance with GAAP, (ii) within 12 months after the closing of any other acquisition or similar Investment that is required to be established, adjusted or incurred, as applicable, as a result of such acquisition in accordance with GAAP or (iii) as a result of any change in, or the adoption or modification of, accounting principles and/or policies in accordance with GAAP;

(t) (i) the effects of adjustments (including the effects of such adjustments pushed down to the relevant Person and its subsidiaries) in component amounts required or permitted by GAAP (including in the inventory, property and equipment, leases, rights fee arrangements, software, goodwill, intangible assets, in-process research and development, deferred revenue, advanced billing and debt line items thereof), resulting from the application of purchase accounting, recapitalization accounting and/or acquisition method accounting, as applicable, in relation to the Transactions or any consummated acquisition or other Investment or the amortization or write-off of any amount thereof, and (ii) the cumulative effect of changes (effected through cumulative effect adjustment or retroactive application) in, and/or any change resulting from the adoption or modification of, accounting principles or policies made in such period in accordance with GAAP which affect Consolidated Net Income (except that, if such Person determines in good faith that the cumulative effects thereof are not material to the interests of the Lenders, the effects of any change, adoption or modification of any such principles or policies may be included in any subsequent period after the Fiscal Quarter in which such change, adoption or modification was made);

(u) [reserved];

(v) (i) any realized or unrealized gain and/or loss in the fair market value of (A) any obligation under any Hedge Agreement as determined in accordance with GAAP and/or (B) any other derivative instrument pursuant to, in the case of this clause (B), Financial Accounting Standards Board's Accounting Standards Codification No. 815-Derivatives and Hedging, and/or (ii) any realized or unrealized foreign currency translation or transaction gain or loss (including any currency re-measurement of Indebtedness, any net gain or loss resulting from Hedge Agreements for currency exchange risk associated with the foregoing or any other currency related risk and any gain or loss resulting from any intercompany Indebtedness, any foreign currency translation or transaction or any other currency-related risk); provided that, notwithstanding anything to the contrary herein, any realized gain or loss in respect of any Designated Operational FX Hedge shall be included in the calculation of Consolidated Net Income;

(w) any deferred Tax expense associated with any tax deduction or net operating loss arising as a result of the Transactions, or the release of any valuation allowance related to any such item;

(x) any non-recurring non-cash (and, with respect to clause (ii), cash) Charge (including any implementation Charge) (other than any write-down of current assets) (including non-cash compensation expense and any amount representing any non-cash adjustment) required by the application of (i) FASB Statement No. 144, (ii) FASB Statement No. 141R, (iii) FASB Statement No. 142 and (iv) Accounting Standards Update No. 2014-09, *Revenue from Contracts with Customers*;

(y) any non-recurring cash Charge required by the application of FASB Statement No. 141R to be expensed by such Person and/or any Restricted Subsidiary during the applicable period; provided that any Charges excluded from Consolidated Net Income pursuant to this clause (m), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 15% Adjustments, shall not exceed 15% of Consolidated Adjusted EBITDA (calculated after giving full effect to the Specified 5% Adjustment, the Specified 15% Adjustments and the Specified 25% Adjustments and all other permitted pro forma adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of "Consolidated Adjusted EBITDA" or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act); and

(z) (i) any one-time cumulative effect adjustment resulting from any change in accounting for revenue required by Accounting Standards Codification 606 or its replacement

and/or (ii) any non-recurring Charge incurred in connection with the implementation of Accounting Standards Codification 606.

“Consolidated Restaurant Pre-Opening Costs” means “Start-up Costs” (as such term is defined in SOP 98-5 published by the American Institute of Certified Public Accountants) and other Charges related to the acquisition, opening, conversion and/or organizing of new facilities, stores, restaurants and/or other Unit Locations, including the cost of feasibility studies, opening marketing, branding and rent expenses, staff training and recruiting and travel costs for employees engaged in such start-up activities, in each case, to the extent such costs and/or Charges are classified as “pre-opening” or “Start-up Costs” in accordance with GAAP.

“Consolidated Secured Debt” means, as to any Person at any date of determination, the aggregate principal amount of Consolidated Total Debt outstanding on such date that is secured by a Lien on substantially all of the Collateral.

“Consolidated Total Assets” means, at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption “total assets” (or any like caption) on a consolidated balance sheet of the applicable Person at such date.

“Consolidated Total Debt” means, as to any Person at any date of determination, (x) the aggregate outstanding principal amount of all third party debt for borrowed money (including LC Disbursements that have not been reimbursed within three Business Days and excluding, for the avoidance of doubt, undrawn letters of credit), (y) to extent constituting Indebtedness, obligations in respect of Capital Leases and (z) the aggregate outstanding principal amount of all purchase money Indebtedness, in each case, as such amount may be adjusted to reflect the effect (as determined by the Borrower in good faith) of any Debt FX Hedge, calculated on a mark-to-market basis; provided that “Consolidated Total Debt” shall be calculated (a) net of the Unrestricted Cash Amount (solely to the extent that the Unrestricted Cash Amount is in excess of \$5,000,000 and the maximum amount of the Unrestricted Cash Amount permitted to be so deducted shall not exceed \$75,000,000) and (b) excluding (i) any obligation, liability or indebtedness of such Person if, upon or prior to the maturity thereof, such Person has irrevocably deposited with the proper Person in trust or escrow the necessary funds (or evidences of indebtedness) for the payment, redemption or satisfaction of such obligation, liability or indebtedness, and thereafter such funds and evidences of such obligation, liability or indebtedness or other security so deposited are not included in the calculation of the Unrestricted Cash Amount, (ii) any debt the proceeds of which are held in Escrow and (iii) for the avoidance of doubt, any amount owing under, or in respect of, any earn-out obligation and/or any purchase price adjustment.

“Contractual Obligation” means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Convertible Indebtedness” means Indebtedness of the Parent (which may be guaranteed by any Loan Party) that is (a) not prohibited by the terms of this Agreement from being incurred and (b) either (i) convertible into common equity of the Parent (and cash in lieu of fractional shares) and/or cash (in an amount determined by reference to the price of such common equity) or (ii) sold as a unit with any call option, warrant and/or right to purchase (or any substantially equivalent derivative transaction) that is exercisable for common equity of the Parent and/or cash (in an amount determined by reference to the price of such common equity).

“Copyright” means the following: (a) all copyrights, rights and interests in copyrights, works protectable by copyright whether published or unpublished, copyright registrations and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including damages or payments for past

or future infringements for any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing; and (e) all rights corresponding to any of the foregoing.

“Corresponding Amount” has the meaning assigned to such term in Section 8.14(c).

“Covenant Acquisition Increase” has the meaning assigned to such term in Section 6.10(a).

“Covenant Acquisition Increase Period” has the meaning assigned to such term in Section 6.10(a).

“Covered Party” has the meaning assigned to such term in Section 9.26(a).

“Credit Extension” means each of (a) the making of a Revolving Loan or Swingline Loan (other than any Letter of Credit Reimbursement Loan or any Revolving Loan resulting from the application of Section 2.04(b)) or (b) the issuance, amendment, modification, renewal or extension of any Letter of Credit (other than any such amendment, modification, renewal or extension that does not increase the Stated Amount of the relevant Letter of Credit).

“Credit Facilities” means the Revolving Facility and the Term Facility.

“Credit Party” has the meaning assigned to such term in Section 9.14.

“Cure Amount” has the meaning assigned to such term in Section 6.10(c).

“Cure Right” has the meaning assigned to such term in Section 6.10(c).

“Customary Bridge Loans” means bridge loans with a maturity date of not longer than one year; provided that (a) the Weighted Average Life to Maturity of any loan, note, security or other Indebtedness which is exchanged for or otherwise replaces (or is to be exchanged for or otherwise replace) such bridge loans is not shorter than the Weighted Average Life to Maturity of any Class of then-existing Term Loans and (b) the final maturity date of any loan, note, security or other Indebtedness which is exchanged for or otherwise replaces (or is to be exchanged for or otherwise replace) such bridge loans is not earlier than the Latest Term Loan Maturity Date on the date of the issuance or incurrence thereof.

“Daily Simple SOFR” means, for any day (as used in this definition, a “SOFR Day”), a rate per annum equal to SOFR for the day that is five U.S. Government Securities Business Days prior to (a) if such SOFR Day is a U.S. Government Securities Business Day, such SOFR Day or (b) if such SOFR Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Day, in each case, as SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website. 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 the Borrower.

“Daily Simple SOFR Adjustment” means a percentage equal to 0.10% per annum.

“De Minimis Proceeds Threshold” has the meaning assigned to such term in Section 2.11(b)(ii).

“Debt Fund Affiliate” means any Affiliate of a Sponsor (other than a natural person (or any holding company, investment vehicle or trust for, or owned and operated by, or for the primary benefit of, one or more natural persons)) that is a bona fide debt fund or other investment vehicle (in each case with one or more bona fide investors to whom its managers owe fiduciary duties independent of their fiduciary duties to such Sponsor) that is primarily engaged in, or advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course.

“Debt FX Hedge” means any Hedge Agreement entered into for the purpose of hedging currency related risks in respect of any Indebtedness of the type described in the definition of “Consolidated Total Debt”.

“Debtor Relief Laws” means the Bankruptcy Code of the US, and all other liquidation, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the US or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Declined Proceeds” has the meaning assigned to such term in Section 2.11(b)(v).

“Default” means any event or condition which upon notice, lapse of time or both would become an Event of Default.

“Defaulting Lender” means any Person that has (a) defaulted in (or is otherwise unable to perform) its obligations under this Agreement, including its obligations, (x) to make a Loan within two Business Days of the date required to be made by it hereunder or (y) to fund its participation in a Letter of Credit or Swingline Loan required to be funded by it hereunder within two Business Days of the date such obligation arose or such Loan or Letter of Credit or Swingline Loan was required to be made or funded, unless, in the case of subclause (x) above, such Person notifies the Administrative Agent in writing that such failure is the result of such Person’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) notified the Administrative Agent, any Issuing Bank or the Swingline Lender or the Borrower in writing that it does not intend to satisfy or perform any such obligation or has made a public statement to the effect that it does not intend to comply with its funding or other obligations under this Agreement or under agreements in which it commits to extend credit generally (unless such writing indicates that such position is based on such Person’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan cannot be satisfied), (c) failed, within two Business Days after the request of the Administrative Agent or the Borrower, to confirm in writing that it will comply with the terms of this Agreement relating to its obligations to fund any prospective Loan and/or any participation in any then outstanding Letter of Credit or Swingline Loans; provided that such Person shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent, (d) become (or any parent company thereof has become) insolvent or been determined by any Governmental Authority having regulatory authority over such Person or its assets, to be insolvent, or the assets or management of which has been taken over by any Governmental Authority or (e)(i) become (or any parent company thereof has become) either the subject of (A) a bankruptcy or insolvency proceeding or (B) a Bail-In Action, (ii) has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian, appointed for it, or (iii) has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in, any such proceeding or appointment, unless in the case of any Person subject to this clause (e), the Borrower and the Administrative Agent have each determined that such Person intends, and has all approvals required to enable it (in form and substance satisfactory to the Borrower and the Administrative Agent), to continue to perform its obligations hereunder; provided that no Person shall be deemed to be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock in such Person or its parent by any Governmental Authority; provided that such action does not result in or provide such Person with immunity from the jurisdiction of courts within the US or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contract or agreement to which such Person is a party. In the event that the Administrative Agent determines that any Person is a Defaulting Lender pursuant to the foregoing, such determination shall be conclusive and binding absent manifest error, and such Person shall be deemed to be a Defaulting Lender (subject to Section 2.21(e)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, each Issuing Bank, the Swingline Lender and each Lender promptly following such determination.

“Delaware Divided LLC” means any Delaware LLC which has been formed upon the consummation of a Delaware LLC Division.

“Delaware LLC” means any limited liability company organized or formed under the laws of the State of Delaware.

“Delaware LLC Division” means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

“Deposit Account” means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“Derivative Transaction” means (a) any interest-rate transaction, including any interest-rate swap, basis swap, forward rate agreement, interest rate option (including a cap, collar or floor), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward deposits accepted), (b) any exchange-rate transaction, including any cross-currency interest-rate swap, any forward foreign-exchange contract, any currency option, and any other instrument linked to exchange rates that gives rise to similar credit risks, (c) any equity derivative transaction, including any equity-linked swap, any equity-linked option, any forward equity-linked contract, and any other instrument linked to equities that gives rise to similar credit risk and (d) any commodity (including precious metal) derivative transaction, including any commodity-linked swap, any commodity-linked option, any forward commodity-linked contract, and any other instrument linked to commodities that gives rise to similar credit risks; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, members of management, managers or consultants of the Borrower or its subsidiaries shall be a Derivative Transaction.

“Designated Non-Cash Consideration” means the fair market value (as determined by the Borrower in good faith) of non-Cash consideration received by the Borrower or any Restricted Subsidiary in connection with any Disposition pursuant to Section 6.07(h) that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower, setting forth the basis of such valuation (which amount will be reduced by the amount of Cash or Cash Equivalents received in connection with a subsequent sale or conversion of such Designated Non-Cash Consideration to Cash or Cash Equivalents).

“Designated Operational FX Hedge” means any Hedge Agreement (a) entered into for the purpose of hedging currency-related risks in respect of the revenues, cash flows or other balance sheet items of the Borrower and/or any of its subsidiaries and (b) designated at the time entered into (or on or prior to the Closing Date, with respect to any Hedge Agreement entered into on or prior to the Closing Date) as a Designated Operational FX Hedge by the Borrower in a writing delivered to the Administrative Agent.

“Discretionary Guarantor” has the meaning assigned to such term in Section 5.12(c).

“Disposition” or “Dispose” means the sale, lease, sublease, or other disposition of any property of any Person, including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division.

“Disqualified Capital Stock” means any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than for Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than for Qualified Capital Stock), in whole or in part, on or prior to the date that is 91 days following the Latest Maturity Date at the time such Capital Stock is issued (it being understood that if any such redemption is in part, only such part coming into effect prior to the date that is 91 days following the Latest Maturity Date shall constitute Disqualified Capital Stock), (b) is or becomes convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Capital Stock that would constitute Disqualified Capital Stock, in each case at any time on or prior to the date that is 91 days following the Latest Maturity Date at the time such Capital Stock is issued or (c) contains any mandatory repurchase obligation (other than for Qualified

Capital Stock), in whole or in part, which may come into effect prior to the date that is 91 days following the Latest Maturity Date at the time such Capital Stock is issued (it being understood that if any such repurchase obligation is in part, only such part coming into effect prior to the date that is 91 days following the Latest Maturity Date shall constitute Disqualified Capital Stock); provided that any (x) Capital Stock that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Capital Stock is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Capital Stock upon the occurrence of any change of control or any other liquidity event or any Disposition occurring prior to the date that is 91 days following the Latest Maturity Date at the time such Capital Stock is issued shall not constitute Disqualified Capital Stock if the documentation governing such Capital Stock provides that the issuer thereof will not redeem any such Capital Stock pursuant to such provisions unless either (1) the relevant redemption is permitted by the terms of this Agreement or (2) the Termination Date has occurred and (y) for purposes of clauses (a) through (c) above, it is understood and agreed that if any such maturity, redemption conversion, exchange, repurchase obligation or scheduled payment is in part, only such part coming into effect prior to the date that is 91 days following the Latest Maturity Date (determined at the time such Capital Stock is issued) shall constitute Disqualified Capital Stock.

Notwithstanding the preceding sentence, (A) if such Capital Stock is issued pursuant to any plan for the benefit of directors, officers, employees, members of management, managers or consultants or by any such plan to such directors, officers, employees, members of management, managers or consultants, in each case in the ordinary course of business of the Borrower or any Restricted Subsidiary and/or any Parent Company, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by the issuer thereof in order to satisfy applicable statutory or regulatory obligations and (B) no Capital Stock held by any future, present or former employee, director, officer, manager, member of management or consultant (or their respective Affiliates or Immediate Family Members) of the Borrower (or any Parent Company or any subsidiary) shall be considered Disqualified Capital Stock because such stock is redeemable or subject to repurchase pursuant to any management equity subscription agreement, stock option, stock appreciation right or other stock award agreement, stock ownership plan, put agreement, stockholder agreement or similar agreement that may be in effect from time to time.

“Disqualified Institution” means:

(aa) (i) any Person identified in writing to the Arrangers on or prior to the Closing Date, (ii) any Person that is identified in writing to the Administrative Agent after the Closing Date (provided that any Person so identified after the Closing Date must be reasonably acceptable to the Administrative Agent), (iii) any Affiliate of any Person described in clauses (i) or (ii) above that is reasonably identifiable on the basis of such Person’s name as an Affiliate of such Person, and (iv) any other Affiliate of any Person described in clauses (i), (ii) or (iii) above that is identified in a written notice to the Administrative Agent (each such person, a “Disqualified Lending Institution”);

(ab) (i) any Person that is or becomes a Company Competitor and/or any Affiliate of any Company Competitor (other than a Competitor Debt Fund Affiliate), in each case, that is identified in writing to the Administrative Agent, (ii) any Affiliate of any Person described in clause (i) above (other than any Competitor Debt Fund Affiliate) that is reasonably identifiable on the basis of such Person’s name as an Affiliate of such Person and (iii) any other Affiliate of any Person described in clauses (i) or (ii) above that is identified in a written notice to the Administrative Agent; it being understood and agreed that no Competitor Debt Fund Affiliate of any Company Competitor may be designated as a Disqualified Institution pursuant to this clause (iii); and

(ac) any Affiliate or Representative of any Arranger and/or any Initial Lender that is engaged as a principal primarily in private equity, mezzanine financing or venture capital (any Person described in this clause (c), an “Excluded Party”);

provided that no written notice delivered pursuant to clauses (a)(ii), (a)(iv), (b)(i) and/or (b)(iii) above shall apply retroactively to disqualify any person that has acquired or agreed to acquire prior to the

delivery of such notice (i) an assignment of an interest in the Loans pursuant to a fully executed Assignment and Assumption (including any consents thereto required hereby) or (ii) a participation interest in the Loans pursuant to a fully executed participation agreement that provides for “participation” only (including any consents thereto required hereby).

The Borrower shall be permitted to remove any Person from the list of Disqualified Institutions; provided that at any time after the removal of such Person, the Borrower shall be permitted to re-designate such Person as a Disqualified Institution without the consent of the Administrative Agent or any other Person.

“Disqualified Lending Institution” has the meaning assigned to such term in the definition of “Disqualified Institution”.

“Disqualified Person” has the meaning assigned to such term in Section 9.05(f)(ii).

“Dollars” or “\$” refers to lawful money of the US.

“Domestic Subsidiary” means any subsidiary of the Borrower incorporated or organized under the laws of the US, any state thereof or the District of Columbia.

“Dutch Auction” has the meaning assigned to such term on Schedule 1.01(b).

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country (or, to the extent that the United Kingdom is not an EEA Member Country, the United Kingdom), which is subject to the supervision of a Resolution Authority, (b) any entity established in an EEA Member Country (or, to the extent that the United Kingdom is not an EEA Member Country, the United Kingdom), 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 (or, to the extent that the United Kingdom is not an EEA Member Country, the United Kingdom), 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.

“Electronic Signature” means any electronic symbol or process attached to, or associated with, any contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

“Eligible Assignee” means (a) any Lender, (b) any commercial bank, insurance company, or finance company, financial institution, any fund that invests in loans or any other “accredited investor” (as defined in Regulation D of the Securities Act), (c) any Affiliate of any Lender, (d) any Approved Fund of any Lender and (e) to the extent permitted under Section 9.05(g), any Affiliated Lender or any Debt Fund Affiliate; provided that, in any event, “Eligible Assignee” shall not include (i) any natural person (or any holding company, investment vehicle or trust for, or owned and operated by, or for the primary benefit of, one or more natural persons), (ii) any Disqualified Institution or (iii) except as permitted under Section 9.05(g), the Borrower or any of its Affiliates.

“Engagement Letter” means the Engagement Letter, dated as of September 15, 2021, by and among the Borrower and BofA Securities, Inc. (and/or certain of their respective Affiliates).

“Environment” means ambient air, indoor air, surface water, groundwater, drinking water, land surface and subsurface strata & natural resources such as wetlands, flora and fauna.

“Environmental Claim” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (b) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (c) in connection with any actual or alleged damage, injury, threat or harm to the Environment.

“Environmental Laws” means any applicable Requirements of Law relating to (a) environmental matters, including those relating to any Hazardous Materials Activity; or (b) the generation, use, storage, transportation or disposal of or exposure to Hazardous Materials, in any manner applicable to Holdings, the Borrower or any of its Restricted Subsidiaries or any Facility.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the Environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is under common control with Holdings, the Borrower or any Restricted Subsidiary and is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by Holdings, the Borrower or any Restricted Subsidiary 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 at any facility of Holdings, the Borrower or any Restricted Subsidiary or any ERISA Affiliate as described in Section 4062(e) of ERISA, in each case, resulting in liability pursuant to Section 4063 of ERISA; (c) a complete or partial withdrawal by Holdings, the Borrower or any Restricted Subsidiary or any ERISA Affiliate from a Multiemployer Plan resulting in the imposition of Withdrawal Liability on Holdings, the Borrower or any Restricted Subsidiary or any ERISA Affiliate, notification of Holdings, the Borrower or any Restricted Subsidiary or any ERISA Affiliate concerning the imposition of Withdrawal Liability or notification that a Multiemployer Plan is “insolvent” within the meaning of Section 4245 of ERISA; (d) the filing of a notice of intent to terminate a Pension Plan under Section 4041(c) of ERISA, the treatment of a Pension Plan amendment as a termination under Section 4041(c) of ERISA, the commencement of proceedings by the PBGC to terminate a Pension Plan or the receipt by Holdings, the Borrower or any Restricted Subsidiary or any ERISA Affiliate of notice of the treatment of a Multiemployer Plan amendment as a termination under Section 4041A of ERISA or of notice of the commencement of proceedings by the PBGC to terminate a Multiemployer Plan; (e) the occurrence of an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) 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 Holdings, the Borrower or any Restricted Subsidiary or any ERISA Affiliate, with respect to the termination of any Pension Plan; or (g) the conditions for imposition of a Lien under Section 303(k) of ERISA have been met with respect to any Pension Plan.

“Erroneous Payment” has the meaning assigned to such term in Section 8.14(a).

“Erroneous Payment Return Deficiency” has the meaning assigned to such term in Section 8.14(c).

“Escrow” has the meaning set forth in the definition of “Indebtedness”.

“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 assigned to such term in Article 7.

“Exchange Act” means the Securities Exchange Act of 1934 and the rules and regulations of the SEC promulgated thereunder.

“Excluded Assets” means each of the following:

(ad) any asset the grant or perfection of a security interest in which would (i) be prohibited by enforceable anti-assignment provisions set forth in any contract that is permitted or otherwise not prohibited by the terms of this Agreement and is binding on such asset at the time of its acquisition and not incurred in contemplation thereof (other than assets subject to Capital Leases and purchase money financings), (ii) violate (after giving effect to applicable anti-assignment provisions of the UCC or other applicable Requirements of Law) the terms of any contract relating to such asset that is permitted or otherwise not prohibited by the terms of this Agreement and is binding on such asset at the time of its acquisition and not incurred in contemplation thereof (other than in the case of Capital Leases and purchase money financings), or (iii) trigger termination of any contract relating to such asset that is permitted or otherwise not prohibited by the terms of this Agreement pursuant to any “change of control” or similar provision (to the extent such contract is binding on such asset at the time of its acquisition and not incurred in contemplation thereof); it being understood that the term “Excluded Asset” shall not include proceeds or receivables arising out of any contract described in this clause (a) to the extent that the assignment of such proceeds or receivables is expressly deemed to be effective under the UCC or other applicable Requirements of Law notwithstanding the relevant prohibition, violation or termination right;

(ae) the Capital Stock of any (i) Captive Insurance Subsidiary, (ii) Unrestricted Subsidiary, (iii) not-for-profit subsidiary and/or (iv) Immaterial Subsidiary (other than an Immaterial Subsidiary that is a Loan Party);

(af) any intent-to-use (or similar) Trademark application prior to the filing and acceptance by the U.S. Patent and Trademark Office (or similar Governmental Authority) of a “Statement of Use”, “Declaration of Use”, “Amendment to Allege Use” or similar filing with respect thereto, only to the extent, if any, that, and solely during the period if any, in which, the grant of a security interest therein may impair the validity or enforceability of such intent-to-use (or similar) Trademark application or any registration issuing therefrom under applicable Requirements of Law;

(ag) any asset (including Capital Stock), the grant or perfection of a security interest in which (i) would be prohibited under applicable Requirements of Law (including any rule and/or regulation of any Governmental Authority) (after giving effect to applicable anti-assignment provisions of the UCC or other applicable Requirements of Law), (ii) would require any governmental or regulatory consent, approval, license or authorization, in each case, to the extent such consent, approval, license or authorization has not been obtained (it being understood and agreed that no Loan Party shall have any obligation to procure any such consent, approval, license or authorization) (after giving effect to applicable anti-assignment provisions of the UCC or other applicable Requirements of Law); it being understood that the term “Excluded Asset” shall not include proceeds or receivables arising out of any asset described in clauses (d)(i) or (d)(ii) to the extent that the assignment of such proceeds or receivables is effective under the UCC or other applicable Requirements of Law notwithstanding the relevant requirement or prohibition or (iii) could be reasonably likely to result in material adverse tax consequences (including as a result of the application of Section 956 of the Code or any similar Requirement of Law) to Holdings, the Borrower, any Parent Company and/or any of their respective subsidiaries as determined by the Borrower in good faith;

(ah) (i) any leasehold Real Estate Asset, (ii) except to the extent a security interest therein can be perfected by the filing of a UCC-1 financing statement, any other leasehold interest, and (iii) any owned Real Estate Asset;

(ai) the Capital Stock of (i) any Person that is not the Borrower or a Wholly-Owned Subsidiary of the Borrower and/or (ii) any subsidiary of any non-Wholly Owned Subsidiary of the Borrower;

(aj) any Margin Stock;

(ak) the Capital Stock of (i) any Foreign Subsidiary and (ii) any FSHCO, in each case, (A) in excess of 65% of the issued and outstanding voting Capital Stock and 100% of the issued and outstanding non-voting Capital Stock of any such Foreign Subsidiary and/or FSHCO or (B) to the extent such Foreign Subsidiary or FSHCO is not a first-tier Subsidiary of any Loan Party;

(al) any Commercial Tort Claim;

(am) any Deposit Account, securities account and/or similar account (including any securities entitlement), escrow, fiduciary and/or trust account, payroll and other employee wage and benefit accounts, tax accounts (including, sales tax accounts), any cash collateral account, any Cash and Cash Equivalents and any funds and other property held or maintained in any such accounts (other than, in each case, proceeds of other Collateral as to which perfection may be accomplished by filing a UCC-1 financing statement or automatically in accordance with the UCC);

(an) assets subject to any purchase money security interest, Capital Lease obligation, sale-leaseback obligation or similar arrangement, in each case, that is permitted or otherwise not prohibited by the terms of this Agreement and 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 create a right of termination in favor of any other party thereto (other than Holdings or any subsidiary of Holdings); it being understood that the term "Excluded Asset" shall not include proceeds or receivables arising out of any asset described in this clause (k) to the extent that the assignment of such proceeds or receivables is expressly deemed to be effective under the UCC or other applicable Requirements of Law notwithstanding the relevant violation or invalidation;

(ao) any Letter-of-Credit Right that does not constitute a supporting obligation, except to the extent the security interest therein may be perfected by filing of a financing statement under the UCC of any applicable jurisdiction;

(ap) motor vehicles and other assets subject to certificates of title, except to the extent the security interest therein may be perfected by filing of a financing statement under the UCC of any applicable jurisdiction;

(aq) any asset of a Person acquired by Holdings, the Borrower or any other Restricted Subsidiary that, at the time of the relevant acquisition, is encumbered to secure assumed Indebtedness permitted by this Agreement to the extent (and for so long as) the documentation governing the applicable assumed Indebtedness prohibits such asset from being pledged to secure the Secured Obligations and the relevant prohibition was not implemented in contemplation of the applicable acquisition;

(ar) any asset with respect to which the Borrower has in good faith determined that the cost, burden, difficulty or consequence (including (i) any effect on the ability of the relevant Loan Party to conduct its operations and business in the ordinary course of business and (ii) the cost of mortgage, stamp, intangible or other taxes or expenses) of obtaining or perfecting a security interest therein outweighs, or is excessive in light of, the practical benefit of a security interest to the relevant Secured Parties afforded thereby (and the Lenders acknowledge that the Collateral that may be provided by any Loan Party may be limited to minimize stamp duty, notarization, registration or other applicable fees, taxes and duties where the benefit to the Secured Parties of increasing the secured amount is disproportionate to the level of such fees, taxes and duties);

(as) any governmental license or state or local franchise, charter or authorization, to the extent a security interest in any such license, franchise, charter or authorization would be prohibited or restricted thereby, after giving effect to the anti-assignment provisions of the UCC of any applicable jurisdiction, other than any proceeds or receivable thereof to the extent the assignment of the same is effective under the UCC of any applicable jurisdiction notwithstanding such consent or restriction;

(at) [reserved]; and

(au) aircraft, airframes, aircraft engines, helicopters and equipment and/or other assets that are affixed to, or otherwise constitute, such aircraft, airframes, aircraft engines and/or helicopters.

“Excluded Party” has the meaning assigned to such term in the definition of “Disqualified Institution”.

“Excluded Subsidiary” means:

(av) any Restricted Subsidiary that is not a Wholly-Owned Subsidiary of the Borrower;

(aw) any Immaterial Subsidiary;

(ax) any Restricted Subsidiary that (i) is prohibited or restricted from providing a Loan Guaranty by (A) any Requirement of Law or (B) any Contractual Obligation that exists on the Closing Date or at the time such Restricted Subsidiary becomes a subsidiary (which Contractual Obligation was not entered into in contemplation of the acquisition of such Restricted Subsidiary (including pursuant to assumed Indebtedness)), (ii) would require a governmental (including regulatory) or third party consent, approval, license or authorization (including any regulatory consent, approval, license or authorization) to provide a Loan Guaranty (including under any financial assistance, corporate benefit, thin capitalization, capital maintenance, liquidity maintenance or similar legal principles), unless such consent, approval, license or authorization has been obtained (it being understood and agreed that none of Holdings, the Borrower and/or any of their respective subsidiaries shall have any obligation to obtain (or seek to obtain) any such consent, approval, license or authorization) or (iii) with respect to which the provision of a Loan Guaranty could reasonably be expected to result in material and adverse tax consequences to Holdings, the Borrower, any Parent Company and/or any of their respective subsidiaries as determined by the Borrower in good faith;

(ay) any not-for-profit subsidiary;

(az) any Captive Insurance Subsidiary;

(ba) [reserved];

(bb) any Foreign Subsidiary;

(bc) any Domestic Subsidiary that (i) is a FSHCO or (ii) is a direct or indirect subsidiary of any Foreign Subsidiary or FSHCO;

(bd) any Unrestricted Subsidiary;

(be) any Restricted Subsidiary acquired by the Borrower or any Restricted Subsidiary that, at the time of the relevant acquisition, is an obligor in respect of assumed Indebtedness permitted by Section 6.01 to the extent (and for so long as) the documentation governing the applicable assumed Indebtedness prohibits such subsidiary from providing a Loan Guaranty

(which prohibition was not implemented in contemplation of such Restricted Subsidiary becoming a subsidiary in order to avoid the requirement of providing a Loan Guaranty);

(bf) any other Restricted Subsidiary with respect to which the burden or cost of providing a Loan Guaranty outweighs, or would be excessive in light of, the practical benefits afforded thereby as determined by the Borrower in good faith in consultation with the Administrative Agent;

(bg) solely in the case of any Swap Obligation that constitutes a “swap” within the meaning of section 1(a)(47) of the Commodity Exchange Act (which for the avoidance of doubt shall be determined after giving effect to any “keepwell, support or other agreement” (as such terms are used under the Commodity Exchange Act)), any Domestic Subsidiary that is not an “eligible contract participant” as defined under the Commodity Exchange Act and the regulations thereunder;

(bh) any subsidiary where the provision by such subsidiary of a Loan Guaranty could reasonably be expected to conflict with the fiduciary duties of such subsidiary’s directors or result in, or could reasonably be expected to result in, a material risk of personal or criminal liability for such subsidiary or any of its officers or directors or to the extent it is not within the legal capacity of such subsidiary to provide a Loan Guaranty (whether as a result of financial assistance, corporate benefit, thin capitalization, capital maintenance, liquidity maintenance or similar rules or otherwise);

(bi) any broker-dealer subsidiary; and

(bj) any subsidiary of any Person described in the foregoing clauses (a) through (n).

“Excluded Swap Obligation” means, with respect to any Loan Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Loan Guaranty of such Loan Guarantor of, or the grant by such Loan Guarantor of a security interest to secure, such Swap Obligation (or any Loan Guaranty 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, or any Governmental Authority succeeding to any or all of its functions) (a) by virtue of such Loan Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 3.20 of the Loan Guaranty and any other “keepwell”, support or other agreement for the benefit of such Loan Guarantor) at the time the Loan Guaranty of such Loan Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation or (b) in the case of any Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Loan Guarantor is a “financial entity,” as defined in section 2(h)(7)(C) of the Commodity Exchange Act, at the time the guarantee provided by (or grant of such security interest by, as applicable) such Loan Guarantor becomes or would become effective with respect to such Swap Obligation. If any 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 Loan Guaranty or security interest is or becomes illegal.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender or Issuing Bank, or any other recipient of any payment to be made by or on account of any obligation of any Loan Party under any Loan Document, (a) any Taxes imposed on (or measured by) such recipient’s net income (however denominated) or franchise Taxes, (i) imposed as a result of such recipient being organized or having its principal office located in or, in the case of any Lender, having its applicable lending office located in, the taxing jurisdiction or (ii) that are Other Connection Taxes, (b) any branch profits Taxes imposed under Section 884(a) of the Code, or any similar Tax, imposed by any jurisdiction described in clause (a), (c) any US federal withholding Tax that is imposed on amounts payable to or for the account of such Lender (other than a Lender that became a Lender pursuant to an assignment under Section 2.19) with respect to an applicable interest in a Loan or Commitment pursuant to a Requirement of Law in effect on the date on which such Lender (i) acquires such interest in the applicable Commitment or, if such Lender did not fund the applicable Loan pursuant to a prior Commitment, on the date such Lender

acquires its interest in such Loan or (ii) designates a new lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Tax were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender immediately before it designated a new lending office, (d) any Tax imposed as a result of a failure by such recipient to comply with Section 2.17(f) or (j), and (e) any Tax imposed under FATCA.

"Existing Credit Agreement" has the meaning assigned to such term in the recitals to this Agreement.

"Extended Revolving Credit Commitment" has the meaning assigned to such term in Section 2.23(a).

"Extended Revolving Loans" has the meaning assigned to such term in Section 2.23(a).

"Extended Term Loans" has the meaning assigned to such term in Section 2.23(a).

"Extension" has the meaning assigned to such term in Section 2.23(a).

"Extension Amendment" means an amendment to this Agreement that is reasonably satisfactory to the Administrative Agent (to the extent required by Section 2.23) and the Borrower executed by (a) the Borrower and the Subsidiary Guarantors, (b) the Administrative Agent and (c) each Lender that has accepted the applicable Extension Offer pursuant hereto and in accordance with Section 2.23.

"Extension Offer" has the meaning assigned to such term in Section 2.23(a).

"Facility" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or, except with respect to Articles 5 and 6, previously owned, leased, operated or used by Holdings, the Borrower or any of its Restricted Subsidiaries or any of their respective predecessors or Affiliates.

"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 agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"FCPA" has the meaning assigned to such term in Section 3.17(c).

"Federal Funds Effective Rate" means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Federal Reserve Bank of New York's Website" means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

"Fee Letter" means the Agent Fee Letter, dated September 15, 2021, among the Borrower, Bank of America and BofA Securities, Inc.

"Financial Model" means the final financial model made available by the Borrower to the Administrative Agent prior to the Closing Date.

"First Lien Debt" means (a) the Initial Term Loans and the Initial Revolving Loans and (b) any other Indebtedness (other than any such Indebtedness among Holdings, the Borrower and/or any of their

respective subsidiaries) that is secured by a Lien on the Collateral that is *pari passu* with the Lien securing the Initial Term Loans and the Initial Revolving Loans.

“First Lien Rent Adjusted Net Leverage Ratio” means the ratio, as of any date of determination, of (a)(i) Consolidated First Lien Debt as of the last day of the most recently ended Test Period, plus (ii) the product of (A) Consolidated Cash Rental Expense for such Test Period and (B) eight to (b) Consolidated Adjusted EBITDAR for such Test Period, in each case, of the Borrower and its Restricted Subsidiaries on a consolidated basis.

“Fiscal Quarter” means a fiscal quarter of any Fiscal Year of the Borrower ending on a date set forth in the table below, which table may be amended by the Borrower and the Administrative Agent as permitted under Section 5.17 in the event of a change in the Fiscal Year of the Borrower:

<u>Quarter</u>	<u>End Date</u>
Q4 2021	December 26, 2021
Q1 2022	March 27, 2022
Q2 2022	June 26, 2022
Q3 2022	September 25, 2022
Q4 2022	December 25, 2022
Q1 2023	March 26, 2023
Q2 2023	June 25, 2023
Q3 2023	September 24, 2023
Q4 2023	December 31, 2023
Q1 2024	March 31, 2024
Q2 2024	June 30, 2024
Q3 2024	September 29, 2024
Q4 2024	December 29, 2024
Q1 2025	March 30, 2025
Q2 2025	June 29, 2025
Q3 2025	September 28, 2025
Q4 2025	December 28, 2025
Q1 2026	March 29, 2026
Q2 2026	June 28, 2026
Q3 2026	September 27, 2026

“Fiscal Year” means each fiscal year of the Borrower ending on or about December 31 of each calendar year.

“Fitch” means Fitch Ratings, Inc.

“Fixed Amount” has the meaning assigned to such term in Section 1.12(c).

“Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a)(i) Consolidated Adjusted EBITDAR for the relevant Test Period minus (ii) Maintenance Capital Expenditures for such Test Period minus (iii) to the extent added back in the calculation of “Consolidated Adjusted EBITDA” for such Test Period, the aggregate amount of federal, state, local and foreign income taxes paid or payable in cash minus (iv) the aggregate amount of Restricted Payments made in Cash in the relevant Test Period (other than Restricted Payments made pursuant to Section 6.04(a)(i)(F), 6.04(a)(ii), 6.04(a)(iii)(A) (except to the extent made in reliance on clause (a)(ii) of the definition of “Available

Amount”), [6.04\(a\)\(iii\)\(B\)](#), [6.04\(a\)\(v\)](#), [6.04\(a\)\(vi\)](#), [6.04\(a\)\(ix\)](#), [6.04\(a\)\(xii\)](#), [6.04\(a\)\(xiii\)](#) and/or [6.04\(a\)\(xiv\)](#)) to (b) Consolidated Fixed Charges for such Test Period.

“[Fixed Incremental Amount](#)” means the greater of \$30,000,000 and 50% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period.

“[Floor](#)” means a rate of interest equal to 0.00%.

“[Foreign Lender](#)” means any Lender or Issuing Bank that is not a US Person.

“[Foreign Subsidiary](#)” means any subsidiary of the Borrower that is not a Domestic Subsidiary.

“[FSHCO](#)” means (a) any direct or indirect Domestic Subsidiary that has no material assets other than the Capital Stock and/or Indebtedness of one or more Foreign Subsidiaries and (b) any direct or indirect Domestic Subsidiary that has no material assets other than the Capital Stock and/or Indebtedness of one or more Persons of the type described in the immediately preceding [clause \(a\)](#) or in this [clause \(b\)](#).

“[GAAP](#)” means generally accepted accounting principles in the US in effect and applicable to the accounting period in respect of which reference to GAAP is made.

“[Governmental Authority](#)” means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with the US, a foreign government or any political subdivision thereof, including any applicable supranational body (such as the European Union or the European Central Bank).

“[Governmental Authorization](#)” means any permit, license, authorization, approval, plan, directive, consent order or consent decree of or from any Governmental Authority.

“[Granting Lender](#)” has the meaning assigned to such term in [Section 9.05\(e\)](#).

“[Guarantee](#)” of or by any Person (the “[Guarantor](#)”) means any obligation, contingent or otherwise, of the Guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation of any other Person (the “[Primary Obligor](#)”) in any manner and including any obligation of the Guarantor (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other monetary obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the Primary Obligor so as to enable the Primary Obligor to pay such Indebtedness or other monetary obligation, (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or monetary obligation, (e) 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 (f) secured by any Lien on any assets of such Guarantor securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or monetary other obligation is assumed by such Guarantor (or any right, contingent or otherwise, of any holder of such Indebtedness or other monetary obligation to obtain any such Lien); provided that the term “Guarantee” shall not include endorsements for collection or deposit 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, Disposition or other transaction 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.

“[Guarantor](#)” has the meaning assigned to such term in the definition of “Guarantee”.

“Hazardous Materials” means any chemical, material, substance or waste, or any constituent thereof, which is prohibited, limited or regulated under any Environmental Law or by any Governmental Authority or which poses a hazard to the Environment or to human health and safety, including without limitation, petroleum and petroleum by-products, asbestos and asbestos-containing materials, polychlorinated biphenyls, medical waste and pharmaceutical waste.

“Hazardous Materials Activity” means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Material, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Material, and any corrective action or response action with respect to any of the foregoing.

“Hedge Agreement” means any agreement with respect to any Derivative Transaction (or any master agreement which is intended to govern multiple Derivative Transactions) between any Loan Party or any Restricted Subsidiary and any other Person.

“Hedging Obligations” means, with respect to any Person, the obligations of such Person under any Hedge Agreement.

“Holdings” has the meaning assigned to such term in the preamble to this Agreement and shall, for the avoidance of doubt, include any Successor Holdings.

“IBA” has the meaning assigned to such term in Section 1.11.

“Immaterial Subsidiary” means, as of any date, any subsidiary of the Borrower the contribution to (a) Consolidated Adjusted EBITDA of which, when taken together with the contribution to Consolidated Adjusted EBITDA of all other subsidiaries that are Immaterial Subsidiaries, does not exceed 5.0% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period and (b) Consolidated Total Assets of which, when taken together with the contribution to Consolidated Total Assets of all other subsidiaries that are Immaterial Subsidiaries, does not exceed 5.0% of Consolidated Total Assets as of the last day of the most recently ended Test Period; provided that, at all times prior to the first delivery of financial statements pursuant to Section 5.01(a) or (b), this definition shall be applied based on the pro forma consolidated financial statements delivered pursuant to Section 4.01.

“Immediate Family Member” means, with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, domestic partner, former domestic partner, sibling, mother-in-law, father-in-law, son-in-law and/or daughter-in-law (including any adoptive relationship), any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals, such individual’s estate (or an executor or administrator acting on its behalf), heirs or legatees or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

~~“Impacted Loans” has the meaning assigned to such term in Section 2.14(a).~~

“Incremental Cap” means:

(bk) the Fixed Incremental Amount, minus (A) the aggregate outstanding principal amount of any Incremental Facility and/or Incremental Equivalent Debt previously incurred or issued in reliance on the Fixed Incremental Amount minus (B) the aggregate outstanding principal amount of any Ratio Debt issued and/or incurred in reliance on the Fixed Incremental Amount pursuant to Section 6.01(w)(i), in the case of clauses (A) and (B), after giving effect to (1) any reclassification of any Incremental Facility and/or Incremental Equivalent Debt as having been issued or incurred in reliance on the Incremental Incurrence-Based Component and/or (2) any reclassification of any Ratio Debt as having been incurred in reliance on Section 6.01(w)(i); plus

(bl) in the case of any Incremental Facility or Incremental Equivalent Debt that effectively extends (i) the Maturity Date with respect to any Class of Loans and/or Commitments hereunder and/or (ii) the maturity date with respect to (A) any other First Lien Debt and/or (B) any Junior Lien Debt (it being understood that, in the case of this clause (B), the relevant Incremental Facility or Incremental Equivalent Debt incurred in reliance hereon will, at the option of the Borrower, either constitute Junior Lien Debt or be unsecured), an amount equal to the portion of the relevant Class of Loans or Commitments or such other First Lien Debt or such Junior Lien Debt, as applicable, that will be replaced by such Incremental Facility or Incremental Equivalent Debt; plus

(bm) in the case of any Incremental Facility or Incremental Equivalent Debt that effectively replaces any Revolving Credit Commitment terminated in accordance with Section 2.19, an amount equal to the relevant terminated Revolving Credit Commitment; plus

(bn) without duplication of clauses (b) and (c) above, (x) (i) the amount of any voluntary prepayment, redemption, repurchase or other retirement of (A)(1) any Term Loan and/or any other First Lien Debt and/or (2) any Junior Lien Debt (it being understood that, in the case of this clause (x)(i)(A)(2), such amount may only be relied on to incur an Incremental Facility that either constitutes Junior Lien Debt or is unsecured) and/or (B) the amount of any permanent reduction of (1) any Revolving Credit Commitment and/or any revolving commitment in respect of any First Lien Debt and/or (2) any revolving commitment in respect of any Junior Lien Debt (it being understood that, in the case of this clause (x)(i)(B)(2), such amount may only be relied on to incur an Incremental Facility that either constitutes Junior Lien Debt or is unsecured) and (ii) the amount of any reduction in the outstanding principal amount of (A) any Term Loan and/or any other First Lien Debt and/or any (B) any Junior Lien Debt (it being understood that, in the case of this clause (x)(ii)(B), such amount may only be relied on to incur an Incremental Facility that either constitutes Junior Lien Debt or is unsecured) resulting from any assignment of such Term Loan, First Lien Debt and/or Junior Lien Debt to (and/or any purchase of such Term Loan, First Lien Debt or Junior Lien Debt by) the Borrower and/or any subsidiary; provided that, in the case of each of clauses (x)(i) and (ii), the relevant prepayment, redemption, purchase, assignment, redemption or other retirement was not funded with the proceeds of any long-term Indebtedness (other than revolving Indebtedness) (this clause (d), the “Incremental Prepayment Amount”) minus (y) the outstanding principal amount of any Indebtedness incurred in reliance on the Incremental Prepayment Amount pursuant to Section 6.01(w)(i); plus

(bo) an unlimited amount so long as, in the case of this clause (e), after giving effect to the relevant Incremental Facility and/or Incremental Equivalent Debt; as applicable:

(i) if such Incremental Facility and/or Incremental Equivalent Debt constitutes First Lien Debt, the First Lien Rent Adjusted Net Leverage Ratio does not exceed 4.50:1.00;

(ii) if such Incremental Facility and/or Incremental Equivalent Debt constitutes Junior Lien Debt, the Secured Rent Adjusted Net Leverage Ratio does not exceed 5.00:1.00; or

(iii) if such Incremental Facility and/or Incremental Equivalent Debt is unsecured, the Total Rent Adjusted Net Leverage Ratio does not exceed 5.25:1.00;

in each case described in this clause (e), calculated on a Pro Forma Basis, including the application of the proceeds thereof (in the case of each of clauses (i), (ii) and (iii), without “netting” the cash proceeds of the applicable Incremental Facility or Incremental Equivalent Debt on the consolidated balance sheet of the Borrower), and in the case of any Incremental Facility or Incremental Equivalent Debt consisting of a revolving facility or a delayed draw term loan facility then being incurred or established, assuming a full drawing of such revolving facility or such delayed draw term loan facility on the date of the implementation thereof (this clause (e), the “Incremental Incurrence-Based Component”);

provided that any Incremental Facility and/or Incremental Equivalent Debt may be incurred under one or more of clauses (a) through (e) of this definition as selected by the Borrower in its sole discretion; provided, further, that unless the Borrower elects otherwise, any such Incremental Facility and/or Incremental Equivalent Debt will be deemed to have been incurred (I) first, under the Incremental Incurrence-Based Component, to the maximum extent permitted thereunder and (II) second, under the Incremental Prepayment Amount, to the maximum extent permitted thereunder.

“Incremental Commitment” means any commitment made by a lender to provide all or any portion of any Incremental Facility or Incremental Loan.

“Incremental Equivalent Debt” means Indebtedness in the form of *pari passu* senior secured or unsecured notes or loans and/or junior secured or unsecured notes or loans and/or, in each case commitments in respect of any of the foregoing; provided that:

(a) the aggregate outstanding principal amount (or committed amount, if applicable under Section 1.12) thereof shall not exceed the sum of (i) Incremental Cap (as in effect at the time of determination, including giving effect to any reclassification on or prior to such date of determination) and (ii) at the election of the Borrower, any additional amount of Indebtedness otherwise permitted to be incurred under this Agreement (and if such additional Indebtedness that is reallocated to Incremental Equivalent Debt is secured, the relevant Liens securing such additional Indebtedness are Permitted Liens other than by virtue of such additional Indebtedness being incurred as Incremental Equivalent Debt);

(b) the Weighted Average Life to Maturity applicable to such notes or loans (other than Customary Bridge Loans and/or revolving Indebtedness) is no shorter than the Weighted Average Life to Maturity of the then existing Term Loans;

(c) the final maturity date with respect to such notes or loans (other than Customary Bridge Loans and/or revolving Indebtedness) is no earlier than the Latest Term Loan Maturity Date on the date of the issuance or incurrence, as applicable, thereof;

(d) subject to clauses (b) and (c), such Indebtedness may otherwise have an amortization schedule as determined by the Borrower and the lenders providing such Incremental Equivalent Debt;

(e) the currency, pricing (including any “MFN” or other pricing terms), interest rate margins, rate floors, fees, premiums (including prepayment premiums), funding discounts and the maturity and amortization schedule applicable to any Incremental Equivalent Debt shall be determined by the Borrower and the lender or lenders providing such Incremental Equivalent Debt;

(f) such Incremental Equivalent Debt will be documented pursuant to separate documentation from the credit agreement governing the Credit Facilities;

(g) if such Indebtedness is (i) secured by the Collateral on a *pari passu* basis with the Secured Obligations that constitute First Lien Debt, (ii) secured by the Collateral on a junior basis as compared to the Secured Obligations that constitute First Lien Debt or (iii) subordinated to the Obligations in right of payment, then the holders of such Indebtedness (or a representative thereof) shall be party to an Intercreditor Agreement; and

(h) no such Indebtedness may be (A) issued or guaranteed by any subsidiary of the Borrower which is not a Loan Party (it being understood and agreed that the obligations of any Person with respect to any Escrow arrangement into which the proceeds of such Indebtedness are deposited shall not constitute a guarantee by any subsidiary that is not a Loan Party) or (B) secured by any asset that does not constitute Collateral; it being understood that any such Indebtedness that is funded into Escrow pursuant to customary (in the good faith determination of the Borrower) escrow arrangements may be secured by the applicable funds and related assets

held in Escrow (and the proceeds thereof) until the date on which such funds are released from Escrow.

“Incremental Facilities” has the meaning assigned to such term in Section 2.22(a).

“Incremental Facility Amendment” means an amendment to this Agreement that is reasonably satisfactory to the Administrative Agent (solely for purposes of giving effect to Section 2.22) and the Borrower executed by each of (a) Holdings and the Borrower, (b) the Administrative Agent and (c) each Lender that agrees to provide all or any portion of the Incremental Facility being incurred pursuant thereto and in accordance with Section 2.22.

“Incremental Incurrence-Based Component” has the meaning assigned to such term in the definition of “Incremental Cap”.

“Incremental Lender” has the meaning assigned to such term in Section 2.22(b).

“Incremental Loans” has the meaning assigned to such term in Section 2.22(a).

“Incremental Prepayment Amount” has the meaning assigned to such term in clause (d) of the definition of “Incremental Cap.”

“Incremental Revolving Facility” has the meaning assigned to such term in Section 2.22(a).

“Incremental Revolving Facility Lender” means, with respect to any Incremental Revolving Facility, each Revolving Lender providing any portion of such Incremental Revolving Facility.

“Incremental Revolving Loans” has the meaning assigned to such term in Section 2.22(a).

“Incremental Term Facility” has the meaning assigned to such term in Section 2.22(a).

“Incremental Term Loan” has the meaning assigned to such term in Section 2.22(a).

“Incurrence-Based Amount” has the meaning assigned to such term in Section 1.12(c).

“Indebtedness” as applied to any Person means, without duplication:

- (i) all indebtedness for borrowed money;
- (j) that portion of obligations with respect to Capital Leases to the extent recorded as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;
- (k) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments to the extent the same would appear as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;
- (l) any obligation of such Person owed for all or any part of the deferred purchase price of property or services (excluding (i) any earn-out obligation or purchase price adjustment until such obligation (A) becomes a liability on the statement of financial position or balance sheet (excluding the footnotes thereto) in accordance with GAAP and (B) has not been paid within 30 days after becoming due and payable, (ii) any such obligation incurred under ERISA, (iii) accrued expenses and trade accounts payable in the ordinary course of business (including on an inter-company basis) and (iv) liabilities associated with customer prepayments and deposits), which purchase price is (A) due more than six months from the date of the incurrence of the obligation in respect thereof or (B) evidenced by a note or similar written instrument);

(m) any monetary obligation of any other Person secured by any Lien on any asset owned or held by such Person regardless of whether the Indebtedness secured thereby has been assumed by such Person or is non-recourse to the credit of such Person;

(n) the face amount of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for reimbursement of drawings;

(o) the Guarantee by such Person of the Indebtedness of another;

(p) all obligations of such Person in respect of any Disqualified Capital Stock; and

(q) all net obligations of such Person in respect of any Derivative Transaction, including any Hedge Agreement, whether or not entered into for hedging or speculative purposes;

provided that (i) in no event shall any obligation under any Derivative Transaction be deemed to constitute “Indebtedness” for any calculation of the First Lien Rent Adjusted Net Leverage Ratio, the Secured Rent Adjusted Net Leverage Ratio, the Total Rent Adjusted Net Leverage Ratio, or any other financial ratio under this Agreement, (ii) the amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (A) the aggregate unpaid principal amount of such Indebtedness and (B) the fair market value of the property encumbered thereby as determined by such Person in good faith and (iii) the term “Indebtedness” shall exclude (A) intercompany loans and/or advances arising from cash management, tax and accounting operations and (B) intercompany loans and/or advances made in the ordinary course of business that have a term that does not exceed 364 days.

For all purposes hereof, the Indebtedness of any Person shall (i) include the Indebtedness of any third person (including any partnership in which such Person is a general partner and any unincorporated joint venture in which such Person is a joint venture) to the extent such Person would be liable therefor under applicable Requirements of Law or any agreement or instrument by virtue of such Person’s ownership interest in such Person, (A) except to the extent the terms of such Indebtedness provide that such Person is not liable therefor and (B) only to the extent the relevant Indebtedness is of the type that would be included in the calculation of Consolidated Total Debt; provided that, notwithstanding anything herein to the contrary, the term “Indebtedness” shall not include, and shall be calculated without giving effect to, (1) the effects of Accounting Standards Codification Topic 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose hereunder as a result of accounting for any embedded derivatives created by the terms of such Indebtedness (it being understood that any such amounts that would have constituted Indebtedness hereunder but for the application of this proviso shall not be deemed an incurrence of Indebtedness hereunder) and (2) the effects of Statement of Financial Accounting Standards No. 133 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivative created by the terms of such Indebtedness (it being understood that any such amounts that would have constituted Indebtedness under this Agreement but for the application of this sentence shall not be deemed to be an incurrence of Indebtedness under this Agreement) and (ii) exclude (A) obligations incurred in connection with the consummation of any transaction solely to the extent the proceeds thereof are and continue to be held in an escrow, trust, collateral account or arrangement (collectively, an “Escrow”) and are not otherwise made available to such Person, (B) prepaid or deferred revenue and (C) obligations that constitute “Indebtedness” solely by virtue of a pledge of an Investment (without an accompanying guaranty) in any Unrestricted Subsidiary.

The amount of any Indebtedness that is issued at a discount to its initial principal amount shall be calculated based on the initial stated principal amount thereof without giving effect to any such discount.

“Indemnified Taxes” means all Taxes, other than Excluded Taxes or Other 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.

“Indemnitee” has the meaning assigned to such term in Section 9.03(b).

“Information” has the meaning assigned to such term in Section 3.11(a).

“Initial Lenders” means the Initial Revolving Lenders and Initial Term Lenders who are party to this Agreement as Lenders on the Closing Date.

“Initial Revolving Credit Commitment” means, with respect to any Person, the commitment of such Person to make Initial Revolving Loans (and acquire participations in Letters of Credit and Swingline Loans) hereunder as set forth on the Commitment Schedule, or in the Assignment Agreement pursuant to which such Person assumed its Initial Revolving Credit Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.09 or 2.19, (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.05 or (c) increased pursuant to Section 2.22. The aggregate amount of the Initial Revolving Credit Commitments as of the Closing Date is \$75,000,000.

“Initial Revolving Credit Exposure” means, with respect to any Lender at any time, the aggregate Outstanding Amount at such time of all Initial Revolving Loans of such Lender, plus the aggregate amount at such time of such Lender’s LC Exposure and Swingline Exposure, in each case, attributable to its Initial Revolving Credit Commitment.

“Initial Revolving Credit Maturity Date” means the date that is five years after the Closing Date.

“Initial Revolving Facility” means the Initial Revolving Credit Commitments and the Initial Revolving Loans and other extensions of credit thereunder.

“Initial Revolving Lender” means any Lender with an Initial Revolving Credit Commitment or any Initial Revolving Credit Exposure.

“Initial Revolving Loan” has the meaning assigned to such term in Section 2.01(a)(ii).

“Initial Term Lender” means any Lender with an Initial Term Loan Commitment or an outstanding Initial Term Loan.

“Initial Term Loan Commitment” means, with respect to any Person, the commitment of such Person to make Initial Term Loans hereunder in an aggregate amount not to exceed the amount set forth opposite such Person’s name on the Commitment Schedule, as the same may be (a) reduced from time to time pursuant to Section 2.09, (b) reduced or increased from time to time pursuant to assignments made by or to such Term Lender pursuant to Section 9.05 or (c) increased from time to time pursuant to Section 2.22. The aggregate amount of the Term Lenders’ Initial Term Loan Commitments on the Closing Date is \$100,000,000.

“Initial Term Loan Maturity Date” means the date that is five years after the Closing Date.

“Initial Term Loans” has the meaning assigned to such term in Section 2.01(a)(i).

“Intellectual Property Security Agreement” means any agreement, or a supplement thereto, executed on or after the Closing Date confirming or effecting the grant of any Lien on IP Rights owned by any Loan Party to the Administrative Agent, for the benefit of the Secured Parties, required in accordance with this Agreement and the Security Agreement, including an Intellectual Property Security Agreement substantially in the form of Exhibit C.

“Intercompany Note” means a promissory note substantially in the form of Exhibit F or such other form to which the Borrower and the Administrative Agent may reasonably agree.

“Intercreditor Agreement” means:

- (r) with respect to any Indebtedness that constitutes First Lien Debt, a Pari Passu Intercreditor Agreement;

(s) with respect to any Indebtedness that constitutes Junior Lien Debt, a Junior Lien Intercreditor Agreement; and/or

(t) with respect to any Indebtedness, any other intercreditor or subordination agreement or arrangement (which may take the form of a “waterfall” or similar provision), as applicable, the terms of which are (i) consistent with market terms (as determined by the Borrower and the Administrative Agent in good faith) governing arrangements for the sharing and/or subordination of liens and/or arrangements relating to the distribution of payments, as applicable, at the time the relevant intercreditor agreement is proposed to be established in light of the type of Indebtedness subject thereto and/or (ii) reasonably acceptable to the Borrower and the Administrative Agent.

“Interest Election Request” means a request by the Borrower in the form of Exhibit H hereto or another form reasonably acceptable to the Administrative Agent to convert or continue a Borrowing in accordance with Section 2.08.

“Interest Payment Date” means:

(a) ~~(a)~~ with respect to any ABR Loan, each Scheduled Payment Date and the maturity date applicable to such ABR Loan; and

(b) ~~(b)~~ with respect to any ~~LBO-Rate~~ Term SOFR Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a ~~LBO-Rate~~ Term SOFR Loan with an Interest Period of more than three months’ duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months’ duration been applicable to such Borrowing.

“Interest Period” means with respect to any ~~LBO-Rate~~ Term SOFR Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months (or, to the extent ~~available to~~ agreed by all relevant affected Lenders, ~~12 months or any period shorter than 12 months~~ any other Interest Period other than one, three or six months in duration) thereafter, as the Borrower may elect (in the case of each requested Interest Period, subject to availability); provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing. Notwithstanding the foregoing (but subject to the proviso in the first sentence of this definition), the Interest Period for (i) any Borrowing made on the Closing Date and/or (ii) any Borrowing of Revolving Loans made after the Closing Date and prior to December 24, 2021 (which Interest Period shall commence on the date of such Borrowing), in each case, may, at the option of the Borrower, end on December 24, 2021.

“Investment” means (a) any purchase or other acquisition for consideration by the Borrower or any of its Restricted Subsidiaries of any of the Capital Stock of any other Person (other than any Loan Party (other than Holdings)), (b) the acquisition for consideration by the Borrower or any of its Restricted Subsidiaries by purchase or otherwise (other than any purchase or other acquisition of inventory, materials, supplies and/or equipment in the ordinary course of business) of all or a substantial portion of the business, property or fixed assets of any other Person constituting an operating division or operating line of business or other operating business unit of such other Person and (c) any loan, advance (other than any advance to any current or former employee, officer, director, member of management, manager, consultant or independent contractor of the Borrower, any Restricted Subsidiary, or any Parent Company for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution in exchange for consideration by the Borrower or any of its Restricted Subsidiaries to any other Person. Subject to Section 5.10, the amount of any Investment shall

be the original cost of such Investment, plus the cost of any addition thereto that otherwise constitutes an Investment, without any adjustment for any increase or decrease in value, or any write-up, write-down or write-off with respect thereto, but giving effect to (i) any repayment of principal and/or interest in the case of any Investment in the form of a loan or other debt instrument and (ii) any return of capital or return on Investment in the case of any equity Investment (whether as a distribution, dividend, redemption or sale but not in excess of the amount of the relevant initial Investment). It is understood and agreed that the term “Investment” shall exclude (A) intercompany advances arising from cash management, tax and accounting operations and (B) intercompany loans, advances or Indebtedness made in the ordinary course of business that have a term that does not exceed 364 days.

“Investors” means (a) the Sponsors, (b) the Management Investors, and (c) other investors that, directly or indirectly, beneficially own Capital Stock in Holdings on the IPO Closing Date immediately prior to the consummation of the IPO, which may include one or more of the limited partners of any Sponsor.

“IP Rights” has the meaning assigned to such term in Section 3.05(c).

“IP Separation Transaction” means (a) any Disposition by the Borrower or any Restricted Subsidiary of any Material Intellectual Property to any Unrestricted Subsidiary (other than any bona fide operational joint venture established for legitimate business purposes) and/or (b) any Investment by the Borrower or any Restricted Subsidiary in the form of a contribution of Material Intellectual Property to any Unrestricted Subsidiary (other than any bona fide operational joint venture established for legitimate business purposes).

“IPO” has the meaning assigned to such term in the preamble to this Agreement.

“IPO Closing Date” means October 5, 2021, the date on which the IPO was consummated.

“IRS” means the US Internal Revenue Service.

“ISDA CDS Definitions” has the meaning assigned to such term in Section 9.02.

“Issuing Bank” means, as the context may require, (a) each of Bank of America, Barclays Bank PLC, Citibank, N.A., Jefferies Finance LLC, MUFG Bank Ltd., PNC Bank, National Association and Synovus Bank and (b) each other Person that is or becomes a Revolving Lender, that, in the case of this clause (b), agrees to act as an Issuing Bank hereunder pursuant to Section 2.05(h)(ii), and in the case of clauses (a) and (b), each such Person in its capacity as an issuer of Letters of Credit hereunder. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by any branch or Affiliate of such Issuing Bank, in which case the term “Issuing Bank” shall include any such branch or Affiliate with respect to Letters of Credit issued by such branch or Affiliate. Jefferies Finance LLC will cause Letters of Credit to be issued by unaffiliated financial institutions and such Letters of Credit shall be treated as issued by Jefferies Finance LLC for all purposes under the Loan Documents.

“Joinder Agreement” means a Joinder Agreement substantially in the form of Exhibit K or such other form that is reasonably satisfactory to the Administrative Agent and the Borrower; it being understood and agreed that any Joinder Agreement executed by any Foreign Subsidiary may include such modifications as may be necessary to reflect the fact that such Foreign Subsidiary may not become party to the Security Agreement.

“Judgment Currency” has the meaning assigned to such term in Section 9.25.

“Junior Lien Debt” means any Indebtedness (other than Indebtedness among Holdings, the Borrower and/or any of their respective subsidiaries) that is secured by a Lien on the Collateral that is expressly junior or subordinated to the Lien on the Collateral securing the Initial Term Loans and the Initial Revolving Loans.

“Junior Lien Intercreditor Agreement” means an intercreditor agreement substantially in the form of Exhibit G, with any changes thereto (whether material or immaterial) as the Borrower and the Administrative Agent may agree in their respective reasonable discretion.

“Latest Maturity Date” means, as of any date of determination, the latest maturity or expiration date applicable to any Loan or commitment hereunder at such time, including the latest maturity or expiration date of any Term Loan, Term Commitment, Revolving Loan or Revolving Credit Commitment.

“Latest Revolving Credit Maturity Date” means, as of any date of determination, the latest maturity or expiration date applicable to any Revolving Loan or Revolving Credit Commitment hereunder at such time.

“Latest Term Loan Maturity Date” means, as of any date of determination, the latest maturity or expiration date applicable to any Term Loan hereunder at such time.

“LC Collateral Account” has the meaning assigned to such term in Section 2.05(i).

“LC Disbursement” means a payment or disbursement made by an Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit (other than any Letter of Credit that is subject to Letter of Credit Support at such time) at such time and (b) the aggregate principal amount of all LC Disbursements that have not yet been reimbursed at such time. The LC Exposure of any Revolving Lender at any time shall equal its Applicable Revolving Credit Percentage of the aggregate LC Exposure at such time.

“Legal Reservations” means the application of the relevant Debtor Relief Laws, general principles of equity and/or principles of good faith and fair dealing.

“Lenders” means the Term Lenders, the Revolving Lenders and any other Person that becomes a party hereto pursuant to an Assignment Agreement, other than any such Person that ceases to be a party hereto pursuant to an Assignment Agreement.

“Lending Party” has the meaning assigned to such term in Section 8.14.

“Letter of Credit” means any letter of credit issued pursuant to this Agreement (which, for the avoidance of doubt, shall exclude any Commercial Letter of Credit).

“Letter of Credit Commitment” means with respect to each Issuing Bank, the commitment of such Issuing Bank to issue Letters of Credit in an aggregate amount to not exceed the amount set forth opposite such Person’s name on the Commitment Schedule.

“Letter of Credit Reimbursement Loan” has the meaning assigned to such term in Section 2.05(d)(i).

“Letter of Credit Request” means a request by the Borrower for a new Letter of Credit or an amendment to any existing Letter of Credit in accordance with Section 2.05 and substantially in the form of Exhibit N or such other form that is reasonably satisfactory to the relevant Issuing Bank and the Borrower.

“Letter-of-Credit Right” has the meaning set forth in Article 9 of the UCC.

“Letter of Credit Sublimit” means \$15,000,000, subject to increase in accordance with Section 2.22.

“Letter of Credit Support” means, with respect to any Letter of Credit, that (a) such Letter of Credit has been Cash collateralized in an amount equal to 100% of the face amount of such Letter of Credit, (b) a separate letter of credit has been issued in favor of the Issuing Bank (or its designee) with respect to such Letter of Credit pursuant to arrangements reasonably satisfactory to such Issuing Bank and in an amount equal to 100% of the face amount of the applicable Letter of Credit issued hereunder, (c) such Letter of Credit has been deemed reissued under another agreement in a manner reasonably acceptable to the applicable Issuing Bank or (d) other arrangements reasonably acceptable to the relevant Issuing Bank with respect to such Letter of Credit.

~~“LIBO Rate” means, the Published LIBO Rate, as adjusted to reflect applicable reserves prescribed by Governmental Authorities; provided that, solely with respect to the Initial Term Loans and the Initial Revolving Loans, in no event shall the LIBO Rate be less than 0.00% per annum.~~

“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 Capital Lease having substantially the same economic effect as any of the foregoing), in each case, in the nature of security; provided that in no event shall an operating lease in and of itself be deemed to constitute a Lien.

“Loan Documents” means this Agreement, [Amendment No. 1](#), any Promissory Note, each Loan Guaranty, the Collateral Documents, any Intercreditor Agreement (if any) to which the Borrower is a party, any Perfection Certificate, each Refinancing Amendment, each Incremental Facility Amendment, each Extension Amendment and any other document or instrument designated by the Borrower and the Administrative Agent as a “Loan Document”. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto.

“Loan Guarantor” means (a) Holdings and (b) any Subsidiary Guarantor.

“Loan Guaranty” means the Loan Guaranty, substantially in the form of [Exhibit I](#), executed by each Loan Party thereto and the Administrative Agent for the benefit of the Secured Parties, as supplemented in accordance with the terms of [Section 5.12](#).

“Loan Installment Date” has the meaning assigned to such term in [Section 2.10\(a\)](#).

“Loan Parties” means the Borrower and each Loan Guarantor.

“Loans” means any Initial Term Loan, any Additional Term Loan, any Revolving Loan, any Swingline Loan or any Additional Revolving Loan.

“Maintenance Capital Expenditures” means Capital Expenditures incurred for repair or replacement at, or otherwise to maintain, the Borrower’s Unit Locations, offices and related properties, whether in existence on or after the Closing Date, that are necessary to maintain a status quo level of operating performance as of or after the Closing Date, in each case other than capitalized software expenditures.

“Management Investors” means the current and former officers, directors, managers, employees and members of management of the Borrower, any Parent Company and/or any subsidiary of the Borrower.

“Margin Stock” has the meaning assigned to such term in Regulation U.

“Material Acquisition” means a Permitted Acquisition (other than any Permitted Acquisition entered into in reliance on [clause \(b\)](#) of the definition thereof) with total consideration, including earn-out payments and other contingent payment obligations, in an amount not less than \$30,000,000.

“Material Adverse Effect” means a material adverse effect on (i) the business, assets or financial condition, in each case, of the Borrower and its Restricted Subsidiaries, taken as a whole, (ii) the rights and remedies (taken as a whole) of the Administrative Agent under the applicable Loan Documents or (iii) the ability of the Loan Parties (taken as a whole) to perform their payment obligations under the applicable Loan Documents.

“Material Debt Instrument” means any physical instrument evidencing any Indebtedness for borrowed money owing from any Person other than any Loan Party which is required to be pledged and delivered to the Administrative Agent (or its bailee) pursuant to the Security Agreement.

“Material Intellectual Property” means any intellectual property owned by any Loan Party that is, in the good faith determination of the Borrower, material to the operation of the business of the Borrower and its Restricted Subsidiaries, taken as a whole.

“Maturity Date” means (a) with respect to the Initial Revolving Facility, the Initial Revolving Credit Maturity Date, (b) with respect to the Initial Term Loans, the Initial Term Loan Maturity Date, (c) with respect to any Replacement Term Loan or Revolver Replacement Facility, the final maturity date for such Replacement Term Loan or Revolver Replacement Facility, as the case may be, as set forth in the applicable Refinancing Amendment, (d) with respect to any Incremental Facility, the final maturity date set forth in the applicable Incremental Facility Amendment, and (e) with respect to any Extended Revolving Credit Commitment or Extended Term Loans, the final maturity date set forth in the applicable Extension Amendment.

“Maximum Rate” has the meaning assigned to such term in Section 9.19.

“Minimum Extension Condition” has the meaning assigned to such term in Section 2.23(b).

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means any employee benefit plan which is a “multiemployer plan” as defined in Section 3(37) of ERISA that is subject to the provisions of Title IV of ERISA, and in respect of which Holdings, the Borrower or any of its Restricted Subsidiaries, or any of their respective ERISA Affiliates, makes or is obligated to make contributions or with respect to which any of them has any ongoing obligation or liability, contingent or otherwise.

“Net Insurance/Condemnation Proceeds” means an amount equal to:

(a) any Cash payment or proceeds (including Cash Equivalents) received by the Borrower or any of its Restricted Subsidiaries (i) under any casualty insurance policy in respect of a covered loss thereunder of any asset of the Borrower or any of its Restricted Subsidiaries or (ii) as a result of the taking of any asset of the Borrower or any of its Restricted Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, in each case other than any amount that is attributable to business interruption and/or lost profit; minus

(b) the sum of the following:

(i) any actual out-of-pocket cost and/or expense incurred by the Borrower or any of its Restricted Subsidiaries in connection with the adjustment, settlement or collection of any claims of the Borrower or the relevant Restricted Subsidiary in respect thereof;

(ii) payment of the outstanding principal amount of, premium or penalty, if any, and interest and other amounts on any Indebtedness (other than the Loans and/or any after First Lien Debt and/or Junior Lien Debt) that is secured by a Lien on the assets in question and that is required to be repaid or otherwise comes due or would be in default under the terms thereof as a result of such loss, taking or sale;

(iii) the reasonable out-of-pocket costs of putting any affected property in a safe and secure position;

(iv) any selling costs and/or out-of-pocket expense (including reasonable broker's fees or commissions, legal 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 transfer and similar Taxes and the Borrower's good faith estimate of income Taxes paid or payable (including pursuant to Tax sharing arrangements or any intercompany distribution)) in connection with any sale or taking of such assets as described in clause (a) of this definition; it being understood that the reduction of any net operating loss resulting from such Disposition shall be deemed to constitute an income Tax "paid or payable" for purposes of this clause (iv);

(v) any amount provided as a reserve in accordance with GAAP against any liabilities under any indemnification obligation or purchase price adjustments associated with any sale or taking of such assets as referred to in clause (a) of this definition (provided that to the extent and at the time any such amount is released from such reserve, such amounts shall constitute Net Insurance/Condemnation Proceeds); and

(vi) in the case of any covered loss or taking from any non-Wholly-Owned Subsidiary, the pro rata portion thereof (calculated without regard to this clause (vi)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a Wholly-Owned Subsidiary as a result thereof.

"Net Proceeds" means:

(a) with respect to any Disposition (including any Prepayment Asset Sale), the Cash proceeds (including Cash Equivalents and Cash proceeds subsequently received (as and when received) in respect of non-cash consideration initially received), net of:

(i) selling costs and out-of-pocket expenses (including reasonable broker's fees or commissions, legal 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 and transfer and similar Taxes and the Borrower's good faith estimate of income Taxes paid or payable (including pursuant to any Tax sharing arrangement and/or any intercompany distribution) in connection with such Disposition); it being understood that the reduction in the amount of any net operating loss resulting from such Disposition shall be deemed to constitute an income Tax "paid or payable" for purposes of this clause (i);

(ii) amounts provided as a reserve in accordance with GAAP against any liabilities under any indemnification obligation or purchase price adjustment associated with such Disposition (provided that to the extent and at the time any such amount is released from such reserve, such amounts shall constitute Net Proceeds);

(iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness (other than the Loans and any other Indebtedness that constitutes First Lien Debt or Junior Lien Debt) which is secured by the asset sold in such Disposition and which is required to be repaid or otherwise comes due or would be in default and is repaid (other than any such Indebtedness that is assumed by the purchaser of such asset);

(iv) any Cash escrow (until released from escrow to the Borrower or any of its Restricted Subsidiaries) from the sale price for such Disposition;

(v) in the case of any Disposition by any non-Wholly-Owned Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (v)) that is attributable to any minority interest and not available for distribution to or for the account of the Borrower or a Wholly-Owned Subsidiary as a result thereof; and

(vi) any amount used to repay or return any customer deposit required to be repaid or returned as a result of such Disposition; and

(b) with respect to any issuance or incurrence of Indebtedness, issuance of Capital Stock and/or any contribution in respect of any Capital Stock, the Cash proceeds thereof, net of all Taxes and customary fees, commissions, costs, underwriting discounts and other fees and expenses incurred in connection therewith, including any cost associated with the unwinding of any Hedge Agreement in connection with such Indebtedness.

“Net Short Lender” has the meaning assigned to such term in Section 9.02(e).

“Non-Debt Fund Affiliate” means any Investor (which is an Affiliate of Holdings) and any Affiliate of any such Investor, other than any Debt Fund Affiliate.

“Non-Defaulting Revolving Lenders” has the meaning assigned to such term in Section 2.21(d)(i).

“Not Otherwise Applied” means, with respect to the proceeds of the issuance of Qualified Capital Stock or contribution with respect to Qualified Capital Stock, that as of any date of determination such proceeds have not previously been applied to permit a transaction in reliance on Sections 6.04(a)(ii)(B), (a)(iii)(A) (to the extent a Restricted Payment is made in reliance on clause (a)(iii) or (a)(xiv) of the definition of “Available Amount”), 6.04(a)(iii)(B), 6.04(a)(viii), 6.04(b)(v), (b)(vi)(A) (to the extent a Restricted Debt Payment is made in reliance on clause (a)(iii) or (a)(xiv) of the definition of “Available Amount”), 6.06(n), 6.06(r)(i) (to the extent an Investment is made in reliance on clause (a)(iii) or (a)(xiv) of the definition of “Available Amount”) and/or 6.06(r)(ii).

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit Q or such other form as may be approved by the Administrative Agent and the Borrower (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent and the Borrower), appropriately completed and signed by a Responsible Officer.

“Obligations” means all unpaid principal of and accrued and unpaid interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses (including fees and expenses accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), reimbursements, indemnities and all other advances to, debts, liabilities and obligations of any Loan Party to the Lenders or to any Lender, the Administrative Agent, any Issuing Bank or any indemnified party arising under the Loan Documents in respect of any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute, contingent, due or to become due, now existing or hereafter arising.

“Obligations Derivative Instrument” has the meaning assigned to such term in Section 9.05(d)(ii).

“OFAC” means the Office of Foreign Asset Control of the U.S. Treasury Department.

“Organizational Documents” means (a) with respect to any corporation, its certificate or articles of incorporation or organization and its by-laws, (b) with respect to any limited partnership, its certificate of limited partnership and its partnership agreement, (c) with respect to any general partnership, its partnership agreement, (d) with respect to any limited liability company, its articles of organization or certificate of formation, and its operating agreement, and (e) with respect to any other form of entity, such other organizational documents required by local Requirements of Law or customary under such

jurisdiction to document the formation and governance principles of such type of entity. In the event that any term or condition of this Agreement or any other Loan Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"Other Applicable Indebtedness" has the meaning assigned to such term in Section 2.11(b)(ii).

"Other Connection Taxes" means, with respect to any Lender, any Issuing Bank or the Administrative Agent Taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than connections arising solely from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or 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 all present or future stamp, court or documentary Taxes or any intangible, recording, filing or other similar Taxes arising from any payment made under any Loan Document or from the execution, delivery or enforcement or registration, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, but excluding (i) any Excluded Taxes and (ii) any such Taxes that are Other Connection Taxes imposed with respect to an assignment or participation (other than an assignment made pursuant to Section 2.19).

"Outstanding Amount" means (a) with respect to any Term Loan, Revolving Loan and/or Swingline Loan on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowing and/or prepayment or repayment of such Term Loan, Revolving Loan and/or Swingline Loans, as the case may be, occurring on such date, (b) with respect to any Letter of Credit, the aggregate amount available to be drawn under such Letter of Credit after giving effect to any change in the aggregate amount available to be drawn under such Letter of Credit or the issuance or expiry of such Letter of Credit, including as a result of any LC Disbursement and (c) with respect to any LC Disbursement on any date, the amount of the aggregate outstanding amount of such LC Disbursement on such date after giving effect to any disbursement with respect to any Letter of Credit occurring on such date and any other change in the aggregate amount of such LC Disbursement as of such date, including as a result of any reimbursement by the Borrower of such unreimbursed LC Disbursement.

"Parent" has the meaning assigned to such term in the preamble to this Agreement.

"Parent Company" means (a) the Parent and (b) any Person of which the Borrower is a direct or indirect Wholly-Owned Subsidiary.

"Pari Passu Intercreditor Agreement" means an intercreditor agreement substantially in the form of Exhibit E with any changes thereto (whether material or immaterial) as the Borrower and the Administrative Agent may agree in their respective reasonable discretion.

"Participant" has the meaning assigned to such term in Section 9.05(c)(i).

"Participant/SPC Register" has the meaning assigned to such term in Section 9.05(c).

"Patent" means the following: (a) any and all patents and patent applications; (b) all inventions described and claimed therein; (c) all reissues, divisions, continuations, renewals, extensions and continuations in part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof; and (f) all rights corresponding to any of the foregoing.

"Payment Recipient" has the meaning assigned to such term in Section 8.14(a).

"PBGC" means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any employee pension benefit plan, as defined in Section 3(2) of ERISA (other than a Multiemployer Plan), that is subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, which Holdings, the Borrower or any of its Restricted Subsidiaries, or any of their respective ERISA Affiliates, maintains or contributes to or has an obligation to contribute to, or otherwise has any liability, contingent or otherwise.

“Perfection Certificate” means a certificate substantially in the form of Exhibit J or such other form that is reasonably acceptable to the Administrative Agent and the Borrower.

“Perfection Requirements” means (a) with respect to any Loan Party (other than any Discretionary Guarantor that is a Foreign Subsidiary), the filing of appropriate financing statements with the office of the Secretary of State or other appropriate office of the state of organization of each Loan Party, the filing of Intellectual Property Security Agreements or other appropriate instruments or notices with the US Patent and Trademark Office and the US Copyright Office (solely as required under applicable Requirements of Law), and the delivery to the Administrative Agent of, solely to the extent the same constitutes Collateral, any stock certificate or promissory note, together with instruments of transfer executed in blank and (b) with respect to any Discretionary Guarantor that is a Foreign Subsidiary, any recording, filing, registration, notification or other action required to be taken in the applicable jurisdiction, in each case of the foregoing clauses (a) and (b), to the extent required by the applicable Loan Documents.

“Periodic Term SOFR Determination Day” has the meaning set forth in the definition of “Term SOFR”.

“Permitted Acquisition” means any acquisition made by the Borrower or any of its Restricted Subsidiaries, whether by purchase, merger or otherwise, of (i) all or substantially all of the assets, or any business line, unit or division, product line and/or the re-purchase of franchised Unit Locations (including research and development and related assets in respect of any product) of, any Person engaged in a Similar Business or (ii) a majority of the outstanding Capital Stock of any Person engaged in a Similar Business (it being understood and agreed that “Permitted Acquisition” shall include any Investment in (x) any Restricted Subsidiary the effect of which is to increase the Borrower’s or any Restricted Subsidiary’s equity ownership in such Restricted Subsidiary or (y) any joint venture for the purpose of increasing the Borrower’s or its relevant Restricted Subsidiary’s ownership interest in such joint venture, in each case if (1) such Person is or becomes a Restricted Subsidiary or (2) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys all or a substantial portion of its assets (or such division, business line, unit or product line) to, or is liquidated into, the Borrower and/or any Restricted Subsidiary as a result of such transaction); provided that:

(c) the Borrower is in compliance with Section 6.10(a) (without giving effect to any Covenant Acquisition Increase) and Section 6.10(b) on a Pro Forma Basis; and

(d) the total consideration paid by Loan Parties for (i) the Capital Stock of any Person that is not and does not become a Loan Party, (ii) with respect to any Investment of the type referred to in clauses (x) and (y) above after giving effect to which the relevant Restricted Subsidiary or joint venture is not and does not become a Loan Party or (iii) in the case of an asset acquisition, assets that are not acquired by any Loan Party, in each case, taken together with the total consideration for all such Persons and assets so acquired after the Closing Date, shall not exceed the greater of \$15,000,000 and 25% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(e) the limitation described in the immediately preceding clause (b) shall not apply to any acquisition to the extent (i) any such consideration is financed with the proceeds of sales of the Qualified Capital Stock of, or common equity capital contributions to, the Borrower or any Restricted Subsidiary, other than any Cure Amount or Available Excluded Contribution Amount and/or (ii) the Person so acquired (or the Person owning the assets so acquired) becomes a Subsidiary Guarantor even though such Person is not otherwise required to become a Subsidiary Guarantor; and

(f) in the event the amount available under the immediately preceding clause (b) is reduced as a result of any acquisition of (i) any Restricted Subsidiary that does not become a Loan Party or (ii) any assets that are not transferred to a Loan Party and such Restricted Subsidiary subsequently becomes a Loan Party or such assets are subsequently transferred to a Loan Party respectively, the amount available under the immediately preceding clause (b) shall be proportionately increased as a result thereof.

“Permitted Asset Swap” means the concurrent purchase and sale or exchange of Related Business Assets or any combination of Related Business Assets between the Borrower and/or any Restricted Subsidiary, on the one hand, and any other Person, on the other hand.

“Permitted Bond Hedge Transaction” means any call or capped call option (or substantively equivalent derivative transaction) with respect to the Parent’s common equity that is purchased by the Parent in connection with the issuance of any Convertible Indebtedness; provided that (x) in the case of any such transaction entered into after the Closing Date, such transaction is consummated substantially simultaneously with the issuance of such Convertible Indebtedness and (y) the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Parent from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Parent from the Convertible Indebtedness issued in connection with such Permitted Bond Hedge Transaction.

“Permitted Holders” means (a) the Investors and (b) any Person with which one or more Investors and/or management form a “group” (within the meaning of Section 14(d) of the Exchange Act) so long as, in the case of this clause (b), the relevant Investors beneficially own more than 50% of the relevant voting Capital Stock beneficially owned by the group.

“Permitted Liens” means Liens permitted pursuant to Section 6.02.

“Permitted Warrant Transaction” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) with respect to the Parent’s common equity sold by the Parent substantially concurrently with a related Permitted Bond Hedge Transaction.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or any other entity.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) maintained by Holdings and/or any Restricted Subsidiary or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of its ERISA Affiliates, other than any Multiemployer Plan.

“Platform” has the meaning assigned to such term in Section 5.01.

“Prepayment Asset Sale” means any Disposition by the Borrower or any Restricted Subsidiary made outside the ordinary course of business pursuant in reliance on Section 6.07(h), Section 6.07(q), Section 6.07(s), Section 6.07(x), Section 6.07(aa) and/or Section 6.07(kk).

“Primary Obligor” has the meaning assigned to such term in the definition of “Guarantee”.

“Prime Rate” means (a) the rate of interest publicly announced, from time to time, by the Administrative Agent at its principal office in New York City as its “prime rate,” with the understanding that the “prime rate” is one of the Administrative Agent’s base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as the Administrative Agent may designate or (b) if the Administrative Agent has no “prime rate,” the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the US or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as reasonably

determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as reasonably determined by the Administrative Agent).

“Pro Forma Basis” or “pro forma effect” means, with respect to any determination of the Total Rent Adjusted Net Leverage Ratio, the First Lien Rent Adjusted Net Leverage Ratio, the Secured Rent Adjusted Net Leverage Ratio, the Fixed Charge Coverage Ratio, Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDAR or Consolidated Total Assets (including any component definition thereof), that:

(g) in the case of (i) any Disposition of all or substantially all of the Capital Stock of any Restricted Subsidiary or any division and/or product line of the Borrower and/or any Restricted Subsidiary, (ii) any designation of a Restricted Subsidiary as an Unrestricted Subsidiary (iii) the implementation of any Business Optimization Initiative relating to a cost-savings action and/or (iv) if applicable, any Subject Transaction described in clause (h) or (i) of the definition thereof, income statement items (whether positive or negative and including any expected cost saving) attributable to the property or Person subject to such Subject Transaction, shall be excluded as of the first day of the applicable Test Period with respect to any test or covenant for which the relevant determination is being made;

(h) in the case of (i) any Permitted Acquisition or other Investment, (ii) any designation of any Unrestricted Subsidiary as a Restricted Subsidiary, and/or (iii) if applicable, any Subject Transaction described in clause (i) of the definition thereof, income statement items (whether positive or negative) attributable to the property or Person subject to such Subject Transaction shall be included as of the first day of the applicable Test Period with respect to any test or covenant for which the relevant determination is being made;

(i) [reserved];

(j) any retirement or repayment of Indebtedness by the Borrower or any of its Subsidiaries that constitutes a Subject Transaction shall be deemed to have occurred as of the first day of the applicable Test Period with respect to any test or covenant for which the relevant determination is being made;

(k) any Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in connection therewith that constitutes a Subject Transaction shall be deemed to have occurred as of the first day of the applicable Test Period with respect to any test or covenant for which the relevant determination is being made; provided that, (i) if such Indebtedness has a floating or formula rate, such Indebtedness shall have an implied rate of interest for the applicable Test Period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Indebtedness at the relevant date of determination (taking into account any interest hedging arrangements applicable to such Indebtedness), (ii) interest on any obligation with respect to any Capital Lease shall be deemed to accrue at an interest rate reasonably determined by a Responsible Officer of the Borrower in good faith to be the rate of interest implicit in such obligation in accordance with GAAP and (iii) interest on any Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency 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 by the Borrower;

(l) the acquisition of any asset included in calculating Consolidated Total Assets (other than the amount Cash or Cash Equivalents, which is addressed in clause (g) below), whether pursuant to any Subject Transaction or any Person becoming a subsidiary or merging, amalgamating or consolidating with or into the Borrower or any of its subsidiaries, or the Disposition of any asset included in calculating Consolidated Total Assets described in the definition of “Subject Transaction”, shall be deemed to have occurred as of the last day of the applicable Test Period with respect to any test or covenant for which such calculation is being made;

(m) subject to Section 1.12, other than, for the avoidance of doubt, for purposes of Section 6.10(a) and Section 6.10(b), the Unrestricted Cash Amount shall be calculated as of the date of the consummation of such Subject Transaction after giving pro forma effect thereto, including any application of cash proceeds in connection therewith (other than, for the avoidance of doubt, the cash proceeds of any Indebtedness that is the Subject Transaction for which such a calculation is being made); and

(n) each other Subject Transaction shall be deemed to have occurred as of the first day of the applicable Test Period (or, in the case of Consolidated Total Assets, as of the last day of such Test Period) with respect to any test or covenant for which such calculation is being made.

It is hereby agreed that for purposes of determining pro forma compliance with Section 6.10(a) and/or Section 6.10(b) prior to the last day of the first full Fiscal Quarter after the Closing Date, the applicable level shall be the level cited in Section 6.10(a) or Section 6.10(b), as applicable. Notwithstanding anything to the contrary set forth in the immediately preceding paragraph, for the avoidance of doubt, when calculating the Total Rent Adjusted Net Leverage Ratio for purposes of the definitions of “Applicable Rate” and “Commitment Fee Rate” and for purposes of Section 6.10(c) (other than for the purpose of determining pro forma compliance with Section 6.10(a) or Section 6.10(b) as a condition to taking any action under this Agreement), the events described in the immediately preceding paragraph that occurred subsequent to the end of the applicable Test Period shall not be given pro forma effect.

“Projections” means the financial projections, forecasts, financial estimates and other forward-looking and/or projected information of or relating to the Borrower and its subsidiaries included in the Financial Model (or a supplement thereto).

“Promissory Note” means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit L, evidencing the aggregate outstanding principal amount of Loans of the Borrower to such Lender resulting from the Loans made by such Lender.

“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 associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 (and, in each case, similar Requirements of Law under other jurisdictions) and the rules and regulations promulgated in connection therewith and Charges relating to compliance with the provisions of the Securities Act and the Exchange Act (and, in each case, similar Requirements of Law under other jurisdictions), as applicable to companies with equity or debt securities held by the public, the rules of national securities exchange companies with listed equity or debt securities, directors’, managers’ and/or employees’ compensation, fees and expense reimbursement, Charges relating to investor relations, shareholder meetings and reports to shareholders or debtholders, directors’ and officers’ insurance and other executive costs, legal and other professional fees (including auditors’ and accountants’ fees), listing fees, filing fees and other costs and/or expenses associated with being a public company.

“Public Lender” has the meaning assigned to such term in Section 9.01(d).

~~“Published LIBO Rate” means, with respect to any Interest Period when used in reference to any Loan or Borrowing, (a) the rate of interest appearing on Reuters Screen LIBOR01 Page (or on any successor or substitute page of such service, or any successor to such service as determined by Administrative Agent) as the London interbank offered rate for deposits in Dollars for a term comparable to such Interest Period, at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the commencement of such Interest Period or (b) if the rates described in clause (a) is not available at such time for any reason, then the “Published LIBO Rate” for such Interest Period shall be determined in accordance with Section 2.14.~~

“QFC Credit Support” has the meaning assigned to such term in Section 9.26.

“Qualified Capital Stock” of any Person means any Capital Stock of such Person that is not Disqualified Capital Stock.

“Quality of Earnings Report” has the meaning assigned to such term in the definition of “Consolidated Adjusted EBITDA”.

“Ratio Debt” has the meaning assigned to such term in Section 6.01(w).

“Real Estate Asset” means, at any time of determination, all right, title and interest (fee, leasehold or otherwise) of any Person in and to real property (including, but not limited to, land, improvements and fixtures thereon).

“Refinancing Amendment” means an amendment to this Agreement that is reasonably satisfactory to the Administrative Agent and the Borrower executed by (a) the Borrower, (b) the Administrative Agent and (c) each Lender that agrees to provide all or any portion of the Replacement Term Loans or the Revolver Replacement Facility, as applicable, being incurred pursuant thereto and in accordance with Section 9.02(c).

“Refinancing Indebtedness” has the meaning assigned to such term in Section 6.01(p).

“Refunding Capital Stock” has the meaning assigned to such term in Section 6.04(a)(viii).

“Register” has the meaning assigned to such term in Section 9.05(b).

“Regulated Bank” means any insured depository institution that is regulated by foreign, federal or state banking regulators, including the United States Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation or the Board.

“Regulation D” means Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation S-X” means Regulation S-X under the Securities Act.

“Regulation U” means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Related Business Assets” means assets (other than cash or Cash Equivalents) used or useful in a Similar Business; provided that any asset received by the Borrower or any Restricted Subsidiary in exchange for any asset transferred by the Borrower or any Restricted Subsidiary shall not be deemed to constitute a Related Business Asset if such asset consists of securities of a Person, unless upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

“Related Funds” means with respect to any Lender that is an Approved Fund, any other Approved Fund that is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, managers, officers, shareholders, trustees, employees, partners, agents, advisors and other representatives of such Person and such Person’s Affiliates.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the Environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

“Relevant Governmental Body” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“Replaced Revolving Facility” has the meaning assigned to such term in Section 9.02(c)(ii).

“Replaced Term Loans” has the meaning assigned to such term in Section 9.02(c)(i).

“Replacement Debt” means any Refinancing Indebtedness (whether borrowed in the form of secured or unsecured loans, issued in a public offering, Rule 144A under the Securities Act or other private placement or bridge financing in lieu of the foregoing or otherwise) incurred in respect of Indebtedness permitted under Section 6.01(a) (and any subsequent refinancing of such Replacement Debt).

“Replacement Term Loans” has the meaning assigned to such term in Section 9.02(c)(i).

“Reportable Event” means, with respect to any Pension Plan or Multiemployer Plan, any of the events described in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30-day notice period is waived under PBGC Reg. Section 4043.

“Representatives” has the meaning assigned to such term in Section 9.13.

“Required Lenders” means, at any time, Lenders having Loans or unused Commitments representing more than 50% of the sum of the total Loans and such unused Commitments at such time.

“Required Revolving Lenders” means, at any time, Lenders having Revolving Loans, Additional Revolving Loans, unused Revolving Credit Commitments or unused Additional Revolving Credit Commitments representing more than 50% of the sum of the total Revolving Loans, Additional Revolving Loans and such unused commitments at such time.

“Requirements of Law” means, with respect to any Person, collectively, the common law and all federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Rescindable Amount” has the meaning assigned to such term in Section 2.18(d).

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

“Responsible Officer” means, with respect to any Person, the chief executive officer, the president, the chief financial officer, the treasurer, any assistant treasurer of such Person and any other individual or similar official thereof, any executive vice president, any senior vice president, any vice president or the chief operating officer or other officer responsible for the administration of the obligations of such Person in respect of this Agreement, any member of the board of directors (in the case of any Person that is not incorporated in the US), and, as to any document delivered on the Closing Date, shall include any secretary or assistant secretary or any other individual or similar official thereof with substantially equivalent responsibilities of a Loan Party and, solely for purposes of notices given pursuant to Article 2, any other officer of the applicable Loan Party so designated in writing by the Borrower to the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of any Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party, and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Amount” has the meaning set forth in Section 2.11(b)(iv).

“Restricted Debt” means any Indebtedness described in clause (a) of the definition of “Indebtedness” (other than such Indebtedness among Holdings, the Borrower or any of their respective subsidiaries) of any Loan Party that (a)(i) is contractually subordinated in right of payment to the Obligations, (ii) constitutes Junior Lien Debt or (iii) is unsecured and (b) has an individual outstanding principal amount in excess of the Threshold Amount.

“Restricted Debt Payment” has the meaning set forth in Section 6.04(b).

“Restricted Payment” means (a) any dividend or other distribution on account of any shares of any class of the Capital Stock of the Borrower, except a dividend payable solely in shares of Qualified Capital Stock to the holders of such class; (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value of any shares of any class of the Capital Stock of the Borrower and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of the Capital Stock of the Borrower now or hereafter outstanding.

“Restricted Subsidiary” means, as to any Person, any subsidiary of such Person that is not an Unrestricted Subsidiary. Unless otherwise specified, “Restricted Subsidiary” means any Restricted Subsidiary of the Borrower.

“Revolver Replacement Facility” has the meaning assigned to such term in Section 9.02(c)(ii).

“Revolving Credit Commitment” means any Initial Revolving Credit Commitment and any Additional Revolving Credit Commitment.

“Revolving Credit Exposure” means, with respect to any Lender at any time, the aggregate Outstanding Amount at such time of such Lender’s Initial Revolving Credit Exposure and Additional Revolving Credit Exposure.

“Revolving Facility” means the Initial Revolving Facility, any Incremental Revolving Facility, any facility governing Extended Revolving Credit Commitments or Extended Revolving Loans and any Revolver Replacement Facility.

“Revolving Lender” means any Initial Revolving Lender and any Additional Revolving Lender. Unless the context otherwise requires, the term “Revolving Lender” shall include the Swingline Lender.

“Revolving Loans” means any Initial Revolving Loan and any Additional Revolving Loan.

“Run-Rate Synergies” has the meaning assigned to such term in the definition of “Consolidated Adjusted EBITDA”.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of the S&P Global, Inc.

“Sale and Lease-Back Transaction” means any arrangement providing for the lease by the Borrower and/or any Restricted Subsidiary of any property, which property has been or is to be sold or transferred by the Borrower or such Restricted Subsidiary in contemplation of such lease arrangement.

“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 OFAC or the U.S. Department of State, or (b) to the extent such regimes are applicable to the business of the Borrower and its Restricted Subsidiaries, the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom

“Sanctioned Country” means, at any time, a country or territory that is itself the target of comprehensive Sanctions (as of the date of this Agreement, Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine).

“Sanctioned Person” means any Person that is the target of Sanctions, including (a) any Person listed in any Sanctions-related list of designated Persons maintained by (i) OFAC or the U.S. Department of State or (ii) to the extent the laws of such regimes are applicable to the Borrower and its Restricted Subsidiaries, the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom; (b) any Person organized or resident in a Sanctioned Country; or (c) the government of a Sanctioned Country.

“Scheduled Cash Principal Payments Amount” has the meaning assigned to such term in the definition of “Consolidated Fixed Charges”.

“Scheduled Payment Date” means the last Business Day of each March, June, September and December (commencing March 31, 2022).

~~“Scheduled Unavailability Date” has the meaning assigned to such term in Section 1.13(a)(ii).~~

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of its functions.

“Secured Hedging Obligations” means all Hedging Obligations (other than any Excluded Swap Obligation) under each Hedge Agreement that is in effect on the Closing Date or entered into at any time on or after the Closing Date between any Loan Party and (a) a counterparty that is (or is an Affiliate of) the Administrative Agent, a Lender or an Arranger as of the Closing Date or at the time such Hedge Agreement is entered into and/or (b) any other Person designated by the Borrower to the Administrative Agent, in each case, for which such Loan Party agrees to provide security and in each case that has been designated to the Administrative Agent in writing by the Borrower as being a Secured Hedging Obligation for purposes of the Loan Documents (provided that the Borrower may designate all Hedge Agreements under a specified ISDA master agreement as being Secured Hedging Obligations without the need for separate notices for each Hedge Agreement), it being understood that each counterparty thereto shall be deemed (A) to appoint the Administrative Agent as its agent under the applicable Loan Documents and (B) to agree to be bound by the provisions of Article 8, Section 9.03 and Section 9.10 and any applicable Intercreditor Agreement as if it were a Lender.

“Secured Rent Adjusted Net Leverage Ratio” means the ratio, as of any date of determination, of (a)(i) Consolidated Secured Debt as of the last day of the most recently ended Test Period plus (ii) the product of (A) Consolidated Cash Rental Expense for such Test Period and (B) eight to (b) Consolidated Adjusted EBITDAR for such Test Period, in each case, of the Borrower and its Restricted Subsidiaries on a consolidated basis.

“Secured Obligations” means all Obligations, together with (a) all Banking Services Obligations and (b) all Secured Hedging Obligations.

“Secured Parties” means (a) the Lenders, the Issuing Banks and the Swingline Lender, (b) the Administrative Agent, (c) each counterparty to a Hedge Agreement with a Loan Party the obligations under which constitute Secured Hedging Obligations, (d) each provider of Banking Services to any Loan Party the obligations under which constitute Banking Services Obligations, and (e) any beneficiary of any indemnification obligation undertaken by any Loan Party under any Loan Document.

“Securities Act” means the Securities Act of 1933 and the rules and regulations of the SEC promulgated thereunder.

“Security” means a fungible financial instrument that holds some monetary value, such as representing (a) an ownership interest in a publicly-traded company or rights to such ownership, or (b) a creditor relationship with a Governmental Authority or company.

“Security Agreement” means the Pledge and Security Agreement, substantially in the form of Exhibit M, among the Loan Parties, as grantors, and the Administrative Agent for the benefit of the Secured Parties.

“Similar Business” means any Person the majority of the revenues of which are derived from a business that would be permitted by Section 5.18 if the references to “Restricted Subsidiaries” in Section 5.18 were read to refer to such Person.

~~“SOFR” means, with respect to any Business Day, the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York’s Website (or any successor source) at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day and, in each case, that has been selected and recommended by the Relevant Governmental Body.~~

~~“SOFR-Based Rate” means SOFR or Term SOFR.~~

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“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 Day” has the meaning assigned to such term in the definition of “Daily Simple SOFR”.

“SPC” has the meaning assigned to such term in Section 9.05(e).

“Specified 5% Adjustment” means the adjustments set forth in clause (c)(xviii) of the definition of “Consolidated Adjusted EBITDA”.

“Specified 15% Adjustments” means the adjustments set forth in clause (c)(xiii) (other than Charges of the type described in the clause (c)(xiii)(A)) and/or any other one-time Disposition or issuance of debt or equity) of the definition of “Consolidated Adjusted EBITDA” and in clauses (c) and (m) of the definition of “Consolidated Net Income”.

“Specified 25% Adjustments” means the adjustments set forth in clauses (c)(xii), (c)(xvi)(B) and (e)(iii) of the definition of “Consolidated Adjusted EBITDA” and in clause (d)(iii) of the definition of “Consolidated Net Income”.

“Specified Commitment” has the meaning assigned to such term in Section 1.12(g).

“Specified Commitment Notice” has the meaning assigned to such term in Section 1.12(g).

“Specified Fixed Charges Components” has the meaning assigned to such term in the definition of “Consolidated Fixed Charges”.

“Specified Guarantor Release Provision” has the meaning assigned to such term in Section 8.09.

“Specified Subsidiary” has the meaning assigned to such term in Section 2.11(b)(iv).

“Sponsor” means Advent International Corporation, together with its controlled Affiliates and funds managed or advised by any of them or any of their respective controlled Affiliates.

“Stated Amount” means, with respect to any Letter of Credit, at any time, the maximum amount available to be drawn thereunder, in each case determined (a) as if any future automatic increase in the maximum available amount provided for in any such Letter of Credit had in fact occurred at such time and (b) without regard to whether any conditions to drawing could then be met but after giving effect to all previous drawings made thereunder.

“Subject Indebtedness” has the meaning assigned to such term in Section 1.03.

“Subject Loans” has the meaning assigned to such term in Section 2.11(b)(ii).

“Subject Person” has the meaning assigned to such term in the definition of “Consolidated Net Income”.

“Subject Proceeds” has the meaning assigned to such term in Section 2.11(b)(ii).

“Subject Transaction” means:

- (o) the Transactions;
- (p) any Permitted Acquisition or any other acquisition or similar Investment, whether by purchase, merger or otherwise, of all or substantially all of the assets of, or any business line, unit or division of, any Person or of a majority of the outstanding Capital Stock of any Person (and, in any event, including any Investment in (i) any Restricted Subsidiary the effect of which is to increase the Borrower’s or any Restricted Subsidiary’s respective equity ownership in such Restricted Subsidiary or (ii) any joint venture for the purpose of increasing the Borrower’s or its relevant Restricted Subsidiary’s ownership interest in such joint venture), in each case that is permitted by this Agreement;
- (q) any Disposition of (i) all or substantially all of the assets or (ii) the Capital Stock of any subsidiary (or any business unit, line of business or division of the Borrower and/or any Restricted Subsidiary) not prohibited by this Agreement;
- (r) the designation of a Restricted Subsidiary as an Unrestricted Subsidiary or an Unrestricted Subsidiary as a Restricted Subsidiary in accordance with Section 5.10;
- (s) any incurrence, retirement, redemption, repayment and/or prepayment of Indebtedness (other than any Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes);
- (t) any capital contribution in respect of Qualified Capital Stock or any issuance of Qualified Capital Stock (other than any amount constituting a Cure Amount);
- (u) the implementation of any Business Optimization Initiative;
- (v) at the election of the Borrower, any discontinued operation; and/or
- (w) any other event that by the terms of the Loan Documents requires pro forma compliance with a test or covenant hereunder or requires such test or covenant to be calculated on a pro forma basis.

“subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other subsidiaries of such Person or a combination thereof, in each case to the extent the relevant entity’s

financial results are required to be included in such Person's consolidated financial statements under GAAP; provided that in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interests in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding. Unless otherwise specified, "subsidiary" shall mean any subsidiary of the Borrower.

"Subsidiary Guarantor" means (a) on the Closing Date each subsidiary of the Borrower (other than any such subsidiary that is an Excluded Subsidiary on the Closing Date) and (b) thereafter, each subsidiary of the Borrower that becomes a Guarantor of the Secured Obligations pursuant to the terms of this Agreement (including any such subsidiary designated as a Discretionary Guarantor pursuant to Section 5.12(c)), in each case, until such time as the relevant subsidiary is released from its obligations under the Loan Guaranty in accordance with the terms and provisions hereof.

"Successor Borrower" has the meaning assigned to such term in Section 6.07(a).

"Successor Holdings" has the meaning assigned to such term in Section 6.09(b).

~~"Successor Rate" has the meaning assigned to such term in Section 1.13(a).~~

~~"Successor Rate Conforming Changes" means, with respect to any proposed Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of Business Day, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the reasonable discretion of the Administrative Agent and in consultation with the Borrower, to reflect the adoption and implementation of such Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent reasonably determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for comparable syndicated credit facilities for the administration of such Successor Rate exists, in such other manner of administration that the Administrative Agent reasonably determines (in consultation with the Borrower) is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).~~

"Supported QFC" has the meaning assigned to such term in Section 9.26.

"Swap Obligations" means, with respect to any Loan Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"Swingline Exposure" means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Revolving Lender at any time shall equal to its Applicable Revolving Credit Percentage of the aggregate Swingline Exposure at such time.

"Swingline Lender" means Bank of America, in its capacity as lender of Swingline Loans hereunder, or any successor lender of Swingline Loans hereunder.

"Swingline Loan" has the meaning assigned to such term in Section 2.04.

"Tax Compliance Certificate" has the meaning assigned to such term in Section 2.17(f).

"Taxes" means all present and future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Commitment" means any Initial Term Loan Commitment and any Additional Term Loan Commitment.

“Term Facility” means the Term Loans provided to or for the benefit of the Borrower pursuant to the terms of this Agreement.

“Term Lender” means any Initial Term Lender and any Additional Term Lender.

“Term Loan” means the Initial Term Loans and, if applicable, any Additional Term Loans.

~~“Term SOFR” means the forward-looking term rate for any period that is approximately (as reasonably determined by the Administrative Agent) as long as any of the Interest Period options set forth in the definition of “Interest Period” and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion in consultation with the Borrower.~~

“Term SOFR” means:

(a) for any calculation with respect to a Term SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 11:00 a.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “ABR Term SOFR Determination Day”) that is two U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 11:00 a.m. (New York City time) on any ABR Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three U.S. Government Securities Business Days prior to such ABR Term SOFR Determination Day.

“Term SOFR” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bears interest at a rate determined by reference to Term SOFR (other than pursuant to clause (b) of the definition of “Alternate Base Rate”).

“Term SOFR Adjustment” means a percentage equal to 0.10% per annum.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Termination Date” has the meaning assigned to such term in the lead-in to Article 5.

“Test Period” means, as of any date, the period of four consecutive Fiscal Quarters then most recently ended for which financial statements under Section 5.01(a) or Section 5.01(b), as applicable, have been delivered (or are required to have been delivered); it being understood and agreed that prior to the first delivery (or required delivery) of financial statements under Sections 5.01(a) or (b), “Test Period” means the period of four consecutive Fiscal Quarters most recently ended for which financial statements of the Borrower are available.

“Threshold Amount” means \$15,000,000.

“Total Rent Adjusted Net Leverage Ratio” means the ratio, as of any date of determination, of (a)(i) Consolidated Total Debt outstanding as of the last day of the most recently ended Test Period, plus (ii) the product of (A) Consolidated Cash Rental Expense for such Test Period and (B) eight to (b) Consolidated Adjusted EBITDAR for such Test Period, in each case, of the Borrower and its Restricted Subsidiaries on a consolidated basis.

“Total Revolving Credit Commitment” means, at any time, the aggregate amount of the Revolving Credit Commitments, as in effect at such time.

“Trademark” means the following: (a) all trademarks (including service marks), common law marks, trade names, trade dress, and logos, slogans and other indicia of origin under the Requirements of Law of any jurisdiction in the world, and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing, (b) all renewals of the foregoing, (c) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including damages, claims, and payments for past and future infringements thereof, (d) all rights to sue for past, present, and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing and (e) all domestic rights corresponding to any of the foregoing.

“Transaction Costs” means fees, premiums, expenses and other transaction costs (including original issue discount or upfront fees) payable or otherwise borne by the Borrower, any Parent Company and/or its subsidiaries in connection with the Transactions and the transactions contemplated thereby.

“Transactions” means, collectively, (a) the execution, delivery and performance by the Loan Parties of the Loan Documents to which they are a party and the Borrowing of Loans hereunder on the Closing Date, (b) the Closing Date Refinancing, (c) the consummation of the IPO and (d) the payment of the Transaction Costs.

“Treasury Capital Stock” has the meaning assigned to such term in Section 6.04(a)(viii).

“Treasury Regulations” means the US federal income tax regulations promulgated under the Code.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to ~~the LIBO Rate~~ Adjusted Term SOFR or the Alternate Base Rate.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the creation or perfection of security interests.

“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 falling within 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.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“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.

“Unrestricted Cash Amount” means, as to any Person on any date of determination, the amount of (a) unrestricted Cash and Cash Equivalents of such Person and (b) Cash and Cash Equivalents of such Person that are restricted in favor of the Credit Facilities and/or other permitted *pari passu* or junior secured Indebtedness (which may also include Cash and Cash Equivalents securing other Indebtedness that is secured by a Lien on Collateral along with the Credit Facilities and/or other permitted *pari passu* or junior secured indebtedness), in each case, (x) whether or not held in a pledged account and (y) calculated in accordance with GAAP.

“Unrestricted Subsidiary” means (a) any subsidiary of the Borrower that is listed on Schedule 5.10 hereto or designated by the Borrower as an Unrestricted Subsidiary after the Closing Date pursuant to Section 5.10 and (b) each subsidiary of any Person described in the preceding clause (a).

“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.

“US” means the United States of America.

“US Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“US Special Resolution Regimes” has the meaning assigned to such term in Section 9.26.

“USA PATRIOT Act” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required scheduled payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness; provided that the effects of any prepayment made in respect of such Indebtedness shall be disregarded in making such calculation.

“Wholly-Owned Subsidiary” of any Person means a subsidiary of such Person, 100% of the Capital Stock of which (other than directors’ qualifying shares or shares required by Requirements of Law to be owned by a resident of the relevant jurisdiction) is owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

“Withdrawal Liability” means the liability to any Multiemployer Plan as the result of a “complete” or “partial” withdrawal by Holdings, the Borrower or any Restricted Subsidiary or any ERISA Affiliate from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“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 2. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Term Loan”) or by Type (e.g., a “~~LBO-Rate~~Term SOFR Loan”) or by Class and Type (e.g., a “~~LBO-Rate~~Term SOFR Term Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Term Loan Borrowing”) or by Type (e.g., a “~~LBO-Rate~~Term SOFR Borrowing”) or by Class and Type (e.g., a “~~LBO-Rate~~Term SOFR Term Loan Borrowing”).

SECTION 3. Terms Generally. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined.
- (b) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.
- (c) The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”
- (d) The word “will” shall be construed to have the same meaning and effect as the word “shall.”
- (e) The words “herein,” “hereof” and “hereunder,” and words of similar import, when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision hereof.
- (f) Any definition of or reference to any agreement, instrument or other document herein or in any Loan Document shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified or extended, replaced or refinanced (subject to any restrictions or qualifications on such amendments, restatements, amendment and restatements, supplements or modifications or extensions, replacements or refinancings set forth herein).
- (g) Any reference to any Requirement of Law in any Loan Document shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Requirement of Law.
- (h) Any reference herein or in any Loan Document to any Person shall be construed to include such Person’s successors and permitted assigns.
- (i) All references herein or in any Loan Document to Articles, Sections, clauses, paragraphs, Exhibits and Schedules shall be construed to refer to Articles, Sections, clauses and paragraphs of, and Exhibits and Schedules to, such Loan Document.
- (j) In the computation of periods of time in any Loan Document from a specified date to a later specified date, the word “from” means “from and including”, the words “to” and “until” mean “to but excluding” and the word “through” means “to and including”.

(k) The words “asset” and “property”, when used in any Loan Document, shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including Cash, securities, accounts and contract rights.

(l) For purposes of determining compliance at any time with Sections 5.16, 6.01, 6.02, 6.04, 6.05, 6.06 and 6.07, in the event that any Affiliate transaction, Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, Burdensome Agreement, Investment or Disposition, as applicable, meets the criteria of more than one of the categories of transactions or items permitted pursuant to any clause of such Sections 5.16, 6.01 (other than Section 6.01(a)); provided that it is understood that the provisions of this Section 1.03(1) shall apply to any amount incurred in reliance on any provision of the definition of “Incremental Cap”), 6.02 (other than Section 6.02(a)), 6.04, 6.05, 6.06 and 6.07, the Borrower, in its sole discretion, may, from time to time, classify or reclassify such transaction or item (or portion thereof) under one or more clauses of each such Section and will only be required to include the amount and type of such transaction (or portion thereof) in any one category; provided that:

(i) upon the date on which financial statements of the type described in Section 5.01(a) or (b) are delivered on the date of or following the initial incurrence of any portion of any Indebtedness incurred under Section 6.01 (other than Section 6.01(a)); provided that it is understood that the provisions of this clause (i) shall apply to any amount incurred in reliance on any provision of the definition of “Incremental Cap”) (such portion of such Indebtedness, the “Subject Indebtedness”), if any such Subject Indebtedness could, based on such financial statements, have been incurred in reliance on Section 6.01(w) or the Incremental Incurrence-Based Component, as applicable, such Subject Indebtedness shall automatically be reclassified as having been incurred under the applicable provisions of Section 6.01(w) or the Incremental Incurrence-Based Component, as applicable (subject to any other applicable provision of Section 6.01(w) or the Incremental Incurrence-Based Component, as applicable,) and any associated Lien will be deemed to have been permitted under Section 6.02 upon any such reclassification;

(ii) upon the date on which financial statements of the type described in Section 5.01(a) or (b) are delivered on the date of or following the making of any Investment in reliance on Section 6.06 (other than Section 6.06(bb)), if all or any portion of such Investment could, based on such financial statements, have been made in reliance on Section 6.06(bb), such Investment (or the relevant portion thereof) shall automatically be reclassified as having been made in reliance on Section 6.06(bb);

(iii) upon the date on which financial statements of the type described in Section 5.01(a) or (b) are delivered on the date of or, following the making of any Restricted Payment under Section 6.04(a) (other than Section 6.04(a)(xi)), if all or any portion of such Restricted Payment could, based on such financial statements, have been made in reliance on Section 6.04(a)(xi), such Restricted Payment (or the relevant portion thereof) shall automatically be reclassified as having been made in reliance on Section 6.04(a)(xi); and

(iv) upon the date on which financial statements of the type described in Section 5.01(a) or (b) are delivered on the date of or, following the making of any Restricted Debt Payment under Section 6.04(b) (other than Section 6.04(b)(vii)), if all or any portion of such Restricted Debt Payment could, based on such financial statements, have been made in reliance on Section 6.04(b)(vii), such Restricted Debt Payment (or the relevant portion thereof) shall automatically be reclassified as having been made in reliance on Section 6.04(b)(vii);

provided, further, that it is understood and agreed that, with respect to the fourth Fiscal Quarter of any Fiscal Year, prior to the date on which financial statements of the type described in Section 5.01(b) for such Fiscal Year are delivered the Borrower may, in its sole discretion, rely on financial statements of the type described in Section 5.01(a) that are internally available to trigger the reclassification of any transaction based on the financial results as of the end of the fourth Fiscal Quarter of such Fiscal Year.

(m) It is understood and agreed that any Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, Burdensome Agreement, Investment, Disposition and/or Affiliate transaction need not be

permitted solely by reference to one category of permitted Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, Burdensome Agreement, Investment, Disposition and/or Affiliate transaction under Section 5.16, 6.01, 6.02, 6.04, 6.05, 6.06 or 6.07, respectively, and may instead be permitted in part under any combination thereof, but the Borrower will only be required to include the amount and type of such transaction (or portion thereof) in one such category (or combination thereof). To the extent the applicability of Section 5.16 or 6.07 with respect to any transaction is subject to a materiality threshold, such transaction shall only be required to comply with the provisions of such Sections to the extent of the amount of such transaction that is in excess of such materiality threshold.

(n) For purposes of any amount herein expressed as a percentage of Consolidated Adjusted EBITDA, “Consolidated Adjusted EBITDA”, unless the context otherwise requires, shall be deemed to refer to Consolidated Adjusted EBITDA of the Borrower and its Restricted Subsidiaries.

SECTION 4. Accounting Terms; GAAP.

(a) All financial statements to be delivered pursuant to this Agreement shall be prepared in accordance with GAAP as in effect from time to time and, except as otherwise expressly provided herein, all terms of an accounting nature that are used in calculating the First Lien Rent Adjusted Net Leverage Ratio, the Secured Rent Adjusted Net Leverage Ratio, the Total Rent Adjusted Net Leverage Ratio, Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDAR or Consolidated Total Assets shall be construed and interpreted in accordance with GAAP, as in effect from time to time; provided 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 date of delivery of the financial statements described in Section 3.04(a) in GAAP or in the application thereof on the operation of such provision, regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change becomes effective until such notice have been withdrawn or such provision amended in accordance herewith; provided, further, that if the Borrower so requests, the Borrower and the Administrative Agent shall negotiate in good faith to enter into an amendment of the relevant affected provisions (without the payment of any amendment or similar fee to the Lenders) to preserve the original intent thereof in light of such change in GAAP or the application thereof; provided, further, that all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made without giving effect to (i) any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any subsidiary at “fair value,” as defined therein and (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

(b) Notwithstanding anything to the contrary herein, but subject to Section 1.12, all financial ratios and tests (including the First Lien Rent Adjusted Net Leverage Ratio, the Secured Rent Adjusted Net Leverage Ratio, the Total Rent Adjusted Net Leverage Ratio and the amount of Consolidated Total Assets, Consolidated Adjusted EBITDAR and Consolidated Adjusted EBITDA) contained in this Agreement that are calculated with respect to any Test Period during which any Subject Transaction occurs shall be calculated with respect to such Test Period and such Subject Transaction on a Pro Forma Basis. Further, if since the beginning of any such Test Period and on or prior to the date of any required calculation of any financial ratio or test (i) any Subject Transaction has occurred or (ii) any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries or any joint venture since the beginning of such Test Period has consummated any Subject Transaction, then, in each case, any applicable financial ratio or test shall be calculated on a Pro Forma Basis for such Test Period as if such Subject Transaction had occurred at the beginning of the applicable Test Period (or, in the case of Consolidated Total Assets (or with respect to any determination pertaining to the balance sheet, including the acquisition of Cash and/or Cash Equivalents), as of the last day of such Test Period) (it being understood, for the avoidance of doubt, that solely for purposes of (A) calculating actual compliance with Section 6.10(a) or Section 6.10(b) and (B)

calculating the Total Rent Adjusted Net Leverage Ratio for purposes of the definitions of “Applicable Rate” and “Commitment Fee Rate”, in each case, the date of the required calculation shall be the last day of the Test Period, and no Subject Transaction occurring thereafter shall be taken into account).

(c) Notwithstanding anything to the contrary contained in paragraph (a) above or in the definition of “Capital Lease,” only those leases (assuming for purposes hereof that such leases were then in existence) that would constitute Capital Leases in conformity with GAAP as in effect prior to giving effect to the adoption of ASU No. 2016-02 “Leases (Topic 842)” and ASU No. 2018-11 “Leases (Topic 842)” shall be considered Capital Leases hereunder or under any other Loan Document, and all calculations and deliverables under this Agreement or any other Loan Document shall be made, prepared or available, as applicable, in accordance therewith; provided that all financial statements required to be provided hereunder may, at the option of the Borrower, be prepared in accordance with GAAP without giving effect to the foregoing treatment of Capital Leases.

SECTION 5. Effectuation of Transactions. Each of the representations and warranties contained in the Loan Documents (and all corresponding definitions) is made after giving effect to the Transactions, unless the context otherwise requires.

SECTION 6. Timing of Payment or Performance. When 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, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

SECTION 7. Times of Day. Unless otherwise specified herein, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

SECTION 8. Currency Equivalents Generally.

(a) [Reserved].

(b) For purposes of any determination under Article 1, Article 5, Article 6 (other than Section 6.10(a) and Section 6.10(b)) and the calculation of compliance with any financial ratio for purposes of taking any action hereunder) or Article 7 with respect to any Affiliate transaction, the amount of any Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, Investment, Disposition or other transaction, event or circumstance, or any determination under any other provision of this Agreement, (any of the foregoing, a “specified transaction”), in a currency other than Dollars, (i) the Dollar equivalent amount of a specified transaction in a currency other than Dollars shall be calculated based on the rate of exchange quoted by the Bloomberg Foreign Exchange Rates & World Currencies Page (or any successor page thereto, or in the event such rate does not appear on any Bloomberg Page, by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower) for such foreign currency, as in effect at 11:00 a.m. (London time) on the date of such specified transaction (which, in the case of any Restricted Payment, shall be deemed to be the date of the declaration thereof and, in the case of the incurrence of Indebtedness, shall be deemed to be on the date first committed); provided that, if any Indebtedness is incurred (and, if applicable, associated Lien granted) to refinance or replace other Indebtedness denominated in a currency other than Dollars, and the relevant refinancing or replacement 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 refinancing or replacement, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing or replacement Indebtedness (and, if applicable, associated Lien granted) does not exceed an amount sufficient to repay the principal amount of such Indebtedness being refinanced or replaced, except by an amount equal to (x) unpaid accrued interest and premiums (including tender premiums) thereon plus other reasonable and customary fees and expenses (including upfront fees and original issue discount) incurred in connection with such refinancing or replacement, (y) any existing commitment unutilized thereunder and (z) any additional amount permitted to be incurred under Section 6.01 and (ii) for the avoidance of doubt, no Default or Event of Default shall be deemed to have occurred solely as a result of a change in the rate of currency exchange occurring after the time of any specified transaction so long as such specified transaction was permitted at

the time incurred, made, acquired, committed, entered or declared as set forth in clause (i). For purposes of Section 6.10(a), Section 6.10(b) and the calculation of compliance with any financial ratio for purposes of taking any action hereunder, on any relevant date of determination, amounts denominated in currencies other than Dollars shall be translated into Dollars at the applicable currency exchange rate used in preparing the financial statements delivered pursuant to Sections 5.01(a) or (b) (or, prior to the first such delivery, the financial statements referred to in Section 3.04), as applicable, for the relevant Test Period and will, with respect to any Indebtedness, reflect the currency translation effects, determined in accordance with GAAP, of any Hedge Agreement permitted hereunder in respect of currency exchange risks with respect to the applicable currency in effect on the date of determination for the Dollar equivalent amount of such Indebtedness; provided that the amount of any Indebtedness that is subject to a Debt FX Hedge shall be determined in accordance with the definition of "Consolidated Total Debt". Notwithstanding the foregoing or anything to the contrary herein, to the extent that the Borrower would not be in compliance with Section 6.10(a) and/or Section 6.10(b) if any Indebtedness denominated in a currency other than Dollars were to be translated into Dollars on the basis of the applicable currency exchange rate used in preparing the financial statements delivered pursuant to Section 5.01(a) or (b), as applicable, for the relevant Test Period, but would be in compliance with Section 6.10(a) or Section 6.10(b), as applicable, if such Indebtedness that is denominated in a currency other than in Dollars were instead translated into Dollars on the basis of the average relevant currency exchange rates over such Test Period (taking into account the currency translation effects, determined in accordance with GAAP, of any Hedge Agreement permitted hereunder in respect of currency exchange risks with respect to the applicable currency in effect on the date of determination for the Dollar equivalent amount of such Indebtedness), then, solely for purposes of compliance with Section 6.10(a) or Section 6.10(b), as applicable, the Total Rent Adjusted Net Leverage Ratio as of the last day of such Test Period shall be calculated on the basis of such average relevant currency exchange rates; provided that the amount of any Indebtedness that is subject to a Debt FX Hedge shall be determined in accordance with the definition of "Consolidated Total Debt".

(c) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify with the Borrower's consent to appropriately reflect a change in currency of any country and any relevant market convention or practice relating to such change in currency.

SECTION 9. Cashless Rollovers. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, to the extent that any Lender extends the maturity date of, or replaces, renews or refinances, any of its then-existing Loans with Incremental Loans, Replacement Term Loans, Loans in connection with any Revolver Replacement Facility, Extended Term Loans, Extended Revolving Loans or loans incurred under a new credit facility, in each case, to the extent such extension, replacement, renewal or refinancing is effected by means of a "cashless roll" by such Lender, such extension, replacement, renewal or refinancing shall be deemed to comply with any requirement hereunder or any other Loan Document that such payment be made "in Dollars", "in immediately available funds", "in Cash" or any other similar requirement.

SECTION 10. [Reserved].

Section 1.1. Rates. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Alternate Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Alternate Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Alternate Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner that may be adverse to the

Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Alternate Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR or any other Benchmark, or any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service. It is understood and agreed that nothing in this Section 1.11 shall limit the express terms of this Agreement.

~~Section 1.11. Rates; LIBOR Notification. The interest rate on LIBO Rate Loans is determined by reference to the Published LIBO Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the "IBA") for purposes of the IBA setting the London interbank offered rate. On March 5, 2021, the IBA stated that as a result of its not having access to input data necessary to calculate LIBOR settings on a representative basis beyond the intended cessation dates set forth in the table below, it would have to cease publication of all 35 LIBOR settings immediately after such dates:~~

<u>LIBOR Currency</u>	<u>LIBOR Settings</u>	<u>Date</u>
Dollars	1-week, 2-month	December 31, 2021
Dollars	All other settings (i.e., Overnight/Spot Next, 1-month, 3-month, 6-month and 12-month)	June 30, 2023

~~The IBA did not identify any successor administrator in its announcement. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London interbank offered rate. Section 1.12 provides a mechanism for determining an alternative rate of interest for Loans. The Administrative Agent will promptly notify the Borrower, pursuant to Section 1.12, of any change to the reference rate upon which the interest rate on LIBO Rate Loans is based.~~

SECTION 11. Certain Calculations and Tests.

(a) Notwithstanding anything to the contrary herein, to the extent that the terms of this Agreement require (i) compliance with any financial ratio or test (including Section 6.10(a), Section 6.10(b), any First Lien Rent Adjusted Net Leverage Ratio test, any Secured Rent Adjusted Net Leverage Ratio test, any Total Rent Adjusted Net Leverage Ratio test and/or any Fixed Charge Coverage Ratio test) and/or any cap expressed as a percentage of Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDAR or Consolidated Total Assets, (ii) the absence of a Default or Event of Default (or any type of Default or Event of Default), (iii) the making or accuracy of any representation and/or warranty or (iv) compliance with availability under any basket or cap (including any basket or cap expressed as a percentage of Consolidated Adjusted EBITDA or Consolidated Total Assets), in each case, a condition to (A) the consummation of any transaction in connection with any acquisition or similar Investment (including the assumption or incurrence of Indebtedness), (B) the making of any Restricted Payment and/or (C) the making of any Restricted Debt Payment, the determination of whether the relevant condition is satisfied may be made, at the election of the Borrower, (1) in the case of any acquisition or similar Investment (including with respect to any Indebtedness contemplated, assumed or incurred in connection therewith), at the time of (or on the basis of the financial statements for the most recently ended Test Period at the time of) either (x) the execution of the definitive agreement with respect

to such acquisition or Investment, (y) in connection with an acquisition to which the United Kingdom City Code or Takeover and Mergers (or any comparable Requirement of Law) applies, the date on which a “Rule 2.7 announcement” of a firm intention to make an offer in respect of the target of an acquisition (or equivalent notice under comparable Requirements of Law) or (z) the consummation of such acquisition or Investment, (2) in the case of any Restricted Payment (including with respect to any Indebtedness contemplated or incurred in connection therewith), at the time of (or on the basis of the financial statements for the most recently ended Test Period at the time of) either (x) the declaration of such Restricted Payment or (y) the making of such Restricted Payment and (3) in the case of any Restricted Debt Payment (including with respect to any Indebtedness contemplated or incurred in connection therewith), at the time of (or on the basis of the financial statements for the most recently ended Test Period at the time of) either (x) delivery of irrevocable (which may be conditional) notice with respect to such Restricted Debt Payment or (y) the making of such Restricted Debt Payment, in each case, after giving effect, on a Pro Forma Basis, to (I) the relevant acquisition, Investment, Restricted Payment, Restricted Debt Payment and/or any related Indebtedness (including the intended use of proceeds thereof) and (II) to the extent definitive documents in respect thereof have been executed, the Restricted Payment has been declared or delivery of notice with respect to a Restricted Debt Payment has been delivered (which definitive documents, declaration or notice has not terminated or expired without the consummation thereof), any other Subject Transaction that the Borrower has elected to treat in accordance with this clause (a).

(b) For purposes of determining the permissibility of any action, change, transaction or event that requires a calculation of any financial ratio or test (including Section 6.10(a), Section 6.10(b), any First Lien Rent Adjusted Net Leverage Ratio test, any Secured Rent Adjusted Net Leverage Ratio test, any Total Rent Adjusted Net Leverage Ratio test and/or any Fixed Charge Coverage Ratio test, and/or the amount of Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDAR or Consolidated Total Assets), such financial ratio or test shall be calculated (subject to clause (a) above) at the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be, and no Default or Event of Default shall be deemed to have occurred solely as a result of a change in such financial ratio or test or amount occurring after such calculation, or after the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be.

(c) Notwithstanding anything to the contrary herein, with respect to any amount incurred or transaction entered into (or consummated) in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test (including any First Lien Rent Adjusted Net Leverage Ratio test, any Secured Rent Adjusted Net Leverage Ratio test, any Fixed Charge Coverage Ratio test and/or any Total Rent Adjusted Net Leverage Ratio test) (any such amount, including any such amount drawn or deemed to have been drawn under any revolving credit facility and, for the avoidance of doubt, any amount that is expressed as a percentage of Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDAR or Consolidated Total Assets, a “Fixed Amount”) substantially concurrently with any amount incurred or transaction entered into (or consummated) in reliance on a provision of this Agreement that requires compliance with a financial ratio or test (including Section 6.10(a), Section 6.10(b), any First Lien Rent Adjusted Net Leverage Ratio test, any Secured Rent Adjusted Net Leverage Ratio test, any Fixed Charge Coverage Ratio test and/or any Total Rent Adjusted Net Leverage Ratio test) (any such amount, an “Incurrence-Based Amount”), it is understood and agreed that (i) any Fixed Amount shall be disregarded in the calculation of the financial ratio or test applicable to the relevant Incurrence-Based Amount and (ii) except as provided in the preceding clause (i), pro forma effect shall be given to the entire transaction. The Borrower may elect that any amount incurred or transaction entered into (or consummated) in reliance on one or more of any Incurrence-Based Amount or any Fixed Amount in its sole discretion; provided that, unless the Borrower elects otherwise and except as set forth in the definition of “Incremental Cap”, each such amount or transaction shall be deemed incurred, entered into or consummated first under any Incurrence-Based Amount to the maximum extent permitted thereunder.

(d) The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

(e) The increase in any amount secured by any Lien by virtue of the accrual of interest, the accretion of accreted value, the payment of interest or a dividend in the form of additional Indebtedness,

amortization of original issue discount and/or any increase in the amount of Indebtedness outstanding solely as a result of any fluctuation in the exchange rate of any applicable currency will not be deemed to be the creation, incurrence, assumption, or the permission or sufferance to exist of a Lien for purposes of Section 6.02.

(f) With respect to any pro forma calculation that is required to be made in connection with any acquisition or similar Investment in respect of which financial statements for the applicable target are not available for the same Test Period for which financial statements of the Borrower are available, the Borrower shall make the relevant calculation on the basis of the relevant available financial statements (even if for differing periods) or such other commercially reasonable basis as the Borrower may elect.

(g) In connection with the implementation or assumption of any revolving commitment and/or any delayed draw commitment (in each case, other than any such commitment implemented pursuant to Section 2.22) in reliance on any Incurrence-Based Amount, the Borrower may, in its sole discretion elect to, by written notice to the Administrative Agent (a “Specified Commitment Notice”), either (a) treat all or any portion of such revolving commitment and/or delayed draw commitment as having been fully drawn on the date of implementation or assumption (such commitment (or portion thereof), a “Specified Commitment”), in which case (i) the Borrower shall not be required to comply with any financial ratio or test in connection with any drawing thereunder after the date of incurrence or assumption and (ii) other than for purposes of (A) the Applicable Rate, (B) the Commitment Fee Rate and/or (C) actual compliance with Section 6.10(a) or Section 6.10(b), the amount of such Specified Commitment shall be deemed to have been an actual incurrence of Indebtedness thereunder on the date of implementation or assumption for purposes of calculating any Incurrence-Based Amount or (b) test the permissibility of all or any portion of any drawing under such revolving commitment and/or delayed draw commitment on the date of such drawing (if any), in which case, such revolving commitment and/or delayed draw commitment (or portion thereof) shall only be treated as drawn for purposes of any Incurrence-Based Amount to the extent of any actual drawing thereunder that is outstanding at the applicable time of determination. It is understood and agreed that the Borrower may, at any time in its sole discretion, (x) deliver a Specified Commitment Notice with respect to any revolving commitment and/or delayed draw commitment and/or (y) withdraw any Specified Commitment Notice with respect to all or any portion of any revolving commitment and/or delayed draw commitment and instead elect to treat such revolving commitment and/or delayed draw commitment in accordance with clause (a) or (b) of the immediately preceding sentence.

(h) Any determination of the Weighted Average Life to Maturity of any Indebtedness shall be made by the Borrower in good faith at the time of the incurrence of such Indebtedness.

(i) It is understood and agreed that the Borrower and/or any Restricted Subsidiary may incur Indebtedness permitted under any provision of Section 6.01 to refinance Indebtedness originally incurred under the same provision of Section 6.01 while the Indebtedness being refinanced remains outstanding so long as the proceeds of the applicable refinancing Indebtedness are promptly deposited with the trustee or other applicable representative of the holders of the Indebtedness being refinanced, which proceeds will be applied to satisfy and discharge the Indebtedness being refinanced in accordance with the documentation governing such Indebtedness.

SECTION 12. ~~Effect of Benchmark Transition Event~~ [Reserved].

~~(a) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined with respect to Dollars, that:~~

~~(i) adequate and reasonable means do not exist for ascertaining the LIBO Rate for Dollars for any Interest Period hereunder or any other tenors of LIBOR, including because the LIBO Rate for Dollars is not available or published on a current basis at such time and such circumstances are unlikely to be temporary; or~~

~~(ii) the administrator of the LIBO Rate for Dollars or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator has made a public statement identifying a specific date after which the LIBO Rate or the Published LIBO Rate for Dollars shall no longer be made available, or used for determining the interest rate of loans denominated in Dollars, provided that, in each case, at the time of such statement, there is no successor administrator that is reasonably satisfactory to the Administrative Agent that will continue to provide the LIBO Rate for Dollars after such specific date (such specific date, the “Scheduled Unavailability Date”); or~~

~~(iii) the administrator of the LIBO Rate for Dollars or a Governmental Authority having jurisdiction over such administrator has made a public statement announcing that all Interest Periods and other tenors of the LIBO Rate are no longer representative; or~~

~~(iv) syndicated loans being executed at the time of such determination, or that include language similar to that contained in this Section 1.13, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the LIBO Rate for Dollars;~~

~~then, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice from the Borrower or the Required Lenders, notwithstanding anything to the contrary in Section 9.02, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing the LIBO Rate for Dollars in accordance with this Section 1.13 with (x) one or more SOFR-Based Rates or (y) another alternate benchmark rate giving due consideration to any evolving or then existing convention for comparable syndicated credit facilities for such alternative benchmarks for Dollars and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for comparable syndicated credit facilities for such benchmark for Dollars, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion in consultation with the Borrower and may be periodically updated (each, an “Adjustment,” and any such proposed rate, a “Successor Rate”), and any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that the Required Lenders object to any Adjustment or any rate that is not a SOFR-Based Rate; provided that, for the avoidance of doubt, such Required Lenders shall not be entitled to object to any SOFR-Based Rate contained in any such amendment.~~

~~Any Successor Rate shall be applied in a manner consistent with market practice for comparable syndicated loans being executed at the time of such determination; 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.~~

~~Notwithstanding anything to the contrary herein, if at any time any Successor Rate as so determined would otherwise be less than (x) in the case of Initial Term Loans, 0.00% per annum, then the Successor Rate with respect to such Initial Term Loans will be deemed to be 0.00% per annum and (y) in the case of Initial Revolving Loans, 0.00% per annum, then the Successor Rate with respect to such Initial Revolving Loans will be deemed to be 0.00% per annum, in each case, for the purposes of this Agreement and the other Loan Documents.~~

~~In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Successor Rate Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Successor Rate Conforming Changes will become effective without any further action or consent of any other party to this Agreement (other than the Borrower (such consent not to be unreasonably withheld or delayed)); provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Successor Rate Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.~~

~~(b) If, at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, no Successor Rate has been determined in accordance with clause (a) of this Section 1.13 or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Borrower and each Lender and thereafter, (x) the obligation of the Lenders to make or maintain LIBO Rate Loans shall be suspended (to the extent of the affected LIBO Rate Loans, Interest Periods, interest payment dates or payment periods) and (y) the LIBO Rate component shall no longer be utilized in determining the Base Rate, until the Successor Rate has been determined in accordance with clause (a). Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBO Rate Loans (to the extent of the affected LIBO Rate Loans, Interest Periods, interest payment dates or payment periods) or, failing that, (i) any requested Loans will be deemed to have converted such request into a request for a Borrowing of ABR Loans (subject to the foregoing clause (y)) in the amount specified therein) and (ii) any outstanding affected LIBO Rate Loans will be deemed to have been converted into ABR Loans at the end of the applicable Interest Period.~~

SECTION 13. [Reserved].

SECTION 14. Certain Determinations.

(a) For the avoidance of doubt, in connection with any incurrence of Indebtedness under Section 2.22, “Required Lenders” and “Required Revolving Lenders” shall be calculated on a Pro Forma Basis in accordance with Section 1.04, Section 2.22 and the definition of “Incremental Cap”; provided that any waiver, amendment or modification obtained on such basis (i) will become operative substantially contemporaneously with the incurrence of such Indebtedness and (ii) shall not affect the rights or duties under this Agreement of any Lender holding any Loan and/or Commitment under any then-outstanding Class in a manner that does not affect the rights or duties of the Lenders in respect of the Indebtedness incurred in reliance on Section 2.22 in connection with the relevant amendment.

(b) [Reserved].

(c) With respect to any determination under the terms of this Agreement that is vested in the Borrower, the Borrower shall have a right, in its sole discretion (but not any obligation), to deliver notice of such determination to the Administrative Agent, together with a reasonably detailed description thereof, which notice shall be conclusive evidence that such determination satisfied the applicable standard under this Agreement or the relevant other Loan Document unless, within five Business Days following receipt of notice of such determination (and the related description) from the Borrower, the Required Lenders deliver a written objection to such determination to the Borrower, which written objection states, with specificity, the basis upon which the Required Lenders object to such determination.

(d) Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, if, after delivery of any Compliance Certificate pursuant to Section 5.01(c), it is subsequently determined that the Total Rent Adjusted Net Leverage Ratio set forth in such Compliance Certificate is inaccurate for any reason and the result of such inaccuracy is that the Lenders received any amount of interest or any fee for any relevant period based on an Applicable Rate or Commitment Fee Rate that is greater than or less than the amount that would have applied if the Total Rent Adjusted Net Leverage Ratio set forth in such Compliance Certificate had been accurately reported, then, for all purposes under this Agreement, the Applicable Rate and the Commitment Fee Rate for each day during the relevant period shall be revised to be based upon the accurately determined Total Rent Adjusted Net Leverage Ratio and, in such event, any shortfall in the amount of any applicable interest payment shall be due and payable within five Business Days following the date on which the Borrower becomes aware of the relevant inaccuracy. In the event that (A) any inaccuracy in the calculation of the Total Rent Adjusted Net Leverage Ratio resulted in a shortfall in the amount of any required interest or principal payment and (B) such inaccuracy resulted from a good faith mistake on the part of the Borrower in the preparation of such calculation, no Default or Event of Default shall arise under this Agreement with respect thereto unless the relevant amount has not been paid within the period described in the preceding sentence.

(e) With respect to determination of the permissibility of any transaction by Holdings, the Borrower and/or any subsidiary under this Agreement, (i) the delivery by the Borrower of a third party valuation report from (A) a nationally recognized accounting, appraisal, investment banking or consulting

firm or (B) another firm reasonably acceptable to the Administrative Agent, in each case, shall be conclusive with respect to the value of the assets covered thereby and (ii) any determination of whether an action is taken “in the ordinary course of business” or “in a manner consistent with past practice” (or, in either case, any similar expression) shall be made by the Borrower in good faith.

(f) It is understood and agreed for the avoidance of doubt that the carve-outs from the provisions of Section 5.16 and/or Article 6 may include items or activities that are not restricted by the relevant provision and the inclusion of such items or activities shall not be construed to expand the scope of Section 5.16 and/or Article 6, as applicable.

SECTION 15. Conflicts. In the event of any conflict or inconsistency between any term or provision of this Agreement (excluding the Exhibits hereto) and any term or provision of any Exhibit to this Agreement, the term or provision of this Agreement shall govern, and the Borrower shall be entitled to make such revisions to the relevant term or provision of the applicable Exhibit to ensure that such term or provision is consistent with the corresponding term or provision of this Agreement.

SECTION 16. Confidentiality; Privilege, Etc. Notwithstanding any obligation to provide information under any Loan Document or allow the Administrative Agent, the Lenders or any third party to access or inspect the books and records of Holdings or its subsidiaries or otherwise as set forth in this Agreement or any other Loan Document, none of Holdings or any of its subsidiaries will be required to disclose or permit the inspection or discussion of, any document, information or other matter (a) that constitutes a non-financial trade secret or non-financial proprietary information of any Person, (b) in respect of which disclosure to the Administrative Agent or any Lender (or any of their respective Representatives) is prohibited by applicable Requirements of Law, (c) that is subject to attorney-client or similar privilege or constitutes attorney work product and/or (d) in respect of which Holdings and/or any of its subsidiaries owes confidentiality obligations to any Person (provided that such confidentiality obligations were not entered into in contemplation of the requirements of the Loan Documents); provided that, in the event that such information has not been provided in reliance on clauses (c) and/or (d) above, notice that information is being withheld on such basis must be provided to the Administrative Agent.

ARTICLE 2

THE CREDITS

SECTION 1. Commitments.

(a) Subject to the terms and conditions set forth herein, (i) each Initial Term Lender severally, and not jointly, agrees to make term loans (the “Initial Term Loans”) to the Borrower on the Closing Date in Dollars in a principal amount not to exceed its Initial Term Loan Commitment and (ii) each Initial Revolving Lender severally, and not jointly, agrees to make revolving loans (the “Initial Revolving Loans”) to the Borrower in Dollars at any time and from time to time on and after the Closing Date, and until the earlier of the Initial Revolving Credit Maturity Date and the termination of the Initial Revolving Credit Commitment of such Initial Revolving Lender in accordance with the terms hereof; provided that, after giving effect to any Borrowing of Initial Revolving Loans, the Outstanding Amount of such Initial Revolving Lender’s Initial Revolving Credit Exposure shall not exceed such Initial Revolving Lender’s Initial Revolving Credit Commitment. Within the foregoing limits and subject to the terms, conditions and limitations set forth herein, Revolving Loans may consist of ABR Loans, ~~LBO Rate~~ Term SOFR Loans, or a combination thereof, and may be borrowed, paid, repaid and reborrowed. Amounts paid or prepaid in respect of the Initial Term Loans may not be reborrowed.

(b) Subject to the terms and conditions of this Agreement and any applicable Refinancing Amendment, Extension Amendment, or Incremental Facility Amendment, each Lender with an Additional Commitment of a given Class, severally and not jointly, agrees to make Additional Loans of such Class to the Borrower, which Loans shall not exceed for any such Lender at the time of any incurrence thereof the Additional Commitment of such Class of such Lender as set forth in the applicable Refinancing Amendment, Extension Amendment or Incremental Facility Amendment.

SECTION 2. Loans and Borrowings.

(a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. Each Swingline Loan shall be made in accordance with the terms and procedures set forth in Section 2.04.

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or ~~LBO-Rate~~Term SOFR Loans as the Borrower may request in accordance herewith; provided that each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any ~~LBO-Rate~~Term SOFR Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that (i) any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement, (ii) such ~~LBO-Rate~~Term SOFR Loan shall be deemed to have been made and held by such Lender, and the obligation of the Borrower to repay such ~~LBO-Rate~~Term SOFR Loan shall nevertheless be to such Lender for the account of such domestic or foreign branch or Affiliate of such Lender and (iii) in exercising such option, such Lender shall use reasonable efforts to minimize increased costs to the Borrower resulting therefrom (which obligation of such Lender shall not require it to take, or refrain from taking, actions that it determines would result in increased costs for which it will not be compensated hereunder or that it otherwise determines would be disadvantageous to it and in the event of such request for costs for which compensation is provided under this Agreement, the provisions of Section 2.15 shall apply); provided, further, that no such domestic or foreign branch or Affiliate of such Lender shall be entitled to any greater indemnification under Section 2.17 in respect of any US federal withholding tax with respect to such ~~LBO-Rate~~Term SOFR Loan than that to which the applicable Lender was entitled on the date on which such Loan was made (except in connection with any indemnification entitlement arising as a result of any Change in Law after the date on which such Loan was made).

(c) At the commencement of each Interest Period for any ~~LBO-Rate~~Term SOFR Borrowing, such ~~LBO-Rate~~Term SOFR Borrowing shall comprise an aggregate principal amount that is an integral multiple of \$100,000 and not less than \$1,000,000. Each ABR Borrowing when made shall be in a minimum principal amount of \$500,000 and in an integral multiple of \$100,000; provided that an ABR Revolving Loan Borrowing may be made in a lesser aggregate amount that is (x) equal to the entire aggregate unused Revolving Credit Commitment or (y) required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(d). Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of 10 different Interest Periods in effect for ~~LBO-Rate~~Term SOFR Borrowings at any time outstanding (or such greater number of different Interest Periods as the Administrative Agent may agree from time to time).

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not, nor shall it be entitled to, request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date applicable to the relevant Loans.

SECTION 3. Requests for Borrowings. Each Term Loan Borrowing, each Revolving Loan Borrowing, each conversion of Term Loans or Revolving Loans from one Type to the other, and each continuation of ~~LBO-Rate~~Term SOFR Loans shall be made upon irrevocable notice by the Borrower to the Administrative Agent, which may be given by a Borrowing Request or an Interest Election Request, as applicable (provided that any notice in respect of any Term Loan Borrowing and/or any Revolving Loan Borrowing (x) to be made on the Closing Date may be conditioned on the occurrence of the Closing Date, (y) to be made in connection with any acquisition, investment or repayment or redemption of Indebtedness may be conditioned on the closing of such Permitted Acquisition, permitted Investment or permitted repayment or redemption of Indebtedness or (z) for any other purpose to which the Administrative Agent may consent (such consent not to be unreasonably withheld or delayed), may be conditioned on the occurrence of the relevant event). Each such notice must be in the form of a Borrowing Request or an Interest Election Request, as applicable, appropriately completed and signed by a Responsible Officer of the Borrower and must be received by the Administrative Agent (by hand delivery or other electronic transmission (including “.pdf” or “.tif”)) not later than (i) 12:00 p.m. ~~three~~two Business Days prior to the requested day of any Borrowing of, conversion to or continuation of ~~LBO~~

~~Rate Loans (or one Business Day in the case of any Borrowing of LIBO Rate Loans to be made on the Closing Date)~~ Term SOFR Loans and (ii) 10:00 a.m. on the requested date of any Borrowing of or conversion to ABR Loans (other than Swingline Loans) (or, in each case, such later time as is reasonably acceptable to the Administrative Agent); provided, however, that if the Borrower wishes to request ~~LIBO Rate~~ Term SOFR Loans having an Interest Period other than one, three or six months in duration ~~or such shorter period as provided in the definition of "Interest Period"~~, (A) the applicable notice from the Borrower must be received by the Administrative Agent not later than 12:00 p.m. ~~four~~ three Business Days prior to the requested date of the relevant Borrowing, conversion or continuation (or such later time as is reasonably acceptable to the Administrative Agent), whereupon the Administrative Agent shall give prompt notice to the appropriate Lenders of such request, (B) the relevant requested Interest Period shall be deemed to be available to each appropriate Lender unless such Lender has delivered written notice to the Administrative Agent indicating that such Interest Period is not available to such Lender within one Business Day following the date on which the notice described in clause (A) above is posted by the Administrative Agent and (C) not later than 12:00 p.m. ~~three~~ two Business Days before the requested date of the relevant Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower whether or not the requested Interest Period is available to the appropriate Lenders.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested ~~LIBO Rate~~ Term SOFR Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall advise each Lender of the details and amount of any Loan to be made as part of the relevant requested Borrowing (x) in the case of any ABR Borrowing, on the same Business Day of receipt of a Borrowing Request in accordance with this Section or (y) in the case of any ~~LIBO Rate~~ Term SOFR Borrowing, no later than one Business Day following receipt of a Borrowing Request in accordance with this Section.

SECTION 4. Swingline Loans.

(a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make swingline loans ("Swingline Loans") to the Borrower from time to time on and after the Closing Date and until the Latest Revolving Credit Maturity Date, in an aggregate principal amount at any time outstanding not to exceed \$15,000,000; provided that (i) the Swingline Lender shall not be required to make any Swingline Loan to refinance any outstanding Swingline Loan and (ii) after giving effect to any Swingline Loan, the aggregate Outstanding Amount of all Revolving Loans, Swingline Loans and LC Exposure shall not exceed the Total Revolving Credit Commitment. Each Swingline Loan shall be in a minimum principal amount of not less than \$100,000 or such lesser amount as may be agreed by the Swingline Lender; provided that, notwithstanding the foregoing, any Swingline Loan may be in an aggregate amount that is (1) equal to the entire unused balance of the aggregate unused Revolving Credit Commitments or (2) required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(d). Within the foregoing limits and subject to the terms and conditions set forth herein, Swingline Loans may be borrowed, prepaid and reborrowed. To request a Swingline Loan, the Borrower shall notify the Swingline Lender (with a copy to the Administrative Agent) of such request by delivery of a written Borrowing Request, appropriately completed and signed by a Responsible Officer of the Borrower, not later than 1:00 p.m. on the day of a proposed Swingline Loan. The Swingline Lender shall make each Swingline Loan available to the Borrower on the same Business Day by means of a credit to the account designated in the related Borrowing Request or otherwise in accordance with the instructions of the Borrower (including, in the case of a Swingline Loan made to finance the reimbursement of any LC Disbursement as provided in Section 2.05(e), by remittance to the applicable Issuing Bank).

(b) The Swingline Lender may by written notice given to the Administrative Agent not later than 12:00 p.m. on any Business Day require the Revolving Lenders to purchase a participation on the Business Day following receipt of such notice in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which the Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Revolving Lender's Applicable Revolving Credit Percentage of such Swingline Loan or Swingline Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Revolving Credit Percentage of such

Swingline Loan or Swingline Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or any reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender shall comply with its obligation under this paragraph by effecting a wire transfer of immediately available funds, in the same manner as provided in Section 2.07 with respect to Revolving Loans made by such Revolving Lender (and Section 2.07 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders pursuant to this Section 2.04(b)), and the Administrative Agent shall promptly remit to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Borrower of any participation in any Swingline Loan acquired pursuant to this Section 2.04(b), and thereafter any payment in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower in respect of any Swingline Loan after receipt by the Swingline Lender of the proceeds of any sale of participations therein shall be promptly remitted by the Swingline Lender to the Administrative Agent, and any such amount received by the Administrative Agent shall be promptly remitted by the Administrative Agent to each Revolving Lender that has made its payment pursuant to this Section 2.04(b) and to the Swingline Lender, as their interests may appear; provided that if and to the extent such payment is required to be funded to the Borrower for any reason, such payment shall be repaid to the Swingline Lender or the Administrative Agent, as the case may be, and thereafter to the Borrower. The purchase of participations in a Swingline Loan pursuant to this Section 2.04(b) shall not relieve the Borrower of any default in the payment thereof.

(c) If any Revolving Lender fails to make available to the Administrative Agent (for the account of the Swingline Lender) any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.04 by the time specified in Section 2.04(b), the Swingline Lender shall be entitled to recover from such Revolving 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 Swingline Lender at a rate per annum equal to the greater of the Federal Funds Effective Rate from time to time in effect and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A certificate of the Swingline Lender submitted to any Revolving Lender (through the Administrative Agent) with respect to any amount owing under this clause (c) shall be conclusive absent manifest error.

SECTION 5. Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, (i) each Issuing Bank agrees, in each case in reliance upon the agreements of the other Revolving Lenders set forth in this Section 2.05, (A) from time to time on any Business Day during the period from the Closing Date to the fifth Business Day prior to the Latest Revolving Credit Maturity Date, upon the request of the Borrower, to issue Letters of Credit, issued on sight basis only on behalf of the Borrower and/or any of its subsidiaries (provided that the Borrower will be the applicant) and to amend or renew any Letter of Credit previously issued by it, in accordance with Section 2.05(b), and (B) to honor any draft under any Letter of Credit; provided that no Issuing Bank shall be required to issue any Letter of Credit if (x) the Stated Amount of such Letter of Credit, taken together with the aggregate Stated Amount of all other then-outstanding Letters of Credit then issued by such Issuing Bank would exceed such Issuing Bank's Letter of Credit Commitment or (y) the issuance of such Letter of Credit would violate any policies or procedures of such Issuing Bank applicable to letters of credit generally and consistently applied by such Issuing Bank to similarly situated borrowers, and (ii) each Revolving Lender severally agrees to participate in each Letter of Credit as provided in Section 2.05(d). It is understood and agreed that no Issuing Bank shall be required (but shall be permitted) to issue any Letter of Credit that (x) is not denominated in Dollars, (y) has a face amount that is less than \$100,000 and (z) if (1) any order, judgment or decree of any Governmental Authority with jurisdiction over such Issuing Bank shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or direct that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or (2) the issuance of

such Letter of Credit would violate one or more policies to such Issuing Bank now or hereafter applicable to similarly situated borrowers under comparable credit facilities and letters of credit generally.

(i) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of any Letter of Credit, the Borrower shall deliver to the applicable Issuing Bank and the Administrative Agent, at least three Business Days in advance of the requested date of issuance (or such shorter period as is acceptable to the applicable Issuing Bank), a Letter of Credit Request (it being understood that, to the extent applicable, the issuance of any Letter of Credit expressly for the benefit of any subsidiary that is not a Loan Party shall be contingent upon the Administrative Agent's receipt of any documentation and other information with respect to such subsidiary that has not been previously provided with respect to any Loan Party, that is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, and reasonably requested by the applicable Issuing Bank at least three Business Days prior to the requested date of issuance). To request an amendment, extension or renewal of an outstanding Letter of Credit, (other than any automatic extension of a Letter of Credit permitted under Section 2.05(c)) the Borrower shall submit a Letter of Credit Request to the applicable Issuing Bank or Issuing Banks selected by the Borrower (with a copy to the Administrative Agent) at least three Business Days in advance of the requested date of amendment, extension or renewal (or such shorter period as is acceptable to the applicable Issuing Bank), identifying the Letter of Credit to be amended, extended or renewed, and specifying the proposed date (which shall be a Business Day) and other details of the amendment, extension or renewal. If requested by the applicable Issuing Bank in connection with any request for any Letter of Credit, the Borrower also shall submit a letter of credit application on such Issuing Bank's standard form. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the applicable Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. No Letter of Credit, letter of credit application or other document entered into by the Borrower with any Issuing Bank relating to any Letter of Credit shall contain any representation or warranty, covenant or event of default not set forth in this Agreement (and to the extent any representation or warranty, covenant or event of default in any letter of credit application or any such other document is inconsistent herewith, the same shall be rendered null and void (or reformed automatically without further action by any Person to conform to the terms of this Agreement), and all representations and warranties, covenants and events of default set forth therein shall contain standards, qualifications, thresholds and exceptions for materiality or otherwise consistent with those set forth in this Agreement (and, to the extent any representation or warranty, covenant or event of default in any letter of credit application or any such other document is inconsistent herewith, the same shall be deemed to automatically incorporate the applicable standards, qualifications, thresholds and exceptions set forth herein without action by any Person)). No Letter of Credit may be issued, amended, extended or renewed unless (and with respect to clauses (i) and (ii) below, upon the issuance, amendment, extension or renewal of each Letter of Credit, the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, extension, or renewal (i) the LC Exposure does not exceed the Letter of Credit Sublimit, and (ii) (A) the aggregate amount of the Initial Revolving Credit Exposure shall not exceed the aggregate amount of the Initial Revolving Credit Commitments then in effect, (B) the aggregate amount of the Additional Revolving Credit Exposure attributable to any Class of Additional Revolving Credit Commitments does not exceed the aggregate amount of the Additional Revolving Credit Commitments of such Class then in effect and (C) if such Letter of Credit has a term that extends beyond the Maturity Date applicable to the Revolving Credit Commitments of any Class, the aggregate amount of the LC Exposure attributable to Letters of Credit expiring after such Maturity Date (1) does not exceed the aggregate amount of the Revolving Credit Commitments then in effect that are scheduled to remain in effect after such Maturity Date or (2) is subject to Letter of Credit Support.

(b) Expiration Date. No Letter of Credit shall expire later than the earlier of (A) the date that is one year after the date of the issuance of such Letter of Credit (or such later date to which the applicable Issuing Bank may agree) and (B) the date that is five Business Days prior to the Latest

Revolving Credit Maturity Date; provided that any Letter of Credit may provide for the automatic extension thereof for any number of additional periods of up to one year in duration (which additional periods shall not extend beyond the date referred to in the preceding clause (B) unless such Letter of Credit is subject to Letter of Credit Support).

(c) Participations. By the issuance of any Letter of Credit (or an amendment to any Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Revolving Lenders, the applicable Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Revolving Lender's Applicable Revolving Credit Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the applicable Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (d) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or Event of Default or reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(d) Reimbursement.

(i) If the applicable Issuing Bank makes any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 1:00 p.m. two Business Days immediately following the date on which the Borrower receives notice of such LC Disbursement under paragraph (f) of this Section (provided that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with an ABR Revolving Loan Borrowing in an equivalent amount (any such Revolving Loan Borrowing, a "Letter of Credit Reimbursement Loan"), and, to the extent so financed, the obligation of the Borrower to make such payment shall be discharged and replaced by the resulting Borrowing (it being understood and agreed that the Borrower may also request a Swingline Loan to reimburse such LC Disbursement in accordance with Section 2.04, subject, in the case of any such Swingline Loan, to the satisfaction of the applicable conditions set forth in Section 4.02). If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Revolving Lender's Applicable Revolving Credit Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Revolving Credit Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.07 with respect to Loans made by such Revolving Lender (and Section 2.07 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Revolving Lenders and such Issuing Bank as their interests may appear.

(ii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the applicable Issuing Bank any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.05(d) by the time specified therein, such Issuing Bank shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Bank at a rate per annum equal to the greater of the Federal Funds Effective Rate from

time to time in effect and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A certificate of the applicable Issuing Bank submitted to any Revolving Lender (through the Administrative Agent) with respect to any amount owing under this clause (ii) shall be conclusive absent manifest error.

(e) Obligations Absolute. The obligation of the Borrower to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute and unconditional and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the applicable Issuing Bank under any Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the obligations of the Borrower hereunder. Neither the Administrative Agent, the Revolving Lenders nor any Issuing Bank, nor any of their respective Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of such Issuing Bank; provided that the foregoing shall not be construed to excuse such Issuing Bank from liability to the Borrower to the extent of any direct damages suffered by the Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of applicable Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to any document presented which appears on its face to be in substantial compliance with the terms of any Letter of Credit, the applicable Issuing Bank may, in its sole discretion, either accept and make payment upon such document without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such document if such document is not in strict compliance with the terms of such Letter of Credit.

(f) Disbursement Procedures. The applicable Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. After such examination and provided that the documents received are compliant with the terms and conditions of the applicable Letter of Credit, such Issuing Bank shall promptly notify the Administrative Agent and the Borrower by electronic means upon any LC Disbursement thereunder; provided that no failure to give or delay in giving such notice shall relieve the Borrower of its obligation to reimburse such Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(g) Interim Interest. If any Issuing Bank makes any LC Disbursement, then unless the Borrower reimburses such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement (or the date on which such LC Disbursement is reimbursed with the proceeds of Loans, as applicable), at the rate per annum then applicable to Initial Revolving Loans that are ABR Loans; provided that if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (d) of this Section, then Section 2.13(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (d) of this Section to reimburse such Issuing Bank shall be for the account of such Revolving Lender to the extent of such payment and shall be payable on the date on which the Borrower is required to reimburse the applicable LC Disbursement in full (and, thereafter, on demand).

(h) Replacement or Resignation of an Issuing Bank; Designation of New Issuing Banks. Any Issuing Bank may be replaced with the consent of the Administrative Agent (not to be unreasonably

withheld or delayed) and the Borrower at any time by written agreement among the Borrower, the Administrative Agent and the successor Issuing Bank. The Administrative Agent shall notify the Revolving Lenders of any such replacement of an Issuing Bank. At the time any such replacement becomes effective, unless otherwise agreed by the replaced Issuing Bank, the Borrower shall pay all unpaid fees accrued prior to such date for the account of the replaced Issuing Bank pursuant to Section 2.12(b)(ii). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of any Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(i) The Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed) and the relevant Revolving Lender, designate one or more additional Revolving Lenders to act as an issuing bank under the terms of this Agreement. Any Revolving Lender designated as an issuing bank pursuant to this paragraph (i) who agrees in writing to such designation shall be deemed to be an "Issuing Bank" (in addition to being a Revolving Lender) in respect of Letters of Credit issued or to be issued by such Revolving Lender in respect of its Letter of Credit Commitment (the amount of which Letter of Credit Commitment shall be specified in the agreement pursuant to which such Revolving Lender becomes an Issuing Bank), and, with respect to such Letters of Credit, such term shall thereafter apply to the other Issuing Bank and such Revolving Lender; provided that, for the avoidance of doubt, it is understood and agreed that the Letter of Credit Commitments of the other Issuing Banks shall not be reduced or otherwise be affected by the appointment of any additional Revolving Lender as an Issuing Bank pursuant to this paragraph (i); provided further that notwithstanding anything to the contrary contained herein, this Agreement may be amended to give effect to such appointment with the consent of the Borrower, the Administrative Agent (which consent shall not be unreasonably withheld or delayed) and such Issuing Bank being appointed in accordance with this Section 2.05(h), which amendment may determine the face amount of Letters of Credit required to be issued by such Issuing Bank, and the consent of no other Lender shall be required therefor.

(ii) Notwithstanding anything to the contrary contained herein, each Issuing Bank may, upon 30 days' prior written notice to the Borrower, each other Issuing Bank and the Lenders, resign as Issuing Bank, which resignation shall be effective as of the date referenced in such notice (but in no event less than 30 days (or such later date as the relevant Issuing Bank may agree) after the delivery of such written notice); provided that the effectiveness of such resignation shall be conditioned on and subject to the appointment of a replacement Issuing Bank reasonably satisfactory to the Borrower who agrees to assume the entire Letter of Credit Commitment of the resigning Issuing Bank, and no such resignation shall become effective unless and until such replacement Issuing Bank has accepted such appointment and agreed to provide such Letter of Credit Commitment on terms acceptable to the Borrower; provided, further, that it is understood and agreed that in the event of any such resignation, any Letter of Credit then outstanding shall remain outstanding (irrespective of whether any amount have been drawn at such time). In the event of any such resignation of any Issuing Bank, the Borrower shall be entitled, but shall not be obligated, to appoint another Revolving Lender that is willing, in its sole discretion to accept such appointment in writing as successor Issuing Bank in respect of such resigning Issuing Bank; it being understood that the resignation of any such Issuing Bank shall not be effective in the event of a failure to appoint any such successor Issuing Bank and/or a failure of any Revolving Lender to accept such appointment as Issuing Bank. Upon the acceptance of any appointment as Issuing Bank hereunder, the successor Issuing Bank shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Issuing Bank, and the retiring Issuing Bank shall be discharged from its duties and obligations in such capacity hereunder.

(i) Cash Collateralization.

(i) If any Event of Default exists and the Loans have been declared due and payable in accordance with Article 7 hereof, then on the Business Day following the date on which the Borrower receives notice from the Administrative Agent (at the direction of the Required Revolving Lenders) demanding the deposit of Cash collateral pursuant to this paragraph (i), the Borrower shall deposit (or shall cause to be deposited), in an interest-bearing account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (the "LC Collateral Account"), an amount in Cash equal to 100% of the LC Exposure as of such date (minus the amount then on deposit in the LC Collateral Account); provided that the obligation to deposit such Cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 7.01(f) or (g).

(ii) Any such deposit under clause (i) above shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations in accordance with the provisions of this paragraph (i). The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account, and the Borrower hereby grants the Administrative Agent, for the benefit of the Secured Parties, a first priority security interest in the LC Collateral Account. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the applicable Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of the Required Revolving Lenders) be applied to satisfy other Secured Obligations. If the Borrower is required to provide an amount of Cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (together with all interest and other earnings with respect thereto, to the extent not applied as aforesaid) shall be returned to the Borrower promptly (but in no event later than three Business Days) after such Event of Default has been cured or waived.

(j) Reporting. (i) Not later than the third Business Day following the last day of each month and at each issuance of a Letter of Credit (or at such other intervals as the Administrative Agent and the applicable Issuing Bank shall agree), each Issuing Bank shall provide to the Administrative Agent a schedule of the Letters of Credit issued by it, and (ii) at each issuance of a Letter of Credit, the applicable Issuing Bank shall provide to the Administrative Agent a description of such Letter of Credit, in each case, in form and substance reasonably satisfactory to the Administrative Agent, showing the date of issuance of each (or such) Letter of Credit, the account party, the original face amount (if any), the expiration date, and the reference number of any Letter of Credit outstanding at any time during such month (or of such Letter of Credit, as applicable), and showing the aggregate amount (if any) payable by the Borrower to such Issuing Bank during such month (or with respect to such Letter of Credit, as applicable).

SECTION 6. ~~Reserved~~ Conforming Changes. With respect to SOFR or Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time in consultation with the Borrower 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; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

SECTION 7. Funding of Borrowings.

(a) Each Lender shall make (x) each ~~LBO-Rate~~ Term SOFR Loan to be made by it hereunder available to the Administrative Agent not later than 11:00 a.m., and (y) each ABR Loan to be made by it hereunder available to the Administrative Agent not later than 1:00 p.m., in each case, on the Business

Day specified in the applicable Borrowing Request by wire transfer of immediately available funds to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's respective Applicable Percentage; provided that Swingline Loans shall be made as provided in Section 2.04. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received on the same Business Day, in like funds, to the account designated in the relevant Borrowing Request or as otherwise directed by the Borrower; provided that ABR Revolving Loans made to finance the reimbursement of any LC Disbursement as provided in Section 2.05(e) shall be remitted by the Administrative Agent to the applicable Issuing Bank.

(b) Unless the Administrative Agent has received notice from any Lender that such Lender will not make available to the Administrative Agent such Lender's share of any Borrowing prior to the proposed date of such Borrowing (or, in the case of any Borrowing of ABR Loans, prior to 12:00 p.m. on the date of such Borrowing), the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if any Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to Loans comprising such Borrowing at such time. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing and the obligation of the Borrower to repay the Administrative Agent such corresponding amount pursuant to this Section 2.07(b) shall cease. If the Borrower pays such amount to the Administrative Agent, the amount so paid shall constitute a repayment of such Borrowing by such amount. 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 or any other Loan Party may have against any Lender as a result of any default by such Lender hereunder.

SECTION 8. Type; Interest Elections.

(a) Each Borrowing shall initially be of the Type specified in the applicable Borrowing Request and, in the case of any ~~LBO~~ RateTerm SOFR Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert any Borrowing denominated in Dollars to a Borrowing of a different Type or to continue such Borrowing and, in the case of a ~~LBO~~ RateTerm SOFR Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders based upon their Applicable Percentages and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Loans, which may not be a ~~LBO~~ RateTerm SOFR Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall deliver an Interest Election Request, appropriately completed and signed by a Responsible Officer of the Borrower, to the Administrative Agent in accordance with Section 2.03. If any such Interest Election Request requests a ~~LBO~~ RateTerm SOFR Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(c) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each applicable Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(d) If the Borrower fails to deliver (or cause to be delivered) a timely Interest Election Request with respect to a ~~LBO~~ RateTerm SOFR Borrowing prior to the end of the Interest Period

applicable thereto, then, unless such Borrowing is repaid as provided herein, such Borrowing shall be converted at the end of such Interest Period to an ABR Borrowing.

SECTION 9. Termination and Reduction of Commitments.

(a) Unless previously terminated, (i) the Initial Term Loan Commitments on the Closing Date shall automatically terminate upon the making of the Initial Term Loans on the Closing Date, (ii) the Initial Revolving Credit Commitments shall automatically terminate on the Initial Revolving Credit Maturity Date, (iii) the Additional Term Loan Commitments of any Class shall automatically terminate upon the making of the Additional Term Loans of such Class and, if any such Additional Term Loan Commitment is not drawn on the date that such Additional Term Loan Commitment is required to be drawn pursuant to the applicable Refinancing Amendment, Extension Amendment or Incremental Facility Amendment, the undrawn amount thereof shall automatically terminate and (iv) the Additional Revolving Credit Commitments of any Class shall automatically terminate on the Maturity Date specified therefor in the applicable Refinancing Amendment, Extension Amendment or Incremental Facility Amendment, as applicable.

(b) Upon delivery of the notice required by Section 2.09(c), the Borrower may at any time terminate or from time to time reduce the Revolving Credit Commitments of any Class; provided that (i) each reduction of the Revolving Credit Commitments of any Class shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$1,000,000 and (ii) the Borrower shall not terminate or reduce the Revolving Credit Commitments of any Class if, after giving effect to any concurrent prepayment of Revolving Loans, Swingline Loans and/or the provision of Letter of Credit Support with respect to any outstanding Letter of Credit, the aggregate amount of the Revolving Credit Exposure attributable to the Revolving Credit Commitments of such Class would exceed the aggregate amount of the Revolving Credit Commitments of such Class; provided that, after the establishment of any Class of Additional Revolving Credit Commitments, any such termination or reduction of the Revolving Credit Commitments of any Class shall be subject to the provisions set forth in Section 2.22, 2.23 and/or 9.02, as applicable.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce any Revolving Credit Commitment under paragraph (b) of this Section in writing at least three Business Days prior to the effective date of such termination or reduction (or such later date to which the Administrative Agent may agree), specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the Revolving Lenders of each applicable Class of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that any such notice may state that it is conditioned upon the effectiveness of other transactions or other events, in which case such notice may be revoked by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of any Revolving Credit Commitment pursuant to this Section 2.09 shall be permanent. Upon any reduction of any Revolving Credit Commitment, the Revolving Credit Commitment of each Revolving Lender of the relevant Class shall be reduced by such Revolving Lender's Applicable Percentage of the amount of such reduction.

SECTION 10. Repayment of Loans; Evidence of Debt.

(a) (i) The Borrower hereby unconditionally promises to repay the outstanding principal amount of the Initial Term Loans to the Administrative Agent for the account of each Term Lender:

(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 Initial Term Loans outstanding on the Closing Date, in each case, as such payments may be reduced from time to time as a result of the application of prepayments in accordance with Section 2.11 and repurchases and assignments in accordance with Section 9.05(g) or increased in connection with the incurrence of Incremental Term Loans:

<u>Loan Installment Date</u>	<u>Amortization Percentage</u>
March 25, 2022	0.625%
June 24, 2022	0.625%
September 23, 2022	0.625%
December 23, 2022	0.625%
March 24, 2023	1.25%
June 23, 2023	1.25%
September 22, 2023	1.25%
December 29, 2023	1.25%
March 28, 2024	1.25%
June 28, 2024	1.25%
September 27, 2024	1.25%
December 27, 2024	1.25%
March 28, 2025	1.875%
June 27, 2025	1.875%
September 26, 2025	1.875%
December 24, 2025	1.875%
March 27, 2026	2.50%
June 26, 2026	2.50%
September 25, 2026	2.50%

(B) on the Initial Term Loan Maturity Date, in an amount equal to the remainder of the principal amount of such Initial Term Loans outstanding on such date, together, in each case, with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment.

(i) The Borrower shall repay the Additional Term Loans of any Class in such scheduled amortization installments and on such date or dates as shall be specified therefor in the applicable Refinancing Amendment, Incremental Facility Amendment or Extension Amendment (as such payments may be reduced from time to time as a result of the application of prepayments in accordance with Section 2.11 or repurchases in accordance with Section 9.05(g) or increased as a result of any increase in the amount of such Additional Term Loans of such Class pursuant to Section 2.22(a)).

(b) (i) The Borrower hereby unconditionally promises to pay in Dollars (A) to the Administrative Agent for the account of each Initial Revolving Lender, the then-unpaid principal amount of the Initial Revolving Loans of such Lender on the Initial Revolving Credit Maturity Date, (B) to the Administrative Agent for the account of each Additional Revolving Lender, the then-unpaid principal amount of each Additional Revolving Loan of such Additional Revolving Lender on the Maturity Date applicable thereto and (C) to the Swingline Lender, the then unpaid principal amount of each Swingline Loan on the Latest Revolving Credit Maturity Date.

(i) On the Maturity Date applicable to the Revolving Credit Commitments of any Class, the Borrower shall (A) cancel and return outstanding Letters of Credit (or alternatively, with respect to any outstanding Letter of Credit, provide Letter of Credit Support with respect thereto), in each case to the extent necessary so that, after giving effect thereto, the aggregate amount of the Revolving Credit Exposure attributable to the Revolving Credit Commitments of any other Class does not exceed the Revolving Credit Commitments of such other Class then in effect, (B) prepay Swingline Loans to the extent necessary so that, after giving effect thereto, the aggregate amount of the Revolving Credit Exposure attributable to the Revolving Credit Commitments of any other Class shall not exceed the Revolving Credit Commitments of such other Class then in effect and (C) make payment in full of all accrued and unpaid fees and all reimbursable expenses and other Obligations with respect to the Revolving Facility of the applicable Class then due, together with accrued and unpaid interest (if any) thereon.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class, Type and currency thereof and the Interest Period (if any) applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders or the Issuing Banks and each Lender's or Issuing Bank's share thereof.

(e) The entries made in the accounts maintained pursuant to paragraphs (c) or (d) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein (absent manifest error); provided that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any manifest error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement, (ii) in the event of any inconsistency between the accounts maintained by the Administrative Agent pursuant to paragraph (d) of this Section and any Lender's records, the accounts of the Administrative Agent shall govern and (iii) in the event of any inconsistency between the Register and any other accounts maintained by the Administrative Agent, the Register shall govern absent manifest error.

(f) Any Lender may request that any Loan made by it be evidenced by a Promissory Note. In such event, the Borrower shall prepare, execute and deliver a Promissory Note to such Lender payable to such Lender and its registered permitted assigns; it being understood and agreed that such Lender (and/or its applicable permitted assign) shall be required to return such Promissory Note to the Borrower in accordance with Section 9.05(b)(iii) and upon the occurrence of the Termination Date (or as promptly thereafter as practicable). If any Lender loses the original copy of its Promissory Note, it shall execute an affidavit of loss containing an indemnification provision that is reasonably satisfactory to the Borrower. The obligation of each Lender to execute and deliver an affidavit of loss containing an indemnification provision that is reasonably satisfactory to the Borrower shall survive the Termination Date.

SECTION 11. Prepayment of Loans.

(a) Optional Prepayments.

(i) Upon prior notice in accordance with paragraph (a)(iii) of this Section, the Borrower shall have the right at any time and from time to time to prepay any Borrowing of Term Loans of one or more Classes (such Class or Classes to be selected by the Borrower in its sole discretion) in whole or in part without premium or penalty (but subject if applicable, to Section 2.16). Each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages of the relevant Class.

(ii) Upon prior notice in accordance with paragraph (a)(iii) of this Section, the Borrower shall have the right at any time and from time to time to prepay any Borrowing of

Revolving Loans of any Class and/or any Borrowing of Swingline Loans, in whole or in part without premium or penalty (but subject to Section 2.16); provided that (A) after the establishment of any Class of Additional Revolving Loans, any such prepayment of any Borrowing of Revolving Loans of any Class shall be subject to the provisions set forth in Section 2.22, 2.23 and/or 9.02, as applicable and (B) no Borrowing of Revolving Loans may be prepaid unless all Swingline Loans then outstanding, if any, are prepaid concurrently therewith. Each such prepayment shall be paid to the Revolving Lenders in accordance with their respective Applicable Percentages of the relevant Class.

(iii) The Borrower shall notify the Administrative Agent (and the Swingline Lender, if applicable) pursuant to delivery to the Administrative Agent (and the Swingline Lender, if applicable) of a Notice of Loan Prepayment in writing of any prepayment under this Section 2.11(a) (i) in the case of any prepayment of a ~~LBO-Rate~~Term SOFR Borrowing, not later than 12:00 p.m. ~~three~~two Business Days before the date of prepayment, (ii) in the case of any prepayment of an ABR Borrowing, not later than 11:00 a.m., on the date of prepayment or (iii) in the case of any prepayment of any Swingline Loan, not later than 1:00 p.m. on the date of prepayment (or, in each case, such later time as to which the Administrative Agent may reasonably agree). Each such notice shall be irrevocable (except as set forth in the proviso to this sentence) and shall specify the prepayment date and the principal amount of each Borrowing or portion or each relevant Class to be prepaid; provided that any notice of prepayment delivered by the Borrower may be conditioned upon the effectiveness of other transactions or other events, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Promptly following receipt of any such notice relating to any Borrowing, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount at least equal to the amount that would be permitted in the case of a Borrowing of the same Type and Class as provided in Section 2.02(c), or such lesser amount that is then outstanding with respect to such Borrowing being repaid (and in increments of \$100,000 in excess thereof or such lesser incremental amount that is then outstanding with respect to such Borrowing being repaid). Each prepayment of Term Loans shall be applied to the Class or Classes of Term Loans specified in the applicable prepayment notice, and each prepayment of Term Loans of such Class or Classes made pursuant to this Section 2.11(a) shall be applied against the remaining scheduled installments of principal due in respect of the Term Loans of such Class or Classes in the manner specified by the Borrower or, in the absence of any such specification on or prior to the date of the relevant optional prepayment, in direct order of maturity.

(b) Mandatory Prepayments.

(i) [Reserved].

(ii) No later than the fifth Business Day following the receipt of Net Proceeds in respect of any Prepayment Asset Sale or Net Insurance/Condemnation Proceeds, in each case, in excess of the greater of \$6,000,000 and 10% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (the "De Minimis Proceeds Threshold") in any Fiscal Year, the Borrower shall apply (or cause to be applied) 100% of such Net Proceeds of such Prepayment Asset Sale or Net Insurance/Condemnation Proceeds received with respect thereto in excess of the De Minimis Proceeds Threshold (collectively, the "Subject Proceeds") to prepay the outstanding principal amount of, and accrued interest on, the Initial Term Loans and Additional Term Loans then subject to ratable prepayment requirements (the "Subject Loans") in accordance with clause (vi) below; provided that:

(A) it is understood that only the amount in excess of the De Minimis Proceeds Threshold shall be required to be applied to make a prepayment in accordance with this Section 2.11(b)(ii);

(B) if prior to the date on which any such prepayment is required to be made, the Borrower notifies the Administrative Agent of its intention to reinvest the applicable

Subject Proceeds in the business of the Borrower and/or any Restricted Subsidiary (other than an investment in Cash or Cash Equivalents), then the Borrower shall not be required to make a mandatory prepayment under this clause (ii) in respect of the applicable Subject Proceeds to the extent (1) the applicable Subject Proceeds are so reinvested within 18 months following receipt thereof, or (2) the Borrower or any Restricted Subsidiary has committed to so reinvest the applicable Subject Proceeds during such 18 month period and the applicable Subject Proceeds are so reinvested within six months after the expiration of such 18-month period or (3) the Borrower or any Restricted Subsidiary has committed to so reinvest the applicable Subject Proceeds during such 18 month period and such commitment is terminated and a new commitment is made within the six months after the expiration of such 18 month period and the application Proceeds are so reinvested within three months after the expiration of such 24 month period; it being understood that if the applicable Subject Proceeds have not been so reinvested prior to the expiration of the applicable period, the Borrower shall promptly prepay the Subject Loans with the amount of applicable Subject Proceeds not so reinvested as set forth above (without regard to the immediately preceding proviso); and

(C) if, at the time that any such prepayment would be required hereunder, the Borrower or any of its Restricted Subsidiaries is required to repay or repurchase any other First Lien Debt pursuant to the terms of the documentation governing such Indebtedness (such Indebtedness required to be so prepaid or offered to be so repurchased, “Other Applicable Indebtedness”) (or offer to repurchase such Other Applicable Indebtedness), then the relevant Person may apply the Subject Proceeds on a pro rata basis to the prepayment of the Subject Loans and to the repurchase or repayment of the Other Applicable Indebtedness (determined on the basis of the aggregate outstanding principal amount of the Subject Loans and the Other Applicable Indebtedness (or accreted amount if such Other Applicable Indebtedness is issued with original issue discount) at such time); it being understood that (1) the portion of the Subject Proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of the Subject Proceeds that is required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, (and the remaining amount, if any, of the Subject Proceeds shall be allocated to the Subject Loans in accordance with the terms hereof), and the amount of the prepayment of the Subject Loans that would have otherwise been required pursuant to this Section 2.11(b)(ii) shall be reduced accordingly and (2) to the extent the holders of the Other Applicable Indebtedness decline to have such Indebtedness prepaid or repurchased, the declined amount shall promptly (and in any event within 10 Business Days after the date of such rejection) be applied to prepay the Subject Loans in accordance with the terms hereof and any other relevant Other Applicable Indebtedness with a corresponding requirement on a pro rata basis (determined in a manner consistent with that set forth in this clause (C)); it being understood and agreed that if any Term Lender or holder of such Other Applicable Indebtedness declines any prepayment contemplated by clause (2) above, the Borrower shall not be required to subsequently offer the amount of the relevant declined prepayment to any Term Lender or any holder of Other Applicable Indebtedness.

(iii) In the event that the Borrower or any of its Restricted Subsidiaries receives Net Proceeds from the issuance or incurrence of Indebtedness by the Borrower or any of its Restricted Subsidiaries (other than Indebtedness that is permitted to be incurred under Section 6.01, except to the extent the relevant Indebtedness constitutes (A) Refinancing Indebtedness (including Replacement Debt) incurred to refinance all or a portion of any Class of Term Loans pursuant to Section 6.01(p), (B) Incremental Loans incurred in reliance on clause (b) of the definition of “Incremental Cap” to refinance all or a portion of any Class of Term Loans pursuant to Section 2.22, (C) Replacement Term Loans incurred to refinance all or any portion of any Class of Term Loans in accordance with the requirements of Section 9.02(c) and/or (D) Incremental Equivalent Debt incurred in reliance on clause (b) of the definition of “Incremental Cap”, to refinance all or a portion of the Loans in accordance with the requirements of the definition thereof, in each case to the extent required by the terms thereof to prepay or offer to prepay such Indebtedness), the Borrower shall, promptly upon (and in any event not later than two Business

Days thereafter) the receipt of such Net Proceeds by the Borrower or its applicable Restricted Subsidiary, apply (or cause to be applied) an amount equal to 100% of such Net Proceeds to prepay the outstanding principal amount of the relevant Class or Classes of Term Loans in accordance with clause (vi) below.

(iv) Notwithstanding anything in this Section 2.11(b) to the contrary:

(A) the Borrower shall not be required to prepay (or cause to be prepaid) any amount that would otherwise be required to be paid pursuant to Section 2.11(b)(ii) above to the extent that the relevant Prepayment Asset Sale is consummated by any Foreign Subsidiary or any Domestic Subsidiary of any Foreign Subsidiary (any such Person, a “Specified Subsidiary”) or the relevant Net Insurance/Condemnation Proceeds are received by any Specified Subsidiary, as the case may be, for so long as the repatriation and/or other transfer to the Borrower of any such amount at the time such prepayment would otherwise be required to be made would be, in the good faith determination of the Borrower, prohibited, restricted or delayed under any Requirement of Law (including for the avoidance of doubt, any Requirement of Law relating to financial assistance, corporate benefit, thin capitalization, capital maintenance and similar legal principles, restrictions on “upstreaming” and/or “cross-streaming” of Cash intra-group and Requirements of Law relating to the fiduciary and/or statutory duties of the directors (or equivalent Persons) of the Borrower and/or any of its Restricted Subsidiaries) or would conflict with the fiduciary and/or statutory duties of such Specified Subsidiary’s directors (or equivalent Persons), or result in, or could reasonably be expected to result in, a material risk of personal or criminal liability for any officer, director, employee, manager, member of management or consultant of such Specified Subsidiary;

(B) the Borrower shall not be required to prepay (or cause to be prepaid) any amount that would otherwise be required to be paid pursuant to Section 2.11(b)(ii) to the extent that the relevant Subject Proceeds are received by any joint venture, in each case, for so long as the distribution and/or other transfer to the Borrower of such Subject Proceeds would, in the good faith determination of the Borrower, be prohibited at the time such prepayment would otherwise be required to be made under the Organizational Documents (or any relevant shareholders’ or similar agreement) governing such joint venture;

(C) the Borrower shall not be required to prepay any amount that would otherwise be required to be paid pursuant to Section 2.11(b)(ii) to the extent that the relevant Subject Proceeds are received by any Foreign Subsidiary that is not a Loan Party, in each case, for so long as the Borrower determines in good faith that the distribution to the Borrower of such Subject Proceeds would be prohibited at the time such prepayment would otherwise be required to be made under an agreement permitted pursuant to Section 6.05 by which such Foreign Subsidiary is bound governing any Indebtedness; and

(D) if the Borrower determines in good faith that the repatriation (or other intercompany distribution or transfer) to the Borrower, directly or indirectly, from a Specified Subsidiary as a distribution or dividend (or other intercompany transfer) of any amount required to mandatorily prepay the Term Loans pursuant to Section 2.11(b)(ii) above would reasonably be expected to result in a material and adverse Tax liability (including any withholding Tax) being incurred by Holdings, the Borrower, any Parent Company and/or any Restricted Subsidiary (such amount, a “Restricted Amount”), the amount that the Borrower shall be required to mandatorily prepay pursuant to Section 2.11(b)(ii) above, as applicable, shall be reduced by the Restricted Amount;

(v) Any Term Lender may elect, by notice to the Administrative Agent at or prior to the time and in the manner specified by the Administrative Agent, prior to any prepayment of Term Loans required to be made by the Borrower pursuant to this Section 2.11(b), to decline all (but not a portion) of its Applicable Percentage of such prepayment (such declined amounts, the

“Declined Proceeds”); provided that, for the avoidance of doubt, no Lender may reject any prepayment made under Section 2.11(b)(iii) above to the extent that such prepayment is made with the Net Proceeds of (1) Refinancing Indebtedness (including Replacement Debt) incurred to refinance all or a portion of the Term Loans pursuant to Section 6.01(p), (2) Incremental Loans incurred to refinance all or a portion of the Term Loans pursuant to Section 2.22, (3) Replacement Term Loans incurred to refinance all or any portion of the Term Loans in accordance with the requirements of Section 9.02(c) and/or (4) Incremental Equivalent Debt incurred to refinance all or a portion of the Loans in accordance with the requirements of the definition thereof. If any Lender fails to deliver a written notice to the Administrative Agent of its election to decline receipt of its Applicable Percentage of any mandatory prepayment within the time frame specified by the Administrative Agent, such failure will be deemed to constitute an acceptance of such Lender’s Applicable Percentage of the total amount of such mandatory prepayment of Term Loans.

(vi) Except as otherwise contemplated by this Agreement or provided in, or intended with respect to, any Refinancing Amendment, any Incremental Facility Amendment, any Extension Amendment or any Replacement Debt (provided that such Refinancing Amendment, Incremental Facility Amendment or Extension Amendment may not provide that the applicable Class of Term Loans receive a greater than pro rata portion of any prepayment of Term Loans pursuant to Section 2.11(b) than would otherwise be permitted by this Agreement), in each case effectuated or issued in a manner consistent with this Agreement, each prepayment of Term Loans pursuant to Section 2.11(b) shall be allocated to prepay any Class of Term Loans as directed by the Borrower or, in the absence of such direction, ratably to each Class of Term Loans then outstanding that is *pari passu* with the Initial Term Loans in right of payment and with respect to security (provided that any prepayment of Term Loans with the Net Proceeds of any Incremental Term Facility incurred in reliance on clause (b) of the definition of “Incremental Cap” to extend the Maturity Date of all or any portion of any Class of Term Loans pursuant to Section 2.22, Incremental Equivalent Debt incurred in reliance on clause (b) of the definition of “Incremental Cap” to extend the Maturity Date of all or any portion of any Class of Term Loans and/or any Replacement Term Loan shall be applied to the applicable Class of Term Loans being extended, refinanced or replaced, as applicable). With respect to each relevant Class of Term Loans, any accepted prepayment under this Section 2.11(b) shall be applied against the remaining scheduled installments of principal due in respect of such Class of Term Loans as directed by the Borrower (or, in the absence of direction from the Borrower, to the remaining scheduled amortization payments in respect of the Term Loans of such Class in direct order of maturity), and each such prepayment shall be paid to the Term Lenders in accordance with their respective Applicable Percentage of the applicable Class. If no Lender exercises the right to decline a prepayment of the Term Loans pursuant to Section 2.11(b)(v), the amount of such mandatory prepayment shall be applied first to the then outstanding Term Loans of the relevant Class that are ABR Loans to the full extent thereof and then to the then outstanding Term Loans of such Class that are ~~LIBO Rate~~ Term SOFR Loans in a manner that minimizes the amount of any payment required to be made by the Borrower pursuant to Section 2.16.

(vii) (A) In the event that the aggregate Revolving Credit Exposure of any Class exceeds the Total Revolving Credit Commitment of such Class then in effect, the Borrower shall, within five Business Days of receipt of notice from the Administrative Agent, prepay the Revolving Loans or Swingline Loans and/or reduce LC Exposure, in an aggregate amount sufficient to reduce such aggregate Revolving Credit Exposure as of the date of such payment to an amount not to exceed 100% of the Revolving Credit Commitment of such Class then in effect by taking any of the following actions as it shall determine at its sole discretion: (I) prepayment of Revolving Loans and/or Swingline Loans in accordance with Section 2.11(a)(ii) and/or (II) with respect to any excess LC Exposure, provide Letter of Credit Support with respect thereto.

(A) Each prepayment of any Revolving Loan Borrowing under this Section 2.11(b)(vii) shall be paid to the Revolving Lenders in accordance with their respective Applicable Percentages of the applicable Class.

(viii) Prepayments made under this Section 2.11(b) shall be (A) accompanied by accrued interest as required by Section 2.13 (which may, at the election of the Borrower, be netted in the calculation of the applicable prepayment amount (and in the event such election is made, the amount of the applicable prepayment of principal and the amount of such accrued interest shall be determined by the Borrower in good faith in consultation with the Administrative Agent)) and (B) subject to Section 2.16.

SECTION 12. Fees.

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender of any Class (other than any Defaulting Lender) a commitment fee, which shall accrue at a rate equal to the Commitment Fee Rate per annum applicable to the Revolving Credit Commitments of such Class on the actual daily amount of the unused Revolving Credit Commitment of such Class of such Revolving Lender during the period from and including the Closing Date to the date on which such Lender's Revolving Credit Commitment of such Class terminates. Accrued Commitment fees shall be payable in arrears on each Scheduled Payment Date for the quarterly period then most recently ended (or, in the case of the first such payment made after the Closing Date, for the period from the Closing Date to such date), and on the date on which the Revolving Credit Commitments of the applicable Class terminate. For purposes of calculating the commitment fee payable pursuant to this Section 2.12(a), the Revolving Credit Commitment of any Class shall be deemed to have been used to the extent of the outstanding principal amount of the Revolving Loans of such Class and the LC Exposure attributable to the Revolving Credit Commitment of such Class, but no portion of the Revolving Credit Commitment of any Class shall be deemed to have been used as a result of any outstanding Swingline Loan.

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Revolving Lender of any Class, a participation fee with respect to its participation in any outstanding Letter of Credit that is not subject to Letter of Credit Support, which shall accrue at the Applicable Rate used to determine the interest rate applicable to Revolving Loans of such Class that are ~~LIBOR~~ RateTerm SOFR Loans on the daily portion of such Lender's LC Exposure that is attributable to its Revolving Credit Commitment of such Class (excluding any portion thereof that is attributable to any unreimbursed LC Disbursement), during the period from and including the Closing Date to the earlier of (A) the later of the date on which such Revolving Lender's Revolving Credit Commitment of such Class terminates and the date on which such Revolving Lender ceases to have any LC Exposure attributable to its Revolving Credit Commitment of such Class and (B) the Termination Date, and (ii) to each Issuing Bank, for its own account, a fronting fee, in respect of each Letter of Credit that is not subject to Letter of Credit Support issued by such Issuing Bank for the period from the date of issuance of such Letter of Credit to the earliest of (A) the expiration date of such Letter of Credit, (B) the date on which such Letter of Credit terminates, (C) the Termination Date, computed at a rate agreed by such Issuing Bank and the Borrower (but in any event not to exceed 0.125% per annum) of the daily available amount of such Letter of Credit, as well as such Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or the processing of any drawing thereunder. Participation fees and fronting fees shall accrue to but excluding each Scheduled Payment Date and be payable in arrears for the quarterly period then most recently ended (or, in the case of the payment made on the first such date after the Closing Date, for the period from the Closing Date to such date) on each Scheduled Payment Date; provided that all such fees shall be payable on the date on which the Revolving Credit Commitments of the applicable Class terminate, and any such fees accruing after the date on which the Revolving Credit Commitments of the applicable Class terminate and prior to the Termination Date shall be payable on demand. Any other fee payable to any Issuing Bank pursuant to this paragraph shall be payable within 30 days after receipt of a written demand (accompanied by reasonable back-up documentation) therefor.

(c) [Reserved].

(d) The Borrower agrees to pay to the Administrative Agent, for its own account, the annual administration fee described in the Fee Letter.

(e) All fees payable hereunder shall be paid on the date due, in Dollars and in immediately available funds, to the Administrative Agent (or to the applicable Issuing Bank, in the case of fees payable to any Issuing Bank). Fees paid shall not be refundable under any circumstance except as

otherwise provided in the Fee Letter. Fees payable hereunder shall accrue through and including the last day of the month immediately preceding the applicable fee payment date.

(f) [Reserved].

(g) Unless otherwise indicated herein, all computations of fees shall be made on the basis of a 360-day year and shall be payable for the actual days elapsed (including the first day but excluding the last day). Each determination by the Administrative Agent of the amount of any fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

SECTION 13. Interest.

(a) The Term Loans, the Revolving Loans and the Swing Loans, in each case, comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Term Loans and the Revolving Loans comprising each ~~LIBOR Rate~~ Term SOFR Borrowing shall bear interest at ~~the LIBOR Rate~~ Adjusted Term SOFR for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) [Reserved].

(d) Notwithstanding the foregoing but in all cases subject to Section 9.05(f), if any principal of or interest on any Term Loan, Revolving Loan or Swingline Loan, any LC Disbursement or other amount payable by the Borrower hereunder is not, in each case, paid or reimbursed when due, whether at stated maturity, upon acceleration or otherwise, the relevant overdue amount shall bear interest, to the fullest extent permitted by applicable Requirements of Law, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal or interest of any Term Loan, Revolving Loan, Swingline Loan or unreimbursed LC Disbursement, 2.00% plus the rate otherwise applicable to such Term Loan, Revolving Loan, Swingline Loan or LC Disbursement as provided in the preceding paragraphs of this Section or (ii) in the case of any fee and other amounts, 2.00% plus the rate applicable to Revolving Loans that are ABR Loans as provided in paragraph (a) of this Section 2.13; provided that no amount shall accrue pursuant to this Section 2.13(d) on any overdue amount, reimbursement obligation in respect of any LC Disbursement or other amount that is payable to any Defaulting Lender so long as such Lender is a Defaulting Lender.

(e) Accrued interest on each Term Loan, Revolving Loan and Swingline Loan shall be payable in arrears on each Interest Payment Date for such Term Loan, Revolving Loan or Swingline Loan and (i) on the Maturity Date applicable to such Loan, (ii) in the case of a Revolving Loan of any Class, upon termination of the Revolving Credit Commitments of such Class and (iii) in the case of any Swingline Loan, upon termination of all of the Revolving Credit Commitments, as applicable; provided that (A) interest accrued pursuant to paragraph (d) of this Section 2.13 shall be payable on demand, (B) except as provided in Section 2.11(b)(viii), in the event of any repayment or prepayment of any Term Loan, Revolving Loan (other than an ABR Revolving Loan of any Class prior to the termination of the Revolving Credit Commitments of such Class) or Swingline Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (C) in the event of any conversion of any ~~LIBOR Rate~~ Term SOFR Loan prior to the end of the current Interest Period therefor, accrued interest on such Term Loan or Revolving Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or ~~LIBOR Rate~~ Term SOFR shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error. 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 bear interest for one day.

SECTION 14. ~~Alternate Rate of Interest~~Inability to Determine Rates; Benchmark Replacement Setting.

~~If, prior to the commencement of any Interest Period for a LIBO Rate Borrowing:~~

~~(a) subject to, and without limitation of, Section 1.13, if the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) adequate and reasonable means do not exist for ascertaining the LIBO Rate for such Interest Period (and the circumstances described in Section 1.13 do not apply) or (ii) deposits in Dollars are not being offered to banks in the applicable offshore interbank eurodollar market for such currency for the applicable amount and Interest Period of such LIBO Rate Loan (in each respect of each of clauses (i) and (ii), "Impacted Loans"); or~~

~~(b) the Administrative Agent is advised by the Required Lenders in writing that the LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;~~

~~then the Administrative Agent shall reasonably promptly give notice thereof to the Borrower and the Lenders by telephone, facsimile or electronic mail promptly thereafter (but at least two Business Days prior to the first day of such Interest Period) and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, which the Administrative Agent agrees promptly to do, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a LIBO Rate Borrowing shall be ineffective and such Borrowing shall be converted to an ABR Borrowing on the last day of the Interest Period, (ii) if any Borrowing Request requests a LIBO Rate Borrowing, such Borrowing shall be made as an ABR Borrowing, (iii) the obligation of the Lenders to make or maintain a LIBO Rate Loan in Dollars shall be suspended and (iv) in the event of a determination in clauses (a) or (b) above with respect to the LIBO Rate component of the Base Rate, the utilization of the LIBO Rate component of the Base Rate shall be suspended; provided that, in the cases of clauses (i) and (ii), the Borrower may instead revoke any pending Interest Election Request or Borrowing Request. In the case of any outstanding LIBO Rate Loans that are Impacted Loans, on the last day of the Interest Period applicable thereto, such Impacted Loans will be deemed to have been converted to ABR Loans:~~

~~(a)~~ Inability to Determine Rates.

~~(i)~~ Subject to Section 2.14(b), if, in connection with any request for a Term SOFR Loan or a conversion of ABR Loans to Term SOFR Loans or a continuation of any of such Loans, as applicable, on or prior to the first day of any Interest Period for any Term SOFR Loan, (A) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that "Term SOFR" cannot be determined pursuant to the definition thereof or (B) the Administrative Agent is advised by the Required Lenders in writing that for any reason in connection with any request for a Term SOFR Loan or a conversion thereto or a continuation thereof, Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Loan does not adequately and fairly reflect the cost to such Lenders of making and maintaining such Loan, then in each case, the Administrative Agent will promptly so notify the Borrower and each Lender.

~~(ii)~~ Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make Term SOFR Loans, and any right of the Borrower to continue Term SOFR Loans, or to convert ABR Loans to Term SOFR Loans, shall be suspended (to the extent of the affected Term SOFR Loans and/or the affected Interest Periods, as applicable) until the Administrative Agent (with respect to clause (i)(B) above, at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (A) the Borrower may revoke any pending request for a Borrowing of Term SOFR Loans, or a conversion to or continuation of Term SOFR Loans, in each case, to the extent of the affected Term SOFR Loans and/or the affected Interest Periods, as applicable, and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans, and (B) any outstanding affected Term SOFR Loans will be deemed to have been converted to ABR Loans at the end of the applicable Interest Period.

(b) Benchmark Replacement Setting.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the reference time in respect of any setting of the then-current Benchmark, then (A) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (B) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth Business Day after the date on which notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is based upon Daily Simple SOFR, all interest payments will be payable on a quarterly basis. No Hedge Agreement shall constitute a “Loan Document” for purposes of this Section 2.14(b).

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, 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 (other than the consultation rights of the Borrower provided for in the definition of “Conforming Changes”).

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (1) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.14(b)(iv) and (2) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14(b), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14(b) and/or any component definition used herein.

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement

that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (A) the Borrower may revoke any pending request for a Borrowing of Term SOFR Loans, or a conversion to or continuation of Term SOFR Loans, as applicable, in each case, to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans and (B) any outstanding affected Term SOFR Loans will be deemed to have been converted to ABR Loans at the end of the applicable Interest Period. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate.

SECTION 15. Increased Costs.

(a) If any Change in Law:

(i) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender ~~(except any such reserve requirement reflected in the LIBO Rate)~~ or Issuing Bank;

(ii) subjects any Lender or Issuing Bank to any Taxes (other than (A) Indemnified Taxes and Other Taxes indemnifiable under Section 2.17, and (B) Excluded Taxes) on or with respect to its loans, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) imposes on any Lender or Issuing Bank or the ~~London interbank~~relevant benchmark market any other condition, cost or expense (other than Taxes) affecting this Agreement or ~~LIBO Rate~~Term SOFR Loans made by any Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing is to increase the cost to the relevant Lender of making or maintaining any ~~LIBO Rate~~Term SOFR Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or otherwise) in respect of any ~~LIBO Rate~~Term SOFR Loan or Letter of Credit in an amount deemed by such Lender or Issuing Bank to be material, then, within 30 days after the Borrower's receipt of the certificate contemplated by paragraph (c) of this Section 2.15, the Borrower will pay (or cause to be paid) to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank, as applicable, for such additional costs incurred or reduction suffered; provided that the Borrower shall not be liable for such compensation if (x) the relevant Change in Law occurs on a date prior to the date such Lender becomes a party hereto, (y) such Lender invokes Section 2.20 or (z) in the case of requests for reimbursement under clause (iii) above resulting from a market disruption, (A) the relevant circumstances do not generally affect the banking market or (B) the applicable request has not been made by Lenders constituting Required Lenders.

(b) If any Lender or Issuing Bank determines that any Change in Law regarding liquidity or capital requirements has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies

of such Lender's or such Issuing Bank's holding company with respect to liquidity or capital adequacy), then within 30 days of receipt by the Borrower of the certificate contemplated by paragraph (c) of this Section 2.15 the Borrower will pay (or cause to be paid) to such Lender or such Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) Any Lender or Issuing Bank requesting compensation under this Section 2.15 shall be required to deliver a certificate to the Borrower that (i) sets forth the amount or amounts necessary to compensate such Lender or Issuing Bank or the holding company thereof, as applicable, as specified in paragraph (a) or (b) of this Section, (ii) sets forth, in reasonable detail, the manner in which such amount or amounts were determined and (iii) certifies that such Lender or Issuing Bank is generally charging such amounts to similarly situated borrowers, which certificate shall be conclusive absent manifest error.

(d) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; provided, however that the Borrower shall not be required to compensate any Lender or an Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than six months prior to the date that such Lender or Issuing Bank notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank's intention to claim compensation therefor; provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six month period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 16. Break Funding Payments. Subject to Section 9.05(f), in the event of (a) the conversion or prepayment of any principal of any ~~LIBO-Rate~~Term SOFR Loan other than on the last day of an Interest Period applicable thereto (whether voluntary, mandatory, automatic, by reason of acceleration or otherwise), (b) the failure to borrow, convert, continue or prepay any ~~LIBO-Rate~~Term SOFR Loan on the date or in the amount specified in any notice delivered pursuant hereto or (c) the assignment of any ~~LIBO-Rate~~Term SOFR Loan of any Lender other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender for the actual amount of any actual out-of-pocket loss, expense and/or liability (including any actual out-of-pocket loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund or maintain ~~LIBO-Rate~~Term SOFR loans, but excluding loss of anticipated profit) that such Lender has incurred or sustained as a result of such event. Any Lender requesting compensation under this Section 2.16 shall be required to deliver a certificate to the Borrower that (A) sets forth any amount or amounts that such Lender is entitled to receive pursuant to this Section, the basis therefor and, in reasonable detail, the manner in which such amount or amounts were determined and (B) certifies that such Lender is generally charging the relevant amounts to similarly situated borrowers, which certificate shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

SECTION 17. Taxes.

(a) Payments Free of Taxes. Any payment by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith of the applicable withholding agent) requires the deduction or withholding of any Tax from any such payment, then (i) if such Tax is an Indemnified Tax and/or Other Tax, the amount payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions or withholdings applicable to additional sums payable under this Section 2.17) each Lender (or, in the case of any payment made to the Administrative Agent for its own account, the Administrative Agent) 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 withholding or deductions and (iii) the applicable withholding agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(b) Payment of Other Taxes. In addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Requirements of Law or at the option of the Administrative Agent timely reimburse it for the payment of Other Taxes.

(c) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent and each Lender within 30 days after receipt of the certificate described in the succeeding sentence, for the full amount of any Indemnified Taxes or Other Taxes payable or paid by the Administrative Agent or such Lender, as applicable (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17), other than any penalties determined by a final and non-appealable judgment of a court of competent jurisdiction (or documented in any settlement agreement) to have resulted from the gross negligence, bad faith or willful misconduct of the Administrative Agent or such Lender, and, in each case, any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted; provided that if the Borrower reasonably believes that such Taxes were not correctly or legally asserted, the Administrative Agent or such Lender, as applicable, will use reasonable efforts to cooperate with the Borrower to obtain a refund of such Taxes (which shall be repaid to the Borrower in accordance with Section 2.17(g)) at the expense of the Loan Parties, so long as such efforts would not, in the sole determination of the Administrative Agent or such Lender, result in any additional out-of-pocket costs or expenses not reimbursed by the Loan Parties or be otherwise materially disadvantageous to the Administrative Agent or such Lender, as applicable. In connection with any request for reimbursement under this Section 2.17(c), the relevant Lender or the Administrative Agent, as applicable, shall deliver a certificate to the Borrower setting forth, in reasonable detail, the basis and calculation of the amount of the relevant payment or liability. Notwithstanding anything to the contrary contained in this Section 2.17, no Borrower shall be required to indemnify the Administrative Agent or any Lender pursuant to this Section 2.17 for any amount to the extent the Administrative Agent or such Lender fails to notify the Borrower of such possible indemnification claim within 180 days after the Administrative Agent or such Lender receives written notice from the applicable taxing authority of the specific Tax assessment giving rise to such indemnification claim.

(d) [Reserved].

(e) Evidence of Payments. As soon as practicable after any payment of any Taxes pursuant to this Section 2.17 by any Loan Party to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued, if any, by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment that is reasonably satisfactory to the Administrative Agent.

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of any withholding Tax with respect to any payment 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 as the Borrower or the Administrative Agent may reasonably request to 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 Requirements of 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. Each Lender hereby authorizes the Administrative Agent to deliver to the Borrower and to any successor Administrative Agent any documentation provided to the Administrative Agent pursuant to this Section 2.17(f). 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 (f)(ii)(A), (ii)(B) and (ii)(D) of this Section 2.17) 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.

(ii) Without limiting the generality of the foregoing,

(A) each Lender that is a US Person shall deliver to the Borrower and the Administrative Agent on or prior to 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), two executed copies of IRS Form W-9 certifying that such Lender is exempt from US federal backup withholding;

(B) each Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent on or prior to 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), whichever of the following is applicable:

(1) in the case of any Foreign Lender claiming the benefits of an income tax treaty to which the US is a party, two executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing any available exemption from, or reduction of, US federal withholding Tax;

(2) two executed copies of IRS Form W-8ECI (or any successor forms);

(3) in the case of any Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (x) two executed copies of a certificate substantially in the form of Exhibit O-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, and that no payments payable to such Lender are effectively connected with the conduct of a US trade or business (a “Tax Compliance Certificate”) and (y) two executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable (or any successor forms); or

(4) to the extent any Foreign Lender is not the beneficial owner (*e.g.*, where the Foreign Lender is a partnership or participating Lender), two executed copies of IRS Form W-8IMY (or any successor forms), accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a Tax Compliance Certificate substantially in the form of Exhibit O-2 or Exhibit O-4, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if such Foreign Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a Tax Compliance Certificate substantially in the form of Exhibit O-3 on behalf of each such direct or indirect partner(s);

(C) each Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent on or prior to 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), two executed copies of any other form prescribed by applicable Requirements of Law as a basis for claiming exemption from or a reduction in US federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Requirements of 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 any Lender under any Loan Document would be subject to US 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 Section 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 applicable Requirements of Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation as is prescribed by applicable Requirements of Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

For the avoidance of doubt, if a Lender is an entity disregarded from its owner for US federal income tax purposes, references to the foregoing documentation are intended to refer to documentation with respect to such Lender's owner and, as applicable, such Lender.

Each Lender agrees that if any documentation it previously delivered expires or becomes obsolete or inaccurate in any respect (including any specific documentation required above in this Section 2.17(f)), it shall deliver to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so.

(g) Treatment of Certain Refunds. If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund (whether received in cash or applied as a credit against any cash taxes payable) of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which any Loan Party has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to the applicable Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.17 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the applicable Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the Administrative Agent or any Lender be required to pay any amount to the applicable Loan Party pursuant to this paragraph (g), in no event will the Administrative Agent or any Lender be required to pay any amount to the Borrower pursuant to this paragraph (g) to the extent that the payment thereof would place the Administrative Agent or such Lender in a less favorable net after-Tax position than the position that the Administrative Agent or such Lender would have been in if the Tax subject to indemnification had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This Section 2.17 shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the relevant Loan Party or any other Person.

(h) Survival. Each party's obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) Definition of "Lender". For the avoidance of doubt, the term "Lender" shall, for all purposes of this Section 2.17, include any Issuing Bank and the Swingline Lender.

(j) Certain Documentation. On or before the date on which the Administrative Agent becomes a party to this Agreement, the Administrative Agent shall deliver to the Borrower whichever of the following is applicable: (i) if the Administrative Agent is a US Person, two executed copies of IRS

Form W-9 certifying that such Administrative Agent is exempt from US federal backup withholding or (ii) if the Administrative Agent is not a US Person, (A) with respect to payments received for its own account, two executed copies of IRS Form W-8ECI or W-8BEN-E, as applicable and (ii) with respect to payments received on account of any Lender, two executed copies of IRS Form W-8IMY (together with all required accompanying documentation) certifying that the Administrative Agent is either a US branch and may be treated as a US person for purposes of applicable US federal withholding Tax or a qualified intermediary. At any time thereafter, the 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 2.17(j), the Administrative Agent shall not be required to provide any documentation that the Administrative Agent is not legally able to deliver as a result of a Change in Law after the Closing Date.

SECTION 18. Payments Generally; Allocation of Proceeds; Sharing of Payments.

(a) Unless otherwise specified, the Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, reimbursements of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 3:00 p.m. on the date when due. Each such payment shall be made in immediately available funds (or such other form of consideration as the relevant recipient may agree), without set-off or counterclaim. Any amount received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. Each such payment shall be made to the Administrative Agent to the applicable account designated by the Administrative Agent to the Borrower, except that payments pursuant to Sections 2.12(b)(ii), 2.15, 2.16, 2.17 and/or 9.03 shall be made directly to the Person or Persons entitled thereto. The Administrative Agent shall distribute any such payment received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Except as provided in Sections 2.19(b), 2.21, 2.22, 2.23, 9.02(c) and/or 9.05 and/or any other express provision of this Agreement, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans of a given Class and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type (and of the same Class) shall be allocated pro rata among the Lenders in accordance with their respective Applicable Percentages of the applicable Class. Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole Dollar amount. All payments hereunder shall be made in Dollars (or such other form of consideration as the relevant recipient may agree). Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(b) Subject in all respects to the provisions of any applicable Intercreditor Agreement, all proceeds of Collateral received by the Administrative Agent while an Event of Default exists and all or any portion of the Loans have been accelerated hereunder pursuant to Section 7.01, shall be applied:

(i) first, to the payment of all costs and expenses then due incurred by the Administrative Agent in connection with any collection, sale or realization on Collateral or otherwise in connection with this Agreement, any other Loan Document or any of the Secured Obligations, including all court costs and the fees and expenses of agents and legal counsel, the repayment of all advances made by the Administrative Agent hereunder or under any other Loan Document on behalf of any Loan Party and any other costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Loan Document,

(ii) second, on a pro rata basis, to pay any fees, indemnities or expense reimbursements constituting Secured Obligations then due to the Administrative Agent (other than those covered in clause first above) or to the Swingline Lender or any Issuing Bank from the Borrower,

(iii) third, on a pro rata basis in accordance with the amounts of the Secured Obligations (other than contingent indemnification obligations for which no claim has yet been made) owed to the Secured Parties on the date of any such distribution, to the payment in full of the Secured Obligations (including, with respect to LC Exposure, an amount to be paid to the Administrative Agent equal to 100% of the LC Exposure (minus the amount then on deposit in the LC Collateral Account) on such date, to be held in the LC Collateral Account as Cash collateral for such Obligations); provided that if any Letter of Credit expires undrawn, then any Cash collateral held to secure the related LC Exposure shall be applied in accordance with this Section 2.18(b), beginning with clause first above,

(iv) fourth, as provided in any applicable Intercreditor Agreement, and

(v) fifth, to, or at the direction of, the Borrower or as a court of competent jurisdiction may otherwise direct.

(c) If any Lender obtains payment (whether voluntary, involuntary, through the exercise of any right of set-off or otherwise) in respect of any principal of or interest on any Loan of any Class or any participation in LC Disbursements or Swingline Loans held by it resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans of such Class and participations in LC Disbursements or Swingline Loans and accrued interest thereon than the proportion received by any other Lender with Loans of such Class and participations in LC Disbursements or Swingline Loans, then the Lender receiving such greater proportion shall purchase (for Cash at face value) participations in the Loans of such Class and sub-participations in LC Disbursements or Swingline Loans of other Lenders of such Class at such time outstanding to the extent necessary so that the benefit of all such payments shall be shared by the Lenders of such Class ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans of such Class and participations in LC Disbursements or Swingline Loans; provided that (i) if any such participation is purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by any Lender as consideration for the assignment of or sale of a participation in any Loan to any permitted assignee or participant, including any payment made or deemed made in connection with Sections 2.22, 2.23, 9.02(c) and/or Section 9.05. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Requirements of Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise rights of set-off and counterclaim against the Borrower with respect to such participation as fully as if such Lender were a 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 2.18(c) and will, in each case, notify the Lenders following any such purchase or repayment. Each Lender that purchases a participation pursuant to this Section 2.18(c) shall from and after the date of 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.

(d) (i) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or any Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable Issuing Bank, as the case may be, the amount due.

(i) With respect to any payment that the Administrative Agent makes for the account of the Lenders or any Issuing Bank hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (3) the Administrative Agent has for any reason

otherwise erroneously made such payment; then each of the Lenders or the applicable Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or such Issuing Bank, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(ii) A notice from the Administrative Agent to any Lender with respect to any amount owing under this clause (d) shall be conclusive, absent manifest error.

(e) If any Lender fails to make any payment required to be made by it pursuant to Section 2.07(b) or Section 2.18(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amount thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 19. Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15 or determines it can no longer make or maintain ~~HBO-RateTerm~~ SOFR Loans pursuant to Section 2.20, or any Loan Party is required to pay any additional amount to or indemnify any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or its participation in any Letter of Credit affected by such event, or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as applicable, in the future or mitigate the impact of Section 2.20, as the case may be, and (ii) would not subject such Lender to any unreimbursed out-of-pocket cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.15 or determines it can no longer make or maintain ~~HBO-RateTerm~~ SOFR Loans pursuant to Section 2.20, (ii) any Loan Party is required to pay any additional amount to or indemnify any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, (iii) any Lender is a Defaulting Lender or (iv) in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender", "each Revolving Lender" or "each Lender directly affected thereby" (or any other Class or group of Lenders other than the Required Lenders) with respect to which Required Lender or Required Revolving Lender consent (or the consent of Lenders holding loans or commitments of such Class or lesser group representing more than 50% of the sum of the total loans and unused commitments of such Class or lesser group at such time) has been obtained, as applicable, any Lender is a non-consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, (x) terminate the applicable Commitments of such Lender, and repay all Obligations of the Borrower owing to such Lender relating to the applicable Loans and participations held by such Lender as of such termination date (provided that, if, after giving effect such termination and repayment, the aggregate amount of the Revolving Credit Exposure of any Class exceeds the aggregate amount of the Revolving Credit Commitments of such Class then in effect, then the Borrower shall, not later than the next Business Day, prepay one or more Revolving Loan Borrowings of the applicable Class and/or Swingline Loans (and, if no Revolving Loan Borrowings of such Class are outstanding, deposit Cash collateral in the LC Collateral Account) in an amount necessary to eliminate such excess) or (y) replace such Lender by requiring such Lender to assign and delegate (and such Lender shall be obligated to assign and delegate), without recourse (in accordance with and subject to the restrictions contained in Section 9.05), all of its interests, rights and obligations under this Agreement to an Eligible Assignee that assumes such obligations (which Eligible Assignee may be another Lender, if any Lender accepts such assignment); provided that (A) such Lender has received payment of an amount equal to the outstanding principal amount of its Loans and, if applicable, participations in LC Disbursements or Swingline Loans, in each case of such Class of Loans and/or Commitments, accrued interest thereon, accrued fees and all other amounts payable to it under any Loan

Document with respect to such Class of Loans and/or Commitments, (B) in the case of any assignment resulting from a claim for compensation under [Section 2.15](#) or any payment required to be made pursuant to [Section 2.17](#), such assignment would result in a reduction in such compensation or payment and (C) such assignment does not conflict with applicable Requirements of Law. No Lender (other than a Defaulting Lender) shall be required to make any such assignment and delegation, and the Borrower may not repay the Obligations of such Lender or terminate its Commitments, 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. Each Lender agrees that if it is replaced pursuant to this [Section 2.19](#), it shall execute and deliver to the Administrative Agent an Assignment Agreement to evidence such sale and purchase and shall deliver to the Administrative Agent any Promissory Note (if the assigning Lender's Loans are evidenced by one or more Promissory Notes) subject to such Assignment Agreement (provided that the failure of any Lender replaced pursuant to this [Section 2.19](#) to execute an Assignment Agreement or deliver any such Promissory Note shall not render such sale and purchase (and the corresponding assignment) invalid), such assignment shall be recorded in the Register and any such Promissory Note shall be deemed cancelled. Each Lender hereby irrevocably appoints the Administrative Agent (such appointment being coupled with an interest) as such Lender's attorney-in-fact, with full authority in the place and stead of such Lender and in the name of such Lender, from time to time in the Administrative Agent's discretion, with prior written notice to such Lender, to take any action and to execute any such Assignment Agreement or other instrument that the Administrative Agent may deem reasonably necessary to carry out the provisions of this [clause \(b\)](#).

SECTION 20. Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for such Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to ~~the Published LIBO Rate~~ [Term SOFR](#), or to determine or charge interest rates based upon ~~the Published LIBO Rate~~ [Term SOFR](#), or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of Dollars in the applicable interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue ~~LIBO Rate~~ [Term SOFR](#) Loans ~~in the effected currency or currencies~~ or to convert ABR Loans to ~~LIBO Rate~~ [Term SOFR](#) Loans shall be suspended and (ii) if such notice asserts the illegality of such Lender making or maintaining ABR Loans the interest rate on which is determined by reference to the ~~Published LIBO Rate~~ [Term SOFR](#) component of the Alternate Base Rate, the interest rate on which ABR Loans of such Lender, shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~Published LIBO Rate~~ [Term SOFR](#) component of the Alternate Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist (which notice such Lender agrees to give promptly). Upon receipt of such notice, (x) the Borrower shall, upon demand from the relevant Lender (with a copy to the Administrative Agent), at its election, prepay or, if applicable, convert all of such Lender's ~~LIBO Rate~~ [Term SOFR](#) Loans to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~Published LIBO Rate~~ [Term SOFR](#) component of the Alternate Base Rate); and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon ~~the Published LIBO Rate~~ [Term SOFR](#), the Administrative Agent shall during the period of such suspension compute the Alternate Base Rate applicable to such Lender without reference to the ~~Published LIBO Rate~~ [Term SOFR](#) component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon ~~the Published LIBO Rate~~ [Term SOFR](#). Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the determination of such Lender, otherwise be materially disadvantageous to such Lender.

SECTION 21. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Person becomes a Defaulting Lender, then the following provisions shall apply for so long as such Person is a Defaulting Lender:

(a) Fees shall cease to accrue on the unfunded portion of any Commitment of such Defaulting Lender pursuant to [Section 2.12\(a\)](#) and, subject to [clause \(d\)\(iv\)](#) below, on the participation of

such Defaulting Lender in Letters of Credit pursuant to Section 2.12(b), and pursuant to any other provision of this Agreement or any other Loan Document.

(b) The Loans, the Commitments and the Revolving Credit Exposure of such Defaulting Lender shall not be included in determining whether all Lenders, each affected Lender, the Required Lenders, the Required Revolving Lenders or such other number of Lenders as may be required hereby or under any other Loan Document have taken or may take any action hereunder (including any consent to any waiver, amendment or modification pursuant to Section 9.02); provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which (i) increases the Commitment of such Defaulting Lender hereunder, (ii) reduces the principal amount of any amount owing to such Defaulting Lender or (iii) affects such Defaulting Lender disproportionately and adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(c) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of any Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 2.11, Section 2.15, Section 2.16, Section 2.17, Section 2.18, Article 7, Section 9.05 or otherwise, and including any amount made available to the Administrative Agent by such Defaulting Lender pursuant to Section 9.09), shall be applied at such time or times as may be determined by the Administrative Agent and, where relevant, the Borrower as follows: first, to the payment of any amount owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amount owing by such Defaulting Lender to any applicable Issuing Bank and/or the Swingline Lender hereunder; third, if so reasonably determined by the Administrative Agent or reasonably requested by the applicable Issuing Bank, to be held as Cash collateral for future funding obligations of such Defaulting Lender in respect of any participation in any Letter of Credit; fourth, so long as no Default or Event of Default exists, as the Borrower may request, to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement; fifth, as the Administrative Agent or the Borrower may elect, to be held in a Deposit Account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement; sixth, to the payment of any amount owing to the non-Defaulting Lenders, Issuing Banks or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any non-Defaulting Lender, any Issuing Bank or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, to the payment of any amount owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such 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 Loan or LC Exposure in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loan or LC Exposure was made or created, as applicable, 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 LC Exposure owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loan of, or LC Exposure owed to, such Defaulting Lender. Any payment, prepayment or other amount paid or payable to any Defaulting Lender that are applied (or held) to pay any amount owed by any Defaulting Lender or to post Cash collateral pursuant to this Section 2.21(c) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(d) If any Swingline Exposure or LC Exposure exists at the time any Lender becomes a Defaulting Lender then:

(i) the Swingline Exposure and LC Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders under the Revolving Facility (the "Non-Defaulting Revolving Lenders") in accordance with their respective Applicable Revolving Credit Percentages but only to the extent that (A) the sum of the Revolving Credit Exposures of all non-Defaulting Lenders attributable to the Revolving Credit Commitments of any Class does not exceed the total of the Revolving Credit Commitments of all Non-Defaulting Revolving Lenders of such Class and (B) the Revolving Credit Exposure of any non-Defaulting Lender that is attributable to its Revolving Credit Commitment of such Class does not exceed such non-Defaulting Lender's Revolving Credit Commitment of such Class; it being understood and agreed

that, subject to Section 9.23, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against any Defaulting Lender arising from such Lender's having become a Defaulting Lender, including any claim of any Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any other right or remedy available to it hereunder or under applicable Requirements of Law, within two Business Days following notice by the Administrative Agent, Cash collateralize 100% of such Defaulting Lender's LC Exposure and any obligation of such Defaulting Lender to fund any participation in any Swingline Exposure (after giving effect to any partial reallocation pursuant to clause (i) above and any Cash collateral provided by such Defaulting Lender or pursuant to Section 2.21(c) above) or make other arrangements reasonably satisfactory to the Administrative Agent and to the applicable Issuing Bank and/or the Swingline Lender with respect to such LC Exposure and/or Swingline Exposure and any obligation to fund any participation therein. Cash collateral (or the appropriate portion thereof) provided to reduce LC Exposure or other obligations shall be released promptly following (A) the elimination of the applicable LC Exposure or other obligations giving rise thereto (including by the termination of the Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 2.19)) or (B) the Administrative Agent's good faith determination that there exists excess Cash collateral (including as a result of any subsequent reallocation of Swingline Exposure and/or LC Exposure among the non-Defaulting Lenders described in clause (i) above);

(iii) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to this Section 2.21(d), then the fees payable to the applicable Lenders pursuant to Sections 2.12(a) and (b), as the case may be, shall be adjusted to give effect to such reallocation; and

(iv) if any Defaulting Lender's LC Exposure is not Cash collateralized, prepaid or reallocated pursuant to this Section 2.21(d), then, without prejudice to any rights or remedies of the applicable Issuing Bank or any Revolving Lender hereunder, all letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the applicable Issuing Bank until such Defaulting Lender's LC Exposure is Cash collateralized or reallocated.

(e) So long as any Revolving Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan, and no Issuing Bank shall be required to issue, extend, create, incur, amend or increase any Letter of Credit unless the relevant Issuing Banks, as applicable, are reasonably satisfied that the related exposure will be 100% covered by the Revolving Credit Commitments of the non-Defaulting Revolving Lenders, Cash collateral provided pursuant to Section 2.21(c) and/or Cash collateral provided in accordance with Section 2.21(d), and participating interest in any such newly issued, extended or created Letter of Credit or newly made Swingline Loan shall be allocated among Non-Defaulting Revolving Lenders in a manner consistent with Section 2.21(d)(i) (it being understood that Defaulting Lenders shall not participate therein).

(f) In the event that the Administrative Agent and the Borrower agree that any Defaulting Lender has adequately remedied all matters that caused such Person to be a Defaulting Lender, then the Applicable Revolving Credit Percentage of LC Exposure and the Swingline Exposure of the Revolving Lenders shall be readjusted to reflect the inclusion of such Person's Revolving Credit Commitment, and on such date such Revolving Lender shall purchase at par such of the Revolving Loans of the applicable Class of the other Revolving Lenders (other than any Swingline Loan) or participations in Revolving Loans of the applicable Class as the Administrative Agent determine as necessary in order for such Revolving Lender to hold such Revolving Loans or participations in accordance with its Applicable Percentage of the applicable Class or its Applicable Revolving Credit Percentage, as applicable. Notwithstanding the fact that any Defaulting Lender has adequately remedied all matters that caused such Person to be a Defaulting Lender, (x) no adjustment will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender and (y) 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 such Person's having been a Defaulting Lender.

SECTION 22. Incremental Credit Extensions.

(a) The Borrower may, at any time, on one or more occasions pursuant to an Incremental Facility Amendment (x) add one or more new Classes of term facilities and/or increase the principal amount of the Term Loans of any existing Class by requesting new commitments to provide such Term Loans (any such new Class or increase, an "Incremental Term Facility," and any loan made pursuant to an Incremental Term Facility, an "Incremental Term Loan") and/or (y) increase the aggregate amount of the Revolving Credit Commitments of any existing Class (any such increase, an "Incremental Revolving Facility" and, together with any Incremental Term Facility, "Incremental Facilities"; and the loans thereunder, "Incremental Revolving Loans" and any Incremental Revolving Loans, together with any Incremental Term Loans, the "Incremental Loans") in an aggregate outstanding principal amount not to exceed the Incremental Cap; provided that:

(i) no Incremental Commitment in respect of any Incremental Term Facility may be in an amount that is less than \$5,000,000 (or such lesser amount to which the Administrative Agent may reasonably agree);

(ii) except as the Borrower and any Lender may separately agree, no Lender shall be obligated to provide any Incremental Commitment, and the determination to provide any Incremental Commitment shall be within the sole and absolute discretion of such Lender (it being agreed that the Borrower shall not be obligated to offer the opportunity to any Lender to participate in any Incremental Facility);

(iii) no Incremental Facility or Incremental Loan (nor the creation, provision or implementation thereof) shall require the approval of any existing Lender other than in its capacity, if any, as a lender providing all or part of any Incremental Commitment or Incremental Loan;

(iv) except as otherwise permitted herein (including with respect to currency, pricing (including any "MFN" or other pricing term), interest rate margins, rate floors, fees, premiums (including prepayment premiums), funding discounts, maturity and amortization):

(A) the terms of any Incremental Term Facility, if not substantially consistent with those applicable to any then-existing Class of Term Loans, must be reasonably acceptable to the Administrative Agent; it being agreed that any terms applicable to such Incremental Term Facility that (1) are applicable only after the then-existing Latest Term Loan Maturity Date, (2) are, taken as a whole, in the good faith determination of the Borrower, not more favorable to the lenders or the agent of such Incremental Term Facility than those contained in the Loan Documents, (3) are more favorable to the lenders or the agent of such Incremental Term Facility than those contained in the Loan Documents and are then conformed (or added) to the Loan Documents for the benefit of the Term Lenders or, as applicable, the Administrative Agent (*i.e.*, by conforming or adding a term to the then-outstanding Term Loans pursuant to the applicable Incremental Facility Amendment) and/or (4) taken as a whole, reflect then current market terms and conditions at the time of the incurrence or issuance of such Incremental Term Facility (as determined by the Borrower in good faith), shall, in each case, be deemed to be satisfactory to the Administrative Agent; provided that, notwithstanding the foregoing, any Incremental Term Facility may be structured as a "delayed draw" facility with such conditions to borrowing thereunder as the Borrower and the relevant Incremental Lenders may agree; and

(B) the terms of any Incremental Revolving Facility (for the avoidance of doubt, other than any arrangement, commitment, structuring, underwriting, ticking and/or amendment fee paid or to be paid in connection with the implementation of such

Incremental Revolving Facility) shall be consistent with the terms of a then-existing Revolving Facility (if any);

(v) the currency, pricing (including any “MFN” or other pricing term), interest rate margins, rate floors, fees, premiums (including any prepayment premium), funding discounts and, subject to clauses (vi), (vii) and (viii) below, the maturity and amortization schedule applicable to any Incremental Facility shall be determined by the Borrower and the lender or lenders providing such Incremental Facility;

(vi) other than with respect to any Incremental Term Facility consisting of Indebtedness in the form of Customary Bridge Loans, the final maturity date with respect to any Class of Incremental Term Loan shall be no earlier than the then-existing Latest Term Loan Maturity Date, it being understood and agreed for the avoidance of doubt that any undrawn commitment in respect of any Incremental Term Facility may terminate at such time as the Borrower and the lenders providing the relevant Incremental Term Facility may agree;

(vii) other than with respect to any Incremental Term Facility consisting of Indebtedness in the form of Customary Bridge Loans, the Weighted Average Life to Maturity of any Incremental Term Facility shall be no shorter than the remaining Weighted Average Life to Maturity of any then-existing tranche of Term Loans (without giving effect to any prepayment thereof that would otherwise modify the Weighted Average Life to Maturity thereof);

(viii) subject to clauses (vi) and (vii) above, any Incremental Term Facility may otherwise have an amortization schedule as determined by the Borrower and the lenders providing such Incremental Term Facility;

(ix) subject to clause (v) above, to the extent applicable, any fee payable in connection with any Incremental Facility shall be determined by the Borrower and the arrangers and/or lenders providing such Incremental Facility;

(x) (A) any Incremental Term Facility may rank *pari passu* with or junior to any then-existing Class of Term Loans in right of payment and/or security or may be unsecured (and to the extent the relevant Incremental Facility is secured on a junior lien basis or subordinated in right of payment, it shall be subject to an Intercreditor Agreement) and (B) no Incremental Facility may be (x) guaranteed by any subsidiary that is not a Loan Party (it being understood and agreed that the obligations of any subsidiary with respect to any escrow arrangement into which the proceeds of such Incremental Term Facility are deposited shall not constitute a guarantee by any subsidiary that is not a Loan Party) or (y) secured by any asset that does not constitute Collateral; it being understood that any Incremental Facility that is funded into Escrow pursuant to customary (in the good faith determination of the Borrower) escrow arrangements may be secured by the applicable funds and related assets held in Escrow (and the proceeds thereof) until the date on which such funds are released from Escrow;

(xi) any Incremental Term Facility may participate (A) in any voluntary prepayment of Term Loans as set forth in Section 2.11(a)(i) and (B) in any mandatory prepayment of Term Loans as set forth in Section 2.11(b)(vi), in each case, to the extent provided in such Sections;

(xii) the effectiveness of any Incremental Facility permitted in reliance on the Fixed Incremental Amount shall be subject to compliance with Section 6.10(a) and Section 6.10(b) on a Pro Forma Basis as of the last day of the most recently ended Test Period prior to the incurrence of such Incremental Facility;

(xiii) the proceeds of any Incremental Facility may be used for working capital needs and other general corporate purposes and any other use not prohibited by this Agreement;

(xiv) on the date of the Borrowing of any Incremental Term Loans that will be of the same Class as any then-existing Class of Term Loans, and notwithstanding anything to the contrary set forth in Sections 2.08 or 2.13 above, such Incremental Term Loans shall be added to

(and constitute a part of, be of the same Type as and, at the election of the Borrower, have the same Interest Period as) each Borrowing of outstanding Term Loans of such Class on a pro rata basis (based on the relative sizes of such Borrowings), so that each Term Lender providing such Incremental Term Loans will participate proportionately in each then-outstanding Borrowing of Term Loans of such Class; it being acknowledged that the application of this clause (a)(xiv) may result in new Incremental Term Loans having an Interest Period (the duration of which may be less than one month) that begin during an Interest Period then applicable to outstanding ~~HBO-Rate~~Term SOFR Loans of the relevant Class and which end on the last day of such Interest Period; and

(xv) to the extent that of any Incremental Facility does not rank *pari passu* with any then-existing Class of Term Loans or Revolving Loans, as applicable, in right of payment and security or is unsecured, such Incremental Facility will be documented pursuant to separate documentation from this Agreement (it being understood and agreed that any “last out” facility that is *pari passu* with any then-existing Class of Term Loans or Revolving Loans, as applicable, in right of security but which is “last out” with respect to payment priority may be documented hereunder).

(b) Incremental Commitments may be provided by any existing Lender, or by any other Eligible Assignee (any such other lender being called an “Incremental Lender”); provided that the Administrative Agent (and, in the case of any Incremental Revolving Facility, the Swingline Lender and any Issuing Bank) shall have a right to consent (such consent not to be unreasonably withheld, conditioned or delayed) to the relevant Incremental Lender’s provision of Incremental Commitments if such consent would be required under Section 9.05(b) for an assignment of Loans to such Incremental Lender; provided, further, that any Incremental Lender that is an Affiliated Lender shall be subject to the provisions of Section 9.05(g), *mutatis mutandis*, to the same extent as if the relevant Incremental Commitments and related Obligations had been acquired by such Lender by way of assignment.

(c) Each Lender or Incremental Lender providing a portion of any Incremental Commitment shall execute and deliver to the Administrative Agent and the Borrower all such documentation (including the relevant Incremental Facility Amendment) as may be reasonably required by the Administrative Agent to evidence and effectuate such Incremental Commitment. On the effective date of the relevant Incremental Commitment, each Incremental Lender shall become a Lender for all purposes in connection with this Agreement.

(d) As conditions precedent to the effectiveness of any Incremental Facility or the making of any Incremental Loan:

(i) upon its request, the Administrative Agent shall be entitled to receive customary written opinions of counsel with respect to the Borrower, as well as such reaffirmation agreements, supplements and/or amendments as it may reasonably require;

(ii) the Administrative Agent shall be entitled to receive, from each Incremental Lender, an Administrative Questionnaire and such other documents as it may reasonably require from such Incremental Lender;

(iii) subject to Section 2.22(h), the Administrative Agent shall have received a Borrowing Request as if the relevant Incremental Loans were subject to Section 2.03 or another written request the form of which is reasonably acceptable to the Administrative Agent (it being understood and agreed that the requirement to deliver a Borrowing Request shall not result in the imposition of any condition precedent to the availability of the relevant Incremental Loans (including with respect to the absence of a Default or Event of Default and/or the accuracy of any representation and/or warranty)); and

(iv) the Administrative Agent shall be entitled to receive a certificate of the Borrower signed by a Responsible Officer thereof certifying and attaching a copy of the resolutions adopted by the governing body of the Borrower approving or consenting to such Incremental Facility or Incremental Loans.

(e) Notwithstanding anything to the contrary in this Section 2.22 or in any other provision of any Loan Document, the conditions to the availability or funding of any Incremental Facility shall be determined by the relevant Incremental Lenders providing such Incremental Facility and the Borrower.

(f) Upon the implementation of any Incremental Revolving Facility pursuant to this Section 2.22, (i) each Revolving Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each relevant Incremental Revolving Facility Lender, and each relevant Incremental Revolving Facility Lender will automatically and without further act be deemed to have assumed a portion of such Revolving Lender's participations hereunder in outstanding Letters of Credit and Swingline Loans such that, after giving effect to each deemed assignment and assumption of such participations, all of the Revolving Lenders' (including each Incremental Revolving Facility Lender) (A) participations hereunder in Letters of Credit and (B) participations hereunder in Swingline Loans shall, in each case of the foregoing clauses (A) and (B), be held on a pro rata basis on the basis of their respective Revolving Credit Commitments (after giving effect to any increase in the Revolving Credit Commitment pursuant to Section 2.22) and (ii) the existing Revolving Lenders of the applicable Class shall assign Revolving Loans to certain other Revolving Lenders of such Class (including the Revolving Lenders providing the relevant Incremental Revolving Facility), and such other Revolving Lenders (including the Revolving Lenders providing the relevant Incremental Revolving Facility) shall purchase such Revolving Loans, in each case to the extent necessary so that all of the Revolving Lenders of such Class participate in each outstanding Borrowing of Revolving Loans pro rata on the basis of their respective Revolving Credit Commitments of such Class (after giving effect to any increase in the Revolving Credit Commitment of such Class pursuant to this Section 2.22); it being understood and agreed that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to this clause (f);

(g) On the date of effectiveness of any Incremental Revolving Facility, the Letter of Credit Sublimit and/or the maximum amount of Swingline Loans, as applicable, permitted hereunder shall increase by an amount, if any, agreed upon by the Borrower, the Administrative Agent and the relevant Issuing Bank and/or the Swingline Lender, as applicable; it being understood and agreed that the Borrower and any Lender providing any Incremental Revolving Facility may agree that such Lender will provide a portion of the Letter of Credit Sublimit in excess of its Applicable Percentage thereof.

(h) The Lenders hereby irrevocably authorize the Administrative Agent to, and the Administrative Agent shall (without the consent of any Lender (other than any Lender providing the applicable Incremental Facility)), enter into any Incremental Facility Amendment and/or any amendment to any other Loan Document as may be necessary, appropriate or advisable in order to establish any Incremental Facility (including any new Class or sub-Class in respect of Loans or commitments pursuant to this Section 2.22) including (i) technical amendments as may be necessary, appropriate or advisable in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new Classes or sub-Classes, in each case on terms consistent with this Section 2.22 and/or (ii) any other amendment contemplated by Section 9.02(d)(ii). In addition, the Incremental Facility Amendment with respect to any Incremental Term Facility may, without the consent of any Lender (other than any Lender providing such Incremental Term Loans) or the Administrative Agent, include such amendments to this Agreement as may be necessary, appropriate or advisable as reasonably determined by the Administrative Agent and the Borrower to make the applicable Incremental Term Loans "fungible" with the relevant existing Class of Term Loans (including by modifying the amortization schedule and/or extending the time period during which any prepayment premium applies).

(i) This Section 2.22 shall supersede any provision in Section 2.18 or 9.02 to the contrary.

SECTION 23. Extensions of Loans and Revolving Credit Commitments.

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an "Extension Offer") made from time to time by the Borrower to all Lenders holding Loans of any Class or Commitments of any Class, in each case on a pro rata basis (based on the aggregate outstanding principal amount of the respective Loans or Commitments of such Class) and on the same terms to each such Lender, the Borrower is hereby permitted to consummate transactions with any

individual Lender who accepts the terms contained in the relevant Extension Offer to extend the Maturity Date of all or a portion of such Lender's Loans and/or Commitments of such Class and otherwise modify the terms of all or a portion of such Loans and/or Commitments pursuant to the terms of the relevant Extension Offer (including by increasing the interest rate or fees payable in respect of such Loans and/or Commitments (and related outstandings) and/or modifying the amortization schedule, if any, in respect of such Loans) (each, an "Extension"; it being understood that any Extended Term Loans shall constitute a separate Class of Loans from the Class of Loans from which they were converted and any Extended Revolving Credit Commitments shall constitute a separate Class of Revolving Credit Commitments from the Class of Revolving Credit Commitments from which they were converted), so long as the following terms are satisfied:

(i) except as to (A) currency, pricing (including any "MFN" or other pricing terms), interest rate margins, rate floors, fees, premiums (including prepayment premiums), funding discounts, maturity and amortization (which shall, subject to the immediately succeeding clause (iii) and to the extent applicable, be determined by the Borrower and any Lender who agrees to an Extension of its Revolving Credit Commitments and set forth in the relevant Extension Offer), (B) terms applicable to such Extended Revolving Credit Commitments or Extended Revolving Loans (each as defined below) that are, taken as a whole, in the good faith determination of the Borrower, more favorable to the lenders or the agent of such Extended Revolving Credit Commitments or Extended Revolving Loans than those contained in the Loan Documents and are then conformed (or added) to the Loan Documents for the benefit of the Revolving Lenders or, as applicable, the Administrative Agent (*i.e.*, by conforming or adding a term to the then-outstanding Revolving Loans pursuant to the applicable Extension Amendment), (C) terms, taken as a whole, that reflect then current market terms and conditions, taken as a whole, at the time of incurrence or issuance (as determined by the Borrower) and (D) any covenant or other provision applicable only after the Latest Revolving Credit Maturity Date, the Revolving Credit Commitment of any Lender who agrees to an extension with respect to such Commitment (an "Extended Revolving Credit Commitment"; and the Loans thereunder, "Extended Revolving Loans"), and the related outstandings, shall constitute a revolving commitment (or related outstandings, as the case may be) with substantially consistent terms (or terms not less favorable to existing Lenders) as the Class of Revolving Credit Commitments subject to the relevant Extension Offer (and related outstandings) provided hereunder; provided that to the extent more than one Revolving Facility exists after giving effect to any such Extension, (x) the borrowing and repayment of Revolving Loans with respect to any Revolving Facility after the effective date of such Extended Revolving Credit Commitments shall be made on a pro rata basis or a non-pro rata basis with all other Revolving Facilities (it being understood that any Revolving Facility that participates in borrowings on a pro rata basis with other Revolving Facilities shall participate in repayments on a pro rata basis with such Revolving Facilities and that in the event of any Revolving Facility that must participate in borrowings on a less than pro rata basis as compared to other Revolving Facilities, such Revolving Facility shall participate in repayments on a less than pro rata basis as compared to such other Revolving Facilities (in each case, except, in any event, for (1) payments of interest and fees at different rates on the Revolving Facilities (and related outstandings), (2) repayments required on the Maturity Date of any Revolving Facility and (3) repayments made in connection with a permanent repayment and termination of the Revolving Credit Commitments under any Revolving Facility (subject to clause (z) below))), (y) all Swingline Loans and all Letters of Credit shall be participated on a pro rata basis by all Revolving Lenders and (z) any permanent repayment of Revolving Loans with respect to, and reduction or termination of Revolving Credit Commitments under, any Revolving Facility after the effective date of such Extended Revolving Credit Commitments shall be made on a pro rata basis or a non-pro rata basis with all other Revolving Facilities (it being understood that a Revolving Facility that participates in borrowings on a pro rata basis with other Revolving Facilities shall participate in permanent repayments of Revolving Loans with respect to, and reduction and termination of revolving Credit Commitments under, such Revolving Facility on a pro rata basis with such other Revolving Facilities and that in the event of any Revolving Facility that must participate in borrowings on a less than pro rata basis as compared to other Revolving Facilities, such other Revolving Facility shall participate in permanent repayments of Revolving Loans with respect to, and reduction and termination of Revolving Credit Commitments under, such Revolving Facility on a less than pro

rata basis as compared to such other Revolving Facilities; provided in each case, that notwithstanding the foregoing, to the extent any such Revolving Commitments are terminated in full and refinanced or replaced with a Revolver Replacement Facility or Replacement Debt, such Revolving Commitments may be terminated on a greater than pro rata basis);

(ii) except as to (A) currency, pricing (including any “MFN” or other pricing term), interest rate margins, rate floors, fees, funding discounts, amortization, final maturity date, premiums (including prepayment premiums), required prepayment dates and participation in prepayments (which shall, subject to immediately succeeding clauses (iii), (iv) and (v), be determined by the Borrower and any Lender who agrees to an Extension of its Term Loans and set forth in the relevant Extension Offer), (B) terms applicable to such Extended Term Loans (as defined below) that are, taken as a whole, in the good faith determination of the Borrower, more favorable to the lenders or the agent of such Extended Term Loans than those contained in the Loan Documents applicable to the relevant Term Loans and are then conformed (or added) to the Loan Documents for the benefit of the Term Lenders in respect of such Term Loans or, as applicable, the Administrative Agent (*i.e.*, by conforming or adding a term to the then-outstanding Term Loans of the applicable Class pursuant to the applicable Extension Amendment), (C) terms, taken as a whole, that reflect then current market terms and conditions, taken as a whole, at the time of incurrence or issuance (as determined by the Borrower) and (D) any covenant or other provision applicable only to any period after the Latest Term Loan Maturity Date (in each case, as of the date of such Extension), the Term Loans of any Lender extended pursuant to any Extension (any such extended Term Loans, the “Extended Term Loans”) shall have substantially consistent terms (or terms not less favorable to existing Lenders) as the tranche of Term Loans subject to the relevant Extension Offer;

(iii) (x) the final maturity date of any Extended Term Loans may be no earlier than the then applicable Latest Term Loan Maturity Date at the time of Extension and (y) no Extended Revolving Credit Commitments or Extended Revolving Loans may have a final maturity date earlier than (or require commitment reductions prior to) the Latest Revolving Credit Maturity Date;

(iv) the Weighted Average Life to Maturity of any Class of Extended Term Loans shall be no shorter than the remaining Weighted Average Life to Maturity of any then-existing Term Loans;

(v) subject to clauses (iii) and (iv) above, any Extended Term Loans may otherwise have an amortization schedule as determined by the Borrower and the Lenders providing such Extended Term Loans;

(vi) any Class of Extended Term Loans may participate (A) in any voluntary prepayment of Term Loans as set forth in Section 2.11(a)(i) and (B) in any mandatory prepayment of Term Loans as set forth in Section 2.11(b)(vi), in each case, to the extent provided in such Sections;

(vii) if the aggregate principal amount of Loans or Commitments, as the case may be, in respect of which Lenders have accepted the relevant Extension Offer exceed the maximum aggregate principal amount of Loans or Commitments, as the case may be, offered to be extended by the Borrower pursuant to such Extension Offer, then the Loans or Commitments, as the case may be, of such Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed the applicable Lender’s actual holdings of record) with respect to which such Lenders have accepted such Extension Offer;

(viii) unless the Administrative Agent otherwise agrees, any Extension must be in a minimum amount of \$5,000,000;

(ix) any applicable Minimum Extension Condition must be satisfied or waived by the Borrower;

(x) any documentation in respect of any Extension shall be consistent with the foregoing; and

(xi) no Extension of any Revolving Facility shall be effective as to the obligations of the Swingline Lender to make any Swingline Loan or any Issuing Bank with respect to Letters of Credit without the consent of the Swingline Lender or such Issuing Bank (such consents not to be unreasonably withheld or delayed) (and, in the absence of such consent, all references herein to Latest Revolving Credit Maturity Date shall be determined, when used in reference to the Swingline Lender or such Issuing Bank, as applicable, without giving effect to such Extension).

(b) (i) No Extension consummated in reliance on this Section 2.23 shall constitute a voluntary or mandatory prepayment for purposes of Section 2.11, (ii) the scheduled amortization payments (insofar as such schedule affects payments due to Lenders participating in the relevant Class) set forth in Section 2.10 shall be adjusted to give effect to any Extension of any Class of Loans and/or Commitments and (iii) except as set forth in clause (a)(viii) above, no Extension Offer is required to be in any minimum amount or any minimum increment; provided that the Borrower may at its election specify as a condition (a “Minimum Extension Condition”) to the consummation of any Extension that a minimum amount (to be specified in the relevant Extension Offer in the Borrower’s sole discretion) of Loans or Commitments (as applicable) of any or all applicable tranches be tendered; it being understood that the Borrower may, in its sole discretion, waive any such Minimum Extension Condition. The Administrative Agent and the Lenders hereby consent to the transactions contemplated by this Section 2.23 (including, for the avoidance of doubt, the payment of any interest, fees or premium in respect of any Extended Term Loans and/or Extended Revolving Credit Commitments on such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement (including Sections 2.10, 2.11 and/or 2.18) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section.

(c) Subject to any consent required under Section 2.23(a)(xi), no consent of any Lender or the Administrative Agent shall be required to effectuate any Extension, other than the consent of each Lender agreeing to such Extension with respect to one or more of its Loans and/or Commitments of any Class (or a portion thereof). All Extended Term Loans and Extended Revolving Credit Commitments and all obligations in respect thereof shall constitute Secured Obligations under this Agreement and the other Loan Documents that are secured by the Collateral and guaranteed on a *pari passu* basis with all other applicable Secured Obligations under this Agreement and the other Loan Documents. The Lenders hereby irrevocably authorize the Administrative Agent to enter into any Extension Amendment and any amendment to any of the other Loan Documents with the Loan Parties as may be necessary in order to establish new Classes or sub-Classes in respect of Loans or Commitments so extended and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new Classes or sub-Classes, in each case on terms consistent with this Section 2.23.

(d) In connection with any Extension, the Borrower shall provide the Administrative Agent at least five Business Days’ (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and shall agree to such procedures (including regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after such Extension), 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 2.23.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

On the dates and to the extent required pursuant to Sections 4.01 or 4.02, as applicable, the Borrower hereby represents and warrants to the Lenders, the Issuing Banks and the Administrative Agent that:

SECTION 1. Organization; Powers. Holdings, the Borrower and each of its Restricted Subsidiaries (a) is (i) duly organized or incorporated (as applicable) and validly existing and (ii) in good

standing (to the extent such concept exists in the relevant jurisdiction) under the Requirements of Law of its jurisdiction of organization, (b) has all requisite organizational power and authority to own its assets and to carry on its business as now conducted and (c) is qualified to do business in, and is in good standing (to the extent such concept exists in the relevant jurisdiction) in, every jurisdiction where the ownership, lease or operation of its properties or conduct of its business requires such qualification, except, in each case referred to in this Section 3.01 (other than clause (a)(i) and clause (b), in each case, with respect to the Borrower) where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 2. Authorization; Enforceability. The execution, delivery and performance by each Loan Party of each Loan Document to which such Loan Party is a party (a) are within such Loan Party's corporate or other organizational power and (b) have been duly authorized by all necessary corporate or other organizational action of such Loan Party. Each Loan Document to which any Loan Party is a party has been duly executed and delivered by such Loan Party and is a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to the Legal Reservations.

SECTION 3. Governmental Approvals; No Conflicts. The execution and delivery of each Loan Document by each Loan Party party thereto and the performance by such Loan Party of its obligations thereunder (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) in connection with the Perfection Requirements and (iii) such consents, approvals, registrations, filings, or other actions the failure to obtain or make which would not be reasonably expected to have a Material Adverse Effect, (b) will not violate any (i) of such Loan Party's Organizational Documents or (ii) Requirement of Law applicable to such Loan Party which violation, in the case of this clause (b)(ii), would reasonably be expected to have a Material Adverse Effect and (c) will not violate or result in a default under any material Contractual Obligation to which such Loan Party is a party which violation, in the case of this clause (c), would reasonably be expected to result in a Material Adverse Effect.

SECTION 4. Financial Condition; No Material Adverse Effect.

(a) The financial statements most recently provided pursuant to Section 5.01(a) or (b), as applicable, present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower on a consolidated basis as of such dates and for such periods in accordance with GAAP, (i) except as otherwise expressly noted herein, (ii) subject, in the case of quarterly financial statements, to the absence of footnotes and normal year-end adjustments and (iii) if applicable, except as may be necessary to reflect any differing entities and/or organizational structure prior to giving effect to the Transactions.

(b) Since the Closing Date, there have been no events, developments or circumstances that have had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect that is continuing.

SECTION 5. Properties.

(a) [Reserved].

(b) The Borrower and each of its Restricted Subsidiaries have good and valid fee simple title to or rights to purchase, or valid leasehold interests in, or easements or other limited property interests in, all of their respective Real Estate Assets and have good and valid title to their personal property and assets, including the Collateral, in each case, except (i) for defects in title that do not materially interfere with their ability to conduct their business as currently conducted or to utilize such properties and assets for their intended purposes, (ii) for any Permitted Lien, or (iii) where the failure to have such title would not reasonably be expected to have a Material Adverse Effect.

(c) The Borrower and its Restricted Subsidiaries own or otherwise have a license or right to use all rights in Patents, Trademarks, Copyrights and other rights in works of authorship (including all Copyrights embodied in software) and all other intellectual property rights ("IP Rights") that are

reasonably necessary to conduct their respective businesses as presently conducted without, to the knowledge of the Borrower, any infringement or misappropriation of the IP Rights of third parties, except to the extent the failure to own or license or have rights to use would not, or where such infringement or misappropriation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 6. Litigation and Environmental Matters.

(a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any of its Restricted Subsidiaries which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except for any matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, (i) neither the Borrower nor any of its Restricted Subsidiaries is subject to, or has received notice of, any Environmental Claim or Environmental Liability or knows of any basis for any Environmental Liability or Environmental Claim of the Borrower or any of its Restricted Subsidiaries and (ii) neither the Borrower nor any of its Restricted Subsidiaries has failed to comply with any Environmental Law or to obtain, maintain or comply with any Governmental Authorization, permit, license or other approval required under any Environmental Law.

(c) Neither Holdings, the Borrower nor any of its Restricted Subsidiaries has treated, stored, transported or Released any Hazardous Materials on, at, under or from any currently or formerly owned, leased or operated real estate or facility in a manner that would reasonably be expected to have a Material Adverse Effect.

SECTION 7. Compliance with Laws. Each of Holdings, the Borrower and each of its Restricted Subsidiaries is in compliance with all Requirements of Law applicable to it or its property, except, in each case where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; it being understood and agreed that this Section 3.07 shall not apply to the Requirements of Law covered by Section 3.17.

SECTION 8. Investment Company Status. No Loan Party is an "investment company" as defined in, or is required to be registered under, the Investment Company Act of 1940.

SECTION 9. Taxes. Each of Holdings, the Borrower and each of its Restricted Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed by or with respect to it and has paid or caused to be paid all Taxes required to have been paid by it that are due and payable (including in its capacity as a withholding agent), except (a) Taxes that are not required to be paid in accordance with Section 5.03, (b) Taxes (or any requirement to file Tax returns with respect thereto) that are being contested in good faith by appropriate proceedings and for which Holdings, the Borrower or such Restricted Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (c) to the extent that the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 10. ERISA.

(a) Each Plan is in compliance in form and operation with its terms and with ERISA and the Code and all other applicable Requirements of Law, except where any failure to comply would not reasonably be expected to result in a Material Adverse Effect.

(b) In the five-year period prior to the date on which this representation is made or deemed made, no ERISA Event has occurred and is continuing that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect.

SECTION 11. Disclosure.

(a) As of the Closing Date, with respect to information relating to the Borrower and its subsidiaries, to the knowledge of the Borrower, all written information (other than the Projections, forecasts, financial estimates, other forward-looking information and/or projected information, information of a general economic or industry-specific nature and/or any third party report and/or memorandum (but not the written information (other than Projections, forecasts, financial estimates, other forward looking information and/or projected information and/or general economic or industry-specific information) on which such third party report and/or memorandum was based, if such written information was provided to any Initial Lender, any Arranger or the Administrative Agent)) concerning Holdings, the Borrower and its subsidiaries that was prepared by or on behalf of Holdings, the Borrower or its subsidiaries or their respective representatives and made available to any Initial Lender, any Arranger or the Administrative Agent in connection with the Transactions on or before the Closing Date (collectively, the “Information”), when taken as a whole, did not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements were made (after giving effect to all supplements and updates thereto from time to time).

(b) As of the Closing Date, the Projections have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time furnished (it being recognized that such Projections are not to be viewed as facts and are subject to significant uncertainties and contingencies many of which are beyond the Borrower’s control, that no assurance can be given that any particular financial projections will be realized, that actual results may differ from projected results and that such differences may be material).

SECTION 12. Solvency. As of the Closing Date, after giving effect to the Transactions and the incurrence of the Indebtedness and obligations being incurred in connection with this Agreement on the Closing Date, (i) the sum of the debt (including contingent liabilities) of the Borrower and its Restricted Subsidiaries, taken as a whole, does not exceed the fair value of the assets of the Borrower and its Restricted Subsidiaries, taken as a whole, (ii) the capital of the Borrower and its Restricted Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Borrower and its Restricted Subsidiaries, taken as a whole, contemplated as of the Closing Date; and (iii) the Borrower and its Restricted Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts (including current obligations and contingent liabilities) beyond their ability to pay such debts as they mature in accordance with their terms. For purposes of this Section 3.12, (A) it is assumed that the Indebtedness and other obligations under the Credit Facilities will come due at their respective maturities and (B) the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

SECTION 13. Subsidiaries. Schedule 3.13 sets forth, in each case as of the Closing Date, (a) a correct and complete list of the name of Holdings, the Borrower, each subsidiary of the Borrower and the ownership interest therein held by Holdings, the Borrower or its applicable subsidiary, and (b) the type of entity of Holdings, the Borrower and each of its subsidiaries.

SECTION 14. Security Interest in Collateral. Subject to the terms of the final paragraph of Section 4.01, the Legal Reservations, the Perfection Requirements and the provisions, limitations and/or exceptions set forth in this Agreement and/or any other Loan Document, the Collateral Documents create legal, valid and enforceable Liens on all of the Collateral in favor of the Administrative Agent, for the benefit of itself and the other Secured Parties, and upon the satisfaction of the applicable Perfection Requirements and/or any other perfection action required under the terms of any Loan Document, such Liens constitute perfected Liens (with the priority that such Liens are expressed to have under the relevant Collateral Documents, unless otherwise permitted hereunder or under any Collateral Document) on the Collateral (to the extent such Liens are then required to be perfected under the terms of the Loan Documents) securing the Secured Obligations, in each case as and to the extent set forth therein.

For the avoidance of doubt, notwithstanding anything herein 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 effect of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in the Capital Stock held by any Loan Party in any Person organized under the laws of any jurisdiction other than the jurisdiction in which such Loan Party is organized, or as to the rights and remedies of the Administrative Agent or any Lender with respect thereto, under the Requirements of Law of any jurisdiction other than the jurisdiction in which such Loan Party is organized, (B) the enforcement of any security interest, or right or remedy with respect to any Collateral that may be limited or restricted by, or require any consent, authorization approval or license under, any Requirement of Law or (C) on the Closing Date and until required pursuant to Section 5.12, 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 the same is not required on the Closing Date.

SECTION 15. Labor Disputes. Except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, (a) there are no strikes, lockouts or slowdowns against Holdings, the Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of Holdings, the Borrower or any of its Restricted Subsidiaries, threatened and (b) the hours worked by and payments made to employees of Holdings, the Borrower and its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters.

SECTION 16. Federal Reserve Regulations. No part of the proceeds of any Loan or any Letter of Credit have been used, whether directly or indirectly, and whether immediately or incidentally or ultimately, for any purpose that results in a violation of the provisions of Regulation U.

SECTION 17. Sanctions; PATRIOT ACT and FCPA.

(a) (i) None of Holdings, the Borrower nor any of its Restricted Subsidiaries nor, to the knowledge of the Borrower, any director, officer or employee of any of the foregoing is a Sanctioned Person; and (ii) the Borrower will not directly or, to its knowledge, indirectly, use the proceeds of the Loans or Letters of Credit or otherwise make available such proceeds to any Person for the purpose of financing the activities of any Person that is the subject or target of any applicable Sanctions, except to the extent licensed or otherwise approved by OFAC or in compliance with applicable exemption, licenses or other approvals.

(b) To the extent applicable, each Loan Party is in compliance, in all material respects, with the USA PATRIOT Act.

(c) (i) Neither Holdings, the Borrower nor any of its Restricted Subsidiaries nor, to the knowledge of the Borrower, any director, officer, or employee of Holdings, the Borrower or any Restricted Subsidiary, nor, to the knowledge of the Borrower, any agent (solely to the extent acting in its capacity as an agent for Holdings, the Borrower or any of its subsidiaries), has taken any action, directly or, to its knowledge, indirectly, that would result in a material violation by any such Person of the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), including making any offer, payment, promise to pay or authorization or approval of the payment of any money, or other property, gift, promise to give or authorization of the giving of anything of value, directly or indirectly, to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in each case in contravention of the FCPA; and (ii) the Borrower will not directly or, to its knowledge, indirectly, used the proceeds of the Loans or Letters of Credit or otherwise make available such proceeds to any governmental official or employee, political party, official of a political party, candidate for public office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage in violation of the FCPA.

The representations and warranties set forth in Section 3.17 above made by or on behalf of any Foreign Subsidiary are subject to and limited by any Requirement of Law applicable to such Foreign Subsidiary; it being understood and agreed that to the extent that any Foreign Subsidiary is unable to make any such representation or warranty set forth in Section 3.17 as a result of the application of this sentence, such Foreign Subsidiary shall be deemed to have represented and warranted that it is in compliance, in all material respects, with any equivalent Requirement of Law relating to sanctions, anti-terrorism, anti-corruption or anti-money laundering that is applicable to such Foreign Subsidiary in its relevant local jurisdiction of organization.

ARTICLE 4
CONDITIONS

SECTION 1. Closing Date. The obligations of (i) each Lender to make Loans and (ii) any Issuing Bank to issue Letters of Credit, in each case, on the Closing Date, shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) Credit Agreement and Loan Documents. The Administrative Agent (or its counsel) shall have received from the Borrower and each Loan Party, to the extent party thereto, (i) a counterpart signed by the Borrower or such Loan Party (or written evidence reasonably satisfactory to the Administrative Agent (which may include a copy transmitted by facsimile or other electronic method) that such party has signed a counterpart) of (A) this Agreement and (B) each Promissory Note requested by a Lender at least three Business Days prior to the Closing Date and (ii) a Borrowing Request as required by Section 2.03.

(b) Legal Opinions. The Administrative Agent (or its counsel) shall have received, on behalf of itself, the Lenders and each Issuing Bank on the Closing Date, a customary written opinion of Weil, Gotshal & Manges LLP, in its capacity as special counsel for Holdings and the Loan Parties, dated the Closing Date and addressed to the Administrative Agent, the Lenders and each Issuing Bank.

(c) Financial Statements. The Administrative Agent shall have received:

(i) the audited consolidated balance sheet of the Borrower for the Fiscal Year ended on December 27, 2020 and the audited consolidated statements of income and cash flows of the Borrower for the Fiscal Year then ended; and

(ii) the unaudited consolidated balance sheet and the unaudited consolidated statements of income and cash flows of the Borrower for the Fiscal Quarters ended on March 28, 2021 and June 27, 2021.

(d) Secretary's Certificate and Good Standing Certificates of Loan Parties. The Administrative Agent (or its counsel) shall have received:

(i) a certificate of each Loan Party on the Closing Date, dated the Closing Date and executed by a Responsible Officer, which shall:

(A) certify that attached thereto is a true and complete copy of the resolutions, written consents or extracts of minutes of a meeting, as applicable, of its board of directors, board of managers, supervisory board, shareholders, members or other governing body (as the case may be and in each case, to the extent required) authorizing the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions or written consents have not been modified, rescinded or amended and are in full force and effect,

(B) identify by name and title and bear the signatures of the Responsible Officer or authorized signatory of such Loan Party on the Closing Date that is authorized to sign the Loan Documents to which it is a party on the Closing Date, as applicable, and

(C) certify (I) that attached thereto is a true and complete copy of the certificate or articles of incorporation or organization (or memorandum of association, articles of association or other equivalent thereof) of each Loan Party on the Closing Date (certified by the relevant authority of the jurisdiction of organization of such Loan Party) and a true and correct copy of its by-laws or operating, management, partnership or similar agreement (to the extent applicable) and (II) that such documents or agreements have not been amended (except as otherwise attached to such certificate and certified therein as being the only amendments thereto as of such date), and

(ii) a good standing certificate (or equivalent), dated as of a recent date for each such Loan Party from the relevant office of its jurisdiction of organization (to the extent available in the jurisdiction of organization of such Loan Party).

(e) Representations and Warranties. The representations and warranties of the Loan Parties set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date; provided that (i) to the extent that any representation and warranty specifically refers to a given date or period, it shall be true and correct in all material respects as of such date or for such period and (ii) to the extent that any representation and warranty is qualified by or subject to a “material adverse effect”, “material adverse change” or similar term or qualification, the same shall be true and correct in all respects.

(f) Fees. Prior to or substantially concurrently with the funding of the Initial Term Loans hereunder, the Administrative Agent shall have received (i) all fees required to be paid by the Borrower on the Closing Date pursuant to the Engagement Letter and/or Fee Letter and (ii) all expenses required to be paid by the Borrower for which invoices have been presented at least three Business Days prior to the Closing Date or such later date to which the Borrower may agree (including the reasonable fees and expenses of legal counsel required to be paid), in each case on or before the Closing Date, which amounts may be offset against the proceeds of the Loans.

(g) Closing Date Refinancing. Substantially concurrently with the initial funding of the Loans hereunder, including by use of the proceeds thereof, the Closing Date Refinancing shall be consummated and the Administrative Agent shall have received a customary payoff letter providing for the release of liens securing the obligations under the Existing Credit Agreement (to the extent required by the definition of “Closing Date Refinancing”) upon the consummation of the Closing Date Refinancing.

(h) No Default or Event of Default. At the time of and immediately after giving effect to the making of the Loans to be made on the Closing Date, no Default or Event of Default has occurred and is continuing.

(i) Solvency. The Administrative Agent (or its counsel) shall have received a certificate in substantially the form of Exhibit P from a Responsible Officer of the Borrower dated as of the Closing Date and certifying as to the matters set forth therein.

(j) Perfection Certificate. The Administrative Agent (or its counsel) shall have received a completed Perfection Certificate dated the Closing Date and signed by a Responsible Officer of the Borrower, together with all attachments contemplated thereby.

(k) Filings Registrations and Recordings. Subject to the final paragraph of this Section 4.01 and except as may otherwise be agreed by the Administrative Agent, the requirements set forth in clause (a) of the definition of “Collateral and Guarantee Requirement” shall be satisfied.

(l) IPO. Prior to, or substantially concurrently with, the initial funding of the Loans hereunder, the IPO shall be consummated and the Borrower shall have received gross proceeds in connection therewith in an amount not less than \$150,000,000.

(m) Material Adverse Effect. Since December 27, 2020, there shall not have occurred a Material Adverse Effect.

(n) USA PATRIOT Act. No later than three Business Days in advance of the Closing Date, the Administrative Agent shall have received all documentation and other information reasonably requested with respect to any Loan Party in writing by any Initial Lender at least 10 Business Days in advance of the Closing Date, which documentation or other information is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(o) Beneficial Ownership Certification. To the extent the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, no later than three Business Days in advance of the Closing Date, the Administrative Agent shall have received a Beneficial Ownership Certification in relation to the Borrower to the extent reasonably requested by it at least 10 Business Days in advance of the Closing Date.

(p) Officer’s Certificate. The Administrative Agent shall have received a certificate from a Responsible Officer of the Borrower certifying the satisfaction of the conditions precedent set forth in Sections 4.01(e), (h) and (m).

For purposes of determining whether the conditions specified in this Section 4.01 have been satisfied on the Closing Date, by funding the Loans hereunder or issuing a Letter of Credit on the Closing Date, the Administrative Agent, each Lender and each Issuing Bank, as applicable, shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Administrative Agent, such Lender or such Issuing Bank, as the case may be.

Notwithstanding the foregoing, to the extent that the Lien on any Collateral is not or cannot be created or perfected on the Closing Date (other than, to the extent required herein or in the other Loan Documents, the creation and perfection of a Lien on Collateral that is of the type that may be perfected by the filing of a Form UCC-1 financing statement under the UCC), then the creation and/or perfection of such Lien shall not constitute a condition precedent to the availability or initial funding of the Credit Facilities on the Closing Date, but may instead be delivered or perfected within the time period set forth in Section 5.15 (or such later date as the Administrative Agent may reasonably agree).

SECTION 2. Each Credit Extension. After the Closing Date, the obligation of each Revolving Lender and each Issuing Bank to make any Credit Extension is subject to the satisfaction of the following conditions:

(a) (i) In the case of any Borrowing, the Administrative Agent shall have received a Borrowing Request as required by Section 2.03, (ii) in the case of the issuance of any Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a Letter of Credit Request or (iii) in the case of any Borrowing of Swingline Loans, the Swingline Lender and the Administrative Agent shall have received Borrowing Request as required by Section 2.04(a).

(b) The representations and warranties of the Loan Parties set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of any such Credit Extension with the same effect as though such representations and warranties had been made on and as of the date of such Credit Extension; provided that, to the extent that any representation and warranty specifically refers to a given date or period, it shall be true and correct in all material respects as of such date or for such period; provided, further, 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 or for such periods.

(c) At the time of and immediately after giving effect to the applicable Credit Extension, no Default or Event of Default has occurred and is continuing.

Each Credit Extension after the Closing Date shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (b) and (c) of this Section; provided, however, that, for the avoidance of doubt, the conditions set forth in this Section 4.02 shall not apply to (A) any Incremental Loan and/or (B) any Credit Extension under any Refinancing Amendment and/or Extension Amendment, unless, in each case, the lenders in respect thereof have required satisfaction of the same in the applicable Incremental Facility Amendment, Refinancing Amendment or Extension Amendment, as applicable.

ARTICLE 5

AFFIRMATIVE COVENANTS

From the Closing Date until the date on which all Revolving Credit Commitments have expired or terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document (other than (i) contingent indemnification obligations for which no claim or demand has been made and (ii) for the avoidance of doubt, obligations and liabilities under Banking Services Obligations and Secured Hedging Obligations) have been paid in full in the manner prescribed by Section 2.18 and all Letters of Credit have expired or have been terminated (or have been made subject to Letter of Credit Support) and all LC Disbursements have been reimbursed (such date, the "Termination Date"), Holdings (solely to the extent applicable to it) and the Borrower hereby covenant and agree with the Lenders, the Issuing Banks and the Administrative Agent that:

SECTION 1. Financial Statements and Other Reports. The Borrower will deliver to the Administrative Agent for delivery by the Administrative Agent, subject to Section 9.05(f), to each Lender:

(a) Quarterly Financial Statements. Within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, commencing with the Fiscal Quarter ending on September 26, 2021, the consolidated balance sheet of the Borrower as at the end of such Fiscal Quarter and the related consolidated statements of income or operations and cash flows of the Borrower for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, and setting forth, in reasonable detail, in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail; provided that any comparison against the corresponding figures from the corresponding period in any prior Fiscal Year may reflect the financial results of any applicable predecessor entity;

(b) Annual Financial Statements. Within 90 days after the end of each Fiscal Year ending after the Closing Date, (i) the consolidated balance sheet of the Borrower as at the end of such Fiscal Year and the related consolidated statements of income or operations and cash flows of the Borrower for such Fiscal Year and setting forth, in reasonable detail, in comparative form the corresponding figures for the previous Fiscal Year (it being understood and agreed that no such comparison shall be required if (A) the relevant independent certified public accountant is not willing to provide the same or (B) the corresponding figures from the previous Fiscal Year are not available) and (ii) with respect to such consolidated financial statements, a report thereon of an independent certified public accountant of recognized national standing (which report shall not be subject to (A) a "going concern" qualification (but not a "going concern" explanatory paragraph or like statement) (except as resulting from, in the good faith determination of the Borrower, (1) the impending maturity of any Indebtedness, (2) the breach or anticipated breach of any financial covenant and/or (3) the activities, operations, financial results, assets or liabilities of any Unrestricted Subsidiary) or (B) a qualification as to the scope of the relevant audit), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Borrower as at the dates indicated and its results of operations and cash flows for the periods indicated in conformity with GAAP;

(c) Compliance Certificate. Together with each delivery of financial statements pursuant to Sections 5.01(a) and (b), (i) a duly executed and completed Compliance Certificate and (ii)(A) a summary of the pro forma adjustments (if any) necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such financial statements and (B) a list identifying each Unrestricted Subsidiary as of the last day of the Fiscal Quarter covered by such Compliance Certificate or confirmation that there is no change in such information since the later of the Closing Date and the date of the last such list delivered pursuant to this clause (ii)(B);

(d) [Reserved];

(e) Notice of Default; Notice of Material Adverse Effect. Promptly upon any Responsible Officer of the Borrower obtaining knowledge of (i) any Default or Event of Default or (ii) the occurrence of any event or change that has caused or evidences or would reasonably be expected to cause or

evidence, either individually or in the aggregate, a Material Adverse Effect, a reasonably-detailed written notice specifying the nature and period of existence of such condition, event or change and what action the Borrower has taken, is taking and proposes to take with respect thereto;

(f) Notice of Litigation. Promptly upon any Responsible Officer of the Borrower obtaining knowledge of (i) the institution of, or threat of, any Adverse Proceeding not previously disclosed in writing by the Borrower to the Administrative Agent, or (ii) any material development in any Adverse Proceeding that, in the case of either of clauses (i) or (ii), would reasonably be expected to have a Material Adverse Effect, written notice thereof from the Borrower together with such other non-privileged information as may be reasonably available to the Loan Parties to enable the Lenders to evaluate such matters;

(g) ERISA. Promptly upon any Responsible Officer of the Borrower becoming aware of the occurrence of any ERISA Event that would reasonably be expected to have a Material Adverse Effect, a written notice specifying the nature thereof from the Borrower;

(h) Financial Plan. Within 90 days after the beginning of any Fiscal Year (commencing with the Fiscal Year ending December 31, 2023), an annual consolidated financial budget for such Fiscal Year prepared by management of the Borrower;

(i) Information Regarding Collateral. Within 90 days of the relevant change (or such later date to which the Administrative Agent may agree in its reasonable discretion), written notice (i) with respect to Holdings, the Borrower or any other Loan Party that is a Domestic Subsidiary, of any change in (A) such Loan Party's legal name, (B) such Loan Party's type of organization, (C) such Loan Party's jurisdiction of organization or (D) such Loan Party's organizational identification number, in each case, to the extent such information is necessary to enable the Administrative Agent to perfect or maintain the perfection and priority of its security interest in the Collateral of the relevant Loan Party, together with a certified copy of the applicable Organizational Document reflecting the relevant change, and (ii) with respect to any Loan Party that is a Discretionary Guarantor, such types of changes affecting the perfection or priority of the Administrative Agent's security interest in the applicable Collateral of such Discretionary Guarantor as the Borrower and the Administrative Agent have agreed in connection with such Loan Party becoming a Discretionary Guarantor; and

(j) Certain Reports. Promptly upon their becoming available and without duplication of any obligation with respect to any such information that is otherwise required to be delivered under the provisions of any Loan Document, copies of (i) all financial statements, reports, notices and proxy statements sent or made available generally by the Borrower, Holdings or its applicable Parent Company to all of its security holders acting in such capacity and (ii) all regular and periodic reports and all registration statements (other than on Form S-8 or a similar form) and prospectuses, if any, publicly filed by the Borrower, Holdings or its applicable Parent Company with any securities exchange or with the SEC or any analogous Governmental Authority or private regulatory authority with jurisdiction over matters relating to securities, in each case other than any prospectus relating to any equity plan; and

(k) Other Information. Such customary additional information (financial or otherwise) that is readily available to the Borrower as the Administrative Agent may reasonably request from time to time regarding the financial condition or business of the Borrower and its Restricted Subsidiaries.

Documents required to be delivered pursuant to this Section 5.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the earliest to occur of the date (i) on which the Borrower (or a representative thereof) (A) posts such documents or (B) provides a link thereto, in each case, at the website address listed on Schedule 5.01 (which Schedule 5.01 may be updated from time to time), (ii)(A) on which such documents are delivered by the Borrower to the Administrative Agent for posting on behalf of the Borrower on IntraLinks/SyndTrak or another relevant website (the "Platform"), 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) or (B) on which the relevant documents are electronically mailed or otherwise transmitted to the Administrative Agent in a manner to which the Administrative Agent may reasonably agree or (iii) in respect of the items required to be delivered pursuant to Section 5.01(a), (b) and/or (j), on which such items have been made available

on the SEC website or the website of the relevant analogous governmental or private regulatory authority or securities exchange (including, for the avoidance of doubt, by way of “EDGAR”).

Notwithstanding the foregoing, the obligations in Section 5.01(a) and (b) may instead be satisfied with respect to any relevant information of the Borrower by furnishing (i) the applicable financial statements or other information required by such clauses of Holdings (or any other Parent Company) or (ii) in the case of Sections 5.01(a) and (b), the Borrower’s or Holdings’ (or any other Parent Company thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC or any securities exchange, in each case, within the time periods specified in such paragraphs and without any requirement to provide notice of such filing to the Administrative Agent or any Lender; provided that, with respect to each of clauses (i) and (ii), (A) to the extent (x) such financial statements relate to any Parent Company and (y) either (1) such Parent Company (or any other Parent Company that is a subsidiary of such Parent Company) has any material third party Indebtedness and/or material operations (as determined by the Borrower in good faith and other than any operations that are attributable solely to such Parent Company’s ownership of the Borrower and its subsidiaries) or (2) there are material differences (in the good faith determination of the Borrower) between the financial statements of such Parent Company and its consolidated subsidiaries, on the one hand, and the Borrower and its consolidated subsidiaries, on the other hand, such financial statements or Form 10-K or Form 10-Q, as applicable, shall be accompanied by unaudited consolidating information that summarizes in reasonable detail the differences between the information relating to such Parent Company and its consolidated subsidiaries, on the one hand, and the information relating to the Borrower and its consolidated subsidiaries on a consolidated stand-alone basis, on the other hand (other than any such difference relating to shareholders’ equity), and (B) to the extent such financial statements are in lieu of statements required to be provided under Section 5.01(b), such statements shall be accompanied by a report and opinion with respect to the financial statements of the applicable Parent Company of an independent registered public accounting firm of nationally recognized standing, which report and opinion shall satisfy the applicable requirements set forth in Section 5.01(b).

No financial statement required to be delivered pursuant to Section 5.01(a) or (b) shall be required to include any acquisition accounting adjustment relating to the Transactions or any Permitted Acquisition or other Investment to the extent it is not practicable to include any such adjustment in such financial statement.

SECTION 2. Existence. Except as otherwise permitted under Section 6.07 or Section 6.09, Holdings and the Borrower will, and the Borrower will cause each of its Restricted Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights, franchises, licenses and permits material to its business, except, other than with respect to the preservation of the existence of the Borrower, to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect; provided that neither Holdings, the Borrower nor any of the Borrower’s Restricted Subsidiaries shall be required to preserve any such existence (other than with respect to the preservation of existence of Holdings and the Borrower), right, franchise, license or permit if a Responsible Officer of such Person or such Person’s board of directors (or similar governing body) determines that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to the Lenders (taken as a whole).

SECTION 3. Payment of Taxes. Holdings and the Borrower will, and the Borrower will cause each of its Restricted Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income or businesses or franchises before any penalty or fine accrues thereon; provided that no such Tax need be paid if (a) it is not more than 60 days overdue, (b) it is being contested in good faith by appropriate proceedings, so long as (i) adequate reserves or other appropriate provisions, as are required in conformity with GAAP, have been made therefor and (ii) in the case of a Tax which has resulted or may result in the creation of a Lien on any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax and/or (c) failure to pay or discharge the same could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 4. Maintenance of Properties. Holdings and the Borrower will, and will cause each of its Restricted Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear and casualty and condemnation excepted, all property reasonably

necessary to the normal conduct of business of the Borrower and its Restricted Subsidiaries and from time to time will make or cause to be made all needed and appropriate repairs, renewals and replacements thereof, in each case except as expressly permitted by this Agreement or where the failure to maintain such properties or make such repairs, renewals or replacements could not reasonably be expected to have a Material Adverse Effect.

SECTION 5. Insurance. (a) Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, the Borrower will maintain or cause to be maintained, with financially sound and reputable insurers, such insurance coverage with respect to liability, loss or damage in respect of the assets, properties and businesses of the Borrower and its Restricted Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Each such policy of insurance shall, subject to Section 5.15, (i) name the Administrative Agent on behalf of the Secured Parties as an additional insured thereunder as its interests may appear and (ii) to the extent available from the relevant insurance carrier, in the case of each casualty insurance policy (excluding any business interruption insurance policy) (A) contain a lender loss payable clause or endorsement that names the Administrative Agent, on behalf of the Secured Parties as the lender loss payee thereunder and (B) provide for at least 30 days' prior written notice to the Administrative Agent of any modification or cancellation of such policy (or 10 days' prior written notice in the case of the failure to pay any premium thereunder); provided that, unless an Event of Default exists, (A) the Administrative Agent agrees that the Borrower and/or its applicable Restricted Subsidiary shall have the sole right to adjust or settle any claims under such insurance and (B) all proceeds from a casualty event shall be paid to the Borrower.

SECTION 6. Inspections. The Borrower will, and the Borrower will cause each of its Restricted Subsidiaries to, permit any authorized representative designated by the Administrative Agent to visit and inspect any of the properties of the Borrower and any of its Restricted Subsidiaries at which the principal financial records and executive officers of the applicable Person are located, to inspect, copy and take extracts from its and their respective financial and accounting records, and to discuss its and their respective affairs, finances and accounts with its and their Responsible Officers and independent public accountants (provided that the Borrower (or any of its subsidiaries) may, if it so chooses, be present at or participate in any such discussion), all upon reasonable notice and at reasonable times during normal business hours; provided that (a) only the Administrative Agent on behalf of the Lenders may exercise the rights of the Administrative Agent and the Lenders under this Section 5.06, (b) except as expressly set forth in clause (c) below during the continuance of an Event of Default under Section 7.01(a), (f) or (g), the Administrative Agent shall not exercise such rights more often than one time during any calendar year and (c) when an Event of Default under Section 7.01(a), (f) or (g) exists, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice.

SECTION 7. Maintenance of Books and Records. The Borrower will, and will cause its Restricted Subsidiaries to, maintain proper books of record and account containing entries of all material financial transactions and matters involving the assets and business of the Borrower and its Restricted Subsidiaries that are full, true and correct in all material respects and permit the preparation of consolidated financial statements in accordance with GAAP.

SECTION 8. Compliance with Laws. The Borrower will comply, and the Borrower will cause each of its Restricted Subsidiaries to comply, with all applicable Requirements of Law (including applicable ERISA and all Environmental Laws, any Sanctions, the USA PATRIOT Act and the FCPA), except to the extent the failure of Holdings, the Borrower or the relevant Restricted Subsidiary to comply could not reasonably be expected to have a Material Adverse Effect; provided that the requirements set forth in this Section 5.08, as they pertain to compliance by any Foreign Subsidiary with any Sanctions, the USA PATRIOT ACT and the FCPA, are subject to and limited by any Requirement of Law applicable to such Foreign Subsidiary in its relevant local jurisdiction and shall not apply to such Foreign Subsidiary to the extent the same conflict with relevant local Requirements of Law applicable to such Foreign Subsidiary.

SECTION 9. Environmental.

(a) Environmental Disclosure. The Borrower will deliver to the Administrative Agent as soon as practicable following the sending or receipt thereof by the Borrower or any of its Restricted Subsidiaries, a copy of any and all written communications with respect to (A) any Environmental Claim that, individually or in the aggregate, would reasonably be expected to give rise to a Material Adverse Effect, (B) any Release required to be reported by the Borrower or any of its Restricted Subsidiaries to any federal, state or local governmental or regulatory agency or other Governmental Authority that would reasonably be expected to have a Material Adverse Effect, (C) any request made to the Borrower or any of its Restricted Subsidiaries for information from any governmental agency that suggests such agency is investigating whether the Borrower or any of its Restricted Subsidiaries may be potentially responsible for any Hazardous Materials Activity which would reasonably be expected to have a Material Adverse Effect and (D) such other documents and information as from time to time may be reasonably requested by the Administrative Agent in relation to any matters disclosed pursuant to this Section 5.09(a);

(b) Hazardous Materials Activities, Etc. The Borrower shall promptly take, and shall cause each of its Restricted Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by the Borrower or its Restricted Subsidiaries, and address with appropriate corrective or remedial action any Release or threatened Release of Hazardous Materials at or from any Facility, in each case, that would reasonably be expected to have a Material Adverse Effect and (ii) make an appropriate response to any Environmental Claim against the Borrower or any of its Restricted Subsidiaries and discharge any obligations it may have to any Person thereunder, in each case, where failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 10. Designation of Subsidiaries. The Borrower may at any time after the Closing Date designate (or re-designate) any subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (a) immediately after giving effect to such designation (or re-designation), no Event of Default exists (including after giving effect to the reclassification of any Investment in, Indebtedness of and/or Lien on the assets of, the applicable Restricted Subsidiary or Unrestricted Subsidiary), (b) immediately after giving effect to such designation (or re-designation), the Borrower is in compliance with Section 6.10(a) and Section 6.10(b) on a Pro Forma Basis as of the last day of the most recently ended Test Period, (c) no Restricted Subsidiary may be designated as an Unrestricted Subsidiary if such Restricted Subsidiary owns any Material Intellectual Property as of the date of such designation and (d) as of the date of the designation thereof, no Unrestricted Subsidiary shall own any Capital Stock in any Restricted Subsidiary of the Borrower (unless such Restricted Subsidiary is also designated as an Unrestricted Subsidiary). The designation of any subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower (or its applicable Restricted Subsidiary) therein at the date of designation in an amount equal to the portion of the fair market value of the net assets of such subsidiary attributable to the Borrower's (or its applicable Restricted Subsidiary's) equity interest therein as estimated by the Borrower in good faith (and such designation shall only be permitted to the extent such Investment is permitted under Section 6.06). The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the making, incurrence or granting, as applicable, at the time of designation of any then-existing Investment, Indebtedness or Lien of such subsidiary, as applicable; provided that, upon any re-designation of any Unrestricted Subsidiary as a Restricted Subsidiary, the Borrower (or its applicable Restricted Subsidiary) shall be deemed to continue to have an Investment in the resulting Restricted Subsidiary in an amount (if positive) equal to (a) the Borrower's (or its applicable Restricted Subsidiary's) "Investment" in such Restricted Subsidiary at the time of such re-designation, less (b) the portion of the fair market value of the net assets of such Restricted Subsidiary attributable to the Borrower's (or its applicable Restricted Subsidiary's) equity therein at the time of such re-designation as estimated by the Borrower in good faith.

SECTION 11. Use of Proceeds.

(a) The Borrower shall use the proceeds of the Revolving Loans (i) on the Closing Date, (A) to finance (or to replenish balance sheet cash used to finance) all or a portion of the Transactions (including the payment of Transaction Costs and other costs and expenses), (B) to finance other general corporate purposes, (C) to finance working capital needs and (D) to cash collateralize letters of credit

issued on behalf of the Borrower and its subsidiaries under the Existing Credit Agreement, and (ii) after the Closing Date, to finance working capital needs and other general corporate purposes of the Borrower and its subsidiaries and any other purpose not prohibited by the terms of the Loan Documents.

(b) The Borrower shall use the proceeds of the Swingline Loans made after the Closing Date to finance the working capital needs and other general corporate purposes of the Borrower and its subsidiaries and for any other purpose not prohibited by the terms of the Loan Documents.

(c) The Borrower shall use the proceeds of the Initial Term Loans made on the Closing Date solely to (i) finance all or a portion of the Transactions (and the payment of Transaction Costs) and (ii) to the extent of any remaining proceeds, for general corporate purposes of the Borrower and its subsidiaries.

(d) Letters of Credit may be issued (i) on the Closing Date in the ordinary course of business and to replace or provide credit support for any letter of credit, bank guarantee and/or surety, customs, performance or similar bond of the Borrower and its subsidiaries or any of their Affiliates and/or to replace cash collateral posted by any of the foregoing Persons and (ii) after the Closing Date, for general corporate purposes of the Borrower and its subsidiaries and any other purpose not prohibited by the terms of the Loan Documents.

SECTION 12. Covenant to Guarantee Obligations and Provide Security.

(a) Upon (i) the formation or acquisition after the Closing Date of any Restricted Subsidiary, (ii) the designation of any Unrestricted Subsidiary as a Restricted Subsidiary or (iii) any Restricted Subsidiary that was an Excluded Subsidiary ceasing to be an Excluded Subsidiary, on or before the date on which a Compliance Certificate is required to be delivered pursuant to Section 5.01(c), for the Fiscal Quarter in which the relevant formation, acquisition, designation or cessation occurred (or such longer period as the Administrative Agent may reasonably agree), the Borrower shall (A) cause such Restricted Subsidiary (other than any Excluded Subsidiary) to comply with the requirements set forth in clause (b) of the definition of "Collateral and Guarantee Requirement" and (B) upon the reasonable request of the Administrative Agent, which request may not be made unless the Consolidated Total Assets of the relevant Restricted Subsidiary constitutes more than 10% of the Consolidated Total Assets of the Borrower and its Restricted Subsidiaries, taken as a whole, cause the relevant Restricted Subsidiary (other than any Excluded Subsidiary) to deliver to the Administrative Agent a signed copy of a customary opinion of counsel for such Restricted Subsidiary, addressed to the Administrative Agent, the Issuing Banks and the Lenders.

(b) [Reserved].

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, the Borrower may, in its sole discretion, elect to cause any Restricted Subsidiary and/or Parent Company (any such Person, a "Discretionary Guarantor") that is not otherwise required to be a Subsidiary Guarantor to provide a Loan Guaranty by causing such Person to execute a Joinder Agreement, and any such Person shall constitute a Loan Party and a Guarantor for all purposes hereunder; it being understood and agreed that such Person shall grant a security interest in such categories of assets pursuant to such documentation as the Borrower and the Administrative Agent may reasonably agree; provided that (i) in the case of any Discretionary Guarantor that is a Foreign Subsidiary, the jurisdiction of such person is reasonably satisfactory to the Administrative Agent and (ii) the Administrative Agent shall have received at least two Business Days prior to such person becoming a Guarantor, all documentation and other information in respect of such person required under applicable "know your customer" and anti-money laundering rules and regulations (including the USA Patriot Act).

(d) Notwithstanding anything to the contrary herein or in any other Loan Document, it is understood and agreed that:

(i) the Administrative Agent may grant extensions of time (including after the expiration of any relevant period, which may apply retroactively) for the creation and perfection of security interests in, or obtaining of legal opinions or other deliverables with respect to,

particular assets or the provision of any Loan Guaranty by any Restricted Subsidiary, and each Lender hereby consents to any such extension of time;

(ii) any Lien required to be granted from time to time pursuant to the definition of “Collateral and Guarantee Requirement” and/or any action requested in connection therewith shall be subject to the exceptions and limitations set forth in this Agreement and the Collateral Documents;

(iii) perfection by control shall not be required with respect to assets requiring perfection through control agreements or other control arrangements, including Deposit Accounts, securities accounts and commodities accounts (other than control of (A) pledged Capital Stock of the Borrower or any material first tier Restricted Subsidiary that is a Wholly-Owned Subsidiary and/or (B) any Material Debt Instrument owing from any Person that is not a Loan Party, in each case, to the extent the same otherwise constitute Collateral);

(iv) no Loan Party shall be required to seek any landlord lien waiver, bailee letter, estoppel, warehouseman waiver or other collateral access or similar letter or agreement;

(v) no Loan Party (other than any Discretionary Guarantor that is organized under the laws of a jurisdiction outside of the US) will be required to (A) take any action to grant or perfect a security interest in any asset located outside of the US or (B) execute any security agreement, pledge agreement, mortgage, deed, charge or other collateral document governed by the laws of any jurisdiction other than the US, any state thereof or the District of Columbia; it being understood and agreed that no Loan Party (including any Discretionary Guarantor) will be required to take any action to perfect a security interest in the Collateral in any jurisdiction other than the jurisdiction in which such Loan Party is organized (other than with respect to the required pledge of the Capital Stock of any Discretionary Guarantor that is not organized under the laws of the United States or any state thereof, the jurisdiction of organization of such Discretionary Guarantor);

(vi) in no event will (A) the Collateral include any Excluded Asset or (B) any Excluded Subsidiary be required to become a Subsidiary Guarantor;

(vii) without limiting clause (xiv) below, no action shall be required to perfect any Lien with respect to (A) any vehicle or other asset subject to a certificate of title, (B) any Letter-of-Credit Right, (C) the Capital Stock of any Immaterial Subsidiary (other than any Immaterial Subsidiary that is a Loan Party), (D) the Capital Stock of any Person that is not a subsidiary, which Person, if a subsidiary, would constitute an Immaterial Subsidiary and/or (E) any aircraft, in each case, except to the extent that a security interest therein can be perfected by filing a Form UCC-1 (or similar) financing statement under the UCC (without the requirement to list a “VIN” or similar number);

(viii) no action shall be required to perfect a Lien in any asset in respect of which the perfection of a security interest therein would (A) be prohibited by enforceable anti-assignment provisions set forth in any contract that is permitted or otherwise not prohibited by the terms of this Agreement and is binding on such asset at the time of its acquisition and not incurred in contemplation thereof (other than in the case of Capital Leases, purchase money and similar financings), (B) violate the terms of any contract relating to such asset that is permitted or otherwise not prohibited by the terms of this Agreement and is binding on such asset at the time of its acquisition and not incurred in contemplation thereof (other than in the case of Capital Leases, purchase money and similar financings), in each case, after giving effect to the applicable anti-assignment provisions of the UCC or other applicable Requirement of Law or (C) trigger termination of any contract relating to such asset that is permitted or otherwise not prohibited by the terms of this Agreement and is binding on such asset at the time of its acquisition and not incurred in contemplation thereof (other than in the case of Capital Leases, purchase money and similar financings) pursuant to any “change of control” or similar provision; it being understood that the Collateral shall include any proceeds and/or receivables arising out of any contract described in this clause to the extent the assignment of such proceeds or receivables is expressly

deemed effective under the UCC or other applicable Requirement of Law notwithstanding the relevant prohibition, violation or termination right;

(ix) (A) no Loan Party shall be required to perfect a Lien in any asset to the extent the perfection of a security interest in such asset would be prohibited under any applicable Requirement of Law and (B) it is understood and agreed, for the avoidance of doubt, that no Loan Party shall be required to comply with the Federal Assignment of Claims Act or any similar statute;

(x) any Joinder Agreement, any Collateral Document and/or any other Loan Document executed by any Restricted Subsidiary that is required to become (or otherwise becomes) a Loan Party pursuant to Section 5.12(a) above (including any Joinder Agreement) may, with the consent of the Administrative Agent (not to be unreasonably withheld or delayed), include such schedules (or updates to schedules) as may be necessary to qualify any representation or warranty set forth in any Loan Document to the extent necessary to ensure that such representation or warranty is true and correct to the extent required thereby or by the terms of any other Loan Document;

(xi) the Lenders and the Administrative Agent acknowledge and agree that the Collateral that may be provided by any Loan Party may be limited to minimize stamp duty, notarization, registration or other applicable fees, taxes and duties where the benefit to the Secured Parties of increasing the secured amount is disproportionate to the cost of such fees, taxes and duties;

(xii) [reserved];

(xiii) the Administrative Agent shall not require the taking of a Lien on, or require the perfection of any Lien granted in, any asset as to which the cost of obtaining or perfecting such Lien (including any mortgage, stamp, intangibles or other tax or expenses relating to such Lien) is excessive in relation to the benefit to the Lenders of the security afforded thereby as reasonably determined in writing by the Borrower and the Administrative Agent;

(xiv) except with respect to any Discretionary Guarantor that is organized under the laws of a jurisdiction outside the US, no Loan Party shall be required, and the Administrative Agent shall not be authorized, to perfect any security interest by means other than (A) filings pursuant to the Uniform Commercial Code in the office of the secretary of state (or similar central filing office) of any Loan Party's jurisdiction of organization, (B) filings with the US federal government offices with respect to IP Rights as expressly required by the Security Agreement (to the extent a security interest can be perfected by such filings), or (C) delivery to the Administrative Agent, for its possession (subject to the terms of any applicable Intercreditor Agreement), of any Collateral consisting of pledged Capital Stock held by any Loan Party in the Borrower or any Restricted Subsidiary that is a Wholly-Owned Subsidiary and/or any Material Debt Instrument issued to the Borrower or another Loan Party, in each case, to the extent required by the Security Agreement; and

(xv) (A) no Collateral Document executed and delivered after the Closing Date will impose any commercial obligation on any Loan Party or contain any representation, warranty or undertaking that is not required for the creation and/or perfection of a security interest in the relevant asset and (B) to the extent the subject matter of any representation, warranty or undertaking in any Collateral Document executed and delivered after the Closing Date is the same as any representation, warranty or covenant in the Credit Agreement, such representation, warranty or covenant shall be no more burdensome to the applicable Loan Party than the corresponding provision of this Agreement unless the relevant additional requirement is necessary for the creation and/or perfection of a security interest in the relevant asset.

(e) It is understood and agreed for the avoidance of doubt that the Borrower may elect to join any Domestic Subsidiary that is not required to be or become a Subsidiary Guarantor solely because such

Restricted Subsidiary is an Immaterial Subsidiary without (i) the consent of the Administrative Agent or (ii) delivery of an opinion of counsel.

SECTION 13. [Reserved].

SECTION 14. Further Assurances. Promptly upon request of the Administrative Agent and subject to the limitations described in Section 5.12:

(a) the Borrower will, and will cause each other Loan Party to, execute any and all further documents, financing statements, agreements, instruments, notices and acknowledgments and take all such further actions (including the filing and recordation of financing statements and/or amendments thereto and other documents), that may be required under any applicable Requirement of Law and which the Administrative Agent may reasonably request to ensure the creation, perfection and priority of the Liens created or intended to be created under the Collateral Documents, all at the expense of the relevant Loan Parties; and

(b) the Borrower will, and will cause each other applicable Loan Party to, (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 (including notices to third parties), deeds, assurances and other instruments as the Administrative Agent may reasonably request from time to time in order to ensure the creation, perfection and priority of the Liens created or intended to be created under the Collateral Documents.

SECTION 15. Post-Closing Covenant. Take the actions required by Schedule 5.15 in each case within the time periods specified therein (or, in each case, such longer period to which the Administrative Agent may reasonably agree).

SECTION 16. Transactions with Affiliates. The Borrower shall, and shall cause its Restricted Subsidiaries to, consummate any transaction with any Affiliate thereof that involves payment in excess of the greater of \$12,000,000 and 20% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, on terms that are at least as favorable (as determined by the Borrower in good faith at the time of the execution of the definitive agreement relating thereto) to the Borrower or such Restricted Subsidiary, as the case may be, as those that might be obtained at the time in a comparable arm's-length transaction from a Person who is not an Affiliate (or, if in the good faith judgment of Borrower, there is no comparable transaction on the basis of which to make the comparison described above, such transaction is fair to the Borrower or its applicable Restricted Subsidiary from a financial point of view); provided that the foregoing requirement shall not apply to:

(a) any transaction between or among Holdings, the Borrower and/or one or more Restricted Subsidiaries (or any entity that becomes a Restricted Subsidiary as a result of such transaction) to the extent permitted or not restricted by this Agreement (it being understood this clause (a) shall not permit any Restricted Subsidiary that is not a Wholly-Owned Subsidiary to make a distribution to, or repurchase of its Capital Stock from, any Affiliate (other than Holdings, the Borrower and/or one or more Restricted Subsidiaries) to the extent the share of the foregoing made or paid to Holdings, the Borrower or any of the Restricted Subsidiaries is not at least pro rata to the percentage of such class of Capital Stock in such Restricted Subsidiary that is not a Wholly-Owned Subsidiary owned by the Borrower and its other Restricted Subsidiaries);

(b) any issuance, sale or grant of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of employment arrangements, stock options and stock ownership plans approved by the board of directors (or equivalent governing body) of any Parent Company or of the Borrower or any Restricted Subsidiary;

(c) (i) any collective bargaining, employment or severance agreement or compensatory (including profit sharing) arrangement (including salary or guaranteed payment and bonuses) entered into by the Borrower or any of its Restricted Subsidiaries with their respective current or former officers, directors, members of management, managers, employees, consultants or independent contractors or

those of any Parent Company, (ii) any subscription agreement or similar agreement pertaining to the repurchase of Capital Stock pursuant to put/call rights or similar rights with current or former officers, directors, members of management, managers, employees, consultants or independent contractors and (iii) any transaction pursuant to any employee compensation, benefit plan, stock option plan or arrangement, any health, disability or similar insurance plan which covers current or former officers, directors, members of management, managers, employees, consultants or independent contractors or any employment contract or arrangement;

(d) (i) transactions permitted by Sections 6.04 and 6.06 and (ii) issuances of Capital Stock, equity contributions and issuances and incurrences of Indebtedness not otherwise restricted by this Agreement;

(e) transactions in existence on the Closing Date and any amendment, modification or extension thereof to the extent such amendment, modification or extension, taken as a whole, is not (i) materially adverse to the Lenders or (ii) more disadvantageous in any material respect to the Lenders than the relevant transaction in existence on the Closing Date;

(f) (i) so long as no Event of Default under Section 7.01(a), (f) or (g) then exists or would result therefrom, the payment of management, monitoring, consulting, transaction, oversight, advisory and similar fees to any Investor in an amount not to exceed the greater of \$1,500,000 and 2% of Consolidated Adjusted EBITDA per Fiscal Year; provided that such fees may continue to accrue during the pendency of any such Event of Default and shall become payable upon the waiver, termination or cure of the relevant Event of Default and (ii) the payment or reimbursement of all indemnification obligations and expenses owed to any Investor and any of their respective directors, officers, members of management, managers, employees and consultants, in each case of clauses (i) and (ii) whether currently due or paid in respect of accruals from prior periods;

(g) the Transactions and the payment of Transaction Costs;

(h) customary compensation to, and reimbursement of expenses of, Affiliates in connection with financial advisory, financing, underwriting or placement services or in respect of other investment banking activities and other transaction fees, which payments are approved by the majority of the members of the board of directors (or similar governing body) or a majority of the disinterested members of the board of directors (or similar governing body) of the Borrower in good faith;

(i) Guarantees permitted by Section 6.01 or Section 6.06;

(j) transactions that are otherwise permitted (or not restricted) under Article 6;

(k) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, members of the board of directors (or similar governing body), officers, employees, members of management, managers, consultants and independent contractors of the Borrower and/or any of its Restricted Subsidiaries in the ordinary course of business and, in the case of payments to such Person in such capacity on behalf of any Parent Company, to the extent attributable to the operations of the Borrower or its subsidiaries;

(l) transactions with customers, clients, suppliers, joint ventures, purchasers or sellers of goods or services or providers of employees or other labor entered into in the ordinary course of business, which are (i) fair to the Borrower and/or its applicable Restricted Subsidiary in the good faith determination of the Borrower (or its board of directors (or similar governing body) or senior management) or (ii) on terms at least as favorable as might reasonably be obtained from a Person other than an Affiliate;

(m) the payment of reasonable out-of-pocket costs and expenses related to registration rights and customary indemnities provided to shareholders under any shareholder agreement;

(n) (i) any purchase by Holdings of the Capital Stock of (or contribution to the equity capital of) the Borrower and (ii) any intercompany loan made by the Borrower to Holdings or any Restricted Subsidiary;

(o) any transaction (or series of related transactions) in respect of which the Borrower delivers to the Administrative Agent a letter addressed to the board of directors (or equivalent governing body) of the Borrower from an accounting, appraisal or investment banking firm of nationally recognized standing stating that such transaction or transactions, as applicable, is or are on terms that either (i) are no less favorable to the Borrower or the applicable Restricted Subsidiary than might be obtained at the time in a comparable arm's length transaction from a Person who is not an Affiliate or (ii) fair to the Borrower or the relevant Restricted Subsidiary from a financial point of view;

(p) any issuance, sale or grant of securities or other payments, awards or grants in Cash, securities or otherwise pursuant to, or the funding of employment arrangements, stock options and stock ownership or incentive plans approved by a majority of the members of the board of directors (or similar governing body) or a majority of the disinterested members of the board of directors (or similar governing body) of the Borrower in good faith;

(q) [reserved];

(r) any payment pursuant to any tax sharing agreement or arrangement (whether written or as a matter of practice), that would otherwise be permitted as a distribution pursuant to Section 6.04(a);

(s) the licensing of any IP Rights in the ordinary course of business to permit the commercial use of IP Rights between or among the Borrower and/or any subsidiary and/or Affiliate thereof;

(t) any transaction (or series of related transactions) approved by a majority of the disinterested directors (or members of any similar governing body) of the Borrower or an applicable Parent Company;

(u) any investment by any Investor or Parent Company in securities or Indebtedness of the Borrower and/or any Guarantor;

(v) transactions not otherwise prohibited by this Agreement for the purpose of (i) forming a holding company and/or (ii) reincorporating the Borrower in a new jurisdiction;

(w) any payment to or from, and/or any transaction with, any joint venture or Unrestricted Subsidiary in the ordinary course of business or consistent with past practice, industry practice or industry norms (including, any cash management activity related thereto);

(x) (i) the existence and performance of any agreement and/or transaction with any Unrestricted Subsidiary that was entered into or consummated prior to the designation of such subsidiary as an Unrestricted Subsidiary to the extent that such agreement or transaction was permitted at the time that it was entered into with such Restricted Subsidiary and/or (ii) any transaction entered into by any Unrestricted Subsidiary with any Affiliate prior to the re-designation of such Unrestricted Subsidiary as a Restricted Subsidiary; provided that such transaction was not entered into in contemplation of such designation or re-designation, as applicable;

(y) any capital contribution (whether or not in exchange for the issuance of additional Capital Stock) or loan to any Unrestricted Subsidiary that is not otherwise prohibited by this Agreement;

(z) transactions permitted pursuant to Section 9.05(g);

(aa) (i) any investment by any Affiliate in the Loans, loans, securities or other Indebtedness of the Borrower and/or any Restricted Subsidiary (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Borrower or such Restricted Subsidiary generally to other investors on the same or more favorable terms

and (ii) payments and/or distributions to Affiliates in respect of the Loans, loans, securities or Indebtedness of the Borrower or any Restricted Subsidiary in connection with the securities and other Indebtedness contemplated in the foregoing subclause (i) or that were acquired from Persons other than the Borrower and the Restricted Subsidiaries, in each case, in accordance with the terms of such securities or Indebtedness; and/or

(ab) any transaction with any portfolio company of any Investor in the ordinary course of business.

SECTION 17. Fiscal Year. In the event that the Borrower elects to change the end date of its Fiscal Year to a date other than as described in the definition of "Fiscal Year", the Borrower shall notify the Administrative Agent in writing, in which case the Borrower and the Administrative Agent will, and are hereby authorized to, make any adjustment to this Agreement that is necessary to reflect such change in Fiscal Year.

SECTION 18. Nature of Business. From and after the Closing Date, the Borrower shall, and shall cause its Restricted Subsidiaries to, ensure that any material line of business in which it engages is either (a) a business engaged in by the Borrower and/or any Restricted Subsidiary on the Closing Date or a similar, incidental, complementary, ancillary or related business or (b) another line of business to which, in the case of this clause (b), the Administrative Agent provides its consent.

SECTION 19. Amendments or Waivers of Organizational Documents. The Borrower shall, and shall cause each Subsidiary Guarantor to, ensure that it does not, without the consent of the Administrative Agent, amend or modify its respective Organizational Documents in a manner that is, in the good faith determination of the Borrower, materially adverse to the Lenders (in their capacity as such), taken as a whole; provided that, for the avoidance of doubt, it is understood and agreed that the Borrower and/or any Subsidiary Guarantor may make any change to its organizational form and/or consummate any other transaction that is permitted under Section 6.07.

ARTICLE 6

NEGATIVE COVENANTS

From the Closing Date until the Termination Date, the Borrower (and, solely in the case of Section 6.09, Holdings) covenants and agrees with the Lenders, the Issuing Banks and the Administrative Agent that:

SECTION 1. Indebtedness. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to create, incur, assume or otherwise become or remain liable with respect to any Indebtedness, except:

(a) the Secured Obligations;

(b) Indebtedness of (i) the Borrower to Holdings and/or any Restricted Subsidiary and/or (ii) any Restricted Subsidiary to Holdings, the Borrower and/or any other Restricted Subsidiary; provided that (A) in the case of any Indebtedness of any Restricted Subsidiary that is not a Loan Party owing to the Borrower or any Restricted Subsidiary that is a Loan Party, the related Investment is permitted under Section 6.06, and (B) any Indebtedness of any Loan Party owing to any Restricted Subsidiary that is not a Loan Party incurred in reliance on this clause (b) must be unsecured and expressly subordinated to the Obligations of such Loan Party on terms that are reasonably acceptable to the Administrative Agent (it being understood that the subordination terms set forth in the Intercompany Note are acceptable to the Administrative Agent);

(c) [reserved];

(d) (i) Indebtedness arising from any agreement providing for indemnification, adjustment of purchase price or similar obligations (including contingent earn-out obligations) incurred in connection with the Transactions, any Disposition permitted hereunder, any acquisition or other Investment permitted

hereunder or consummated prior to the Closing Date or any other purchase of assets or Capital Stock or any other Investment, and (ii) Indebtedness arising from guaranties, letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments securing the performance of the Borrower or any such Restricted Subsidiary pursuant to any such agreement;

(e) Indebtedness of the Borrower and/or any Restricted Subsidiary (i) as a result of or pursuant to tenders, statutory obligations, bids, leases, governmental contracts, trade contracts, surety, stay, customs, appeal, performance and/or return of money bonds or other similar obligations incurred in the ordinary course of business or pursuant to self-insurance obligations and not in connection with debt for borrowed money and (ii) in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments to support any of the foregoing items;

(f) Indebtedness of the Borrower and/or any Restricted Subsidiary in respect of Banking Services and/or otherwise in connection with Cash management and Deposit Accounts;

(g) (i) guaranties by the Borrower and/or any Restricted Subsidiary of the obligations of suppliers, customers, franchisees and licensees in the ordinary course of business in an aggregate outstanding principal amount not to exceed the greater of \$2,500,000 and 5% of Consolidated Adjusted EBITDA, (ii) Indebtedness incurred in the ordinary course of business in respect of obligations of the Borrower and/or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services and (iii) Indebtedness in respect of letters of credit, bankers' acceptances, bank guaranties or similar instruments supporting trade payables, warehouse receipts or similar facilities entered into in the ordinary course of business;

(h) Guarantees by the Borrower and/or any Restricted Subsidiary of Indebtedness or other obligations of the Borrower, any Restricted Subsidiary and/or any joint venture with respect to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.01 or other obligations not prohibited by this Agreement; provided that in the case of any Guarantee by any Loan Party of the obligations of any non-Loan Party, the related Investment is permitted under Section 6.06;

(i) Indebtedness of the Borrower and/or any Restricted Subsidiary existing, or pursuant to commitments existing, on the Closing Date; provided that any such Indebtedness or commitment having an outstanding principal amount in excess of \$5,000,000 shall be described on Schedule 6.01;

(j) Indebtedness of Restricted Subsidiaries that are not Loan Parties; provided that the aggregate outstanding principal amount of such Indebtedness shall not exceed the greater of \$30,000,000 and 50% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(k) Indebtedness of the Borrower and/or any Restricted Subsidiary consisting of obligations owing under incentive, supply, license or similar agreements entered into in the ordinary course of business;

(l) Indebtedness of the Borrower and/or any Restricted Subsidiary consisting of (i) the financing of insurance premiums, (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business and/or (iii) obligations to reacquire assets or inventory in connection with customer financing arrangements in the ordinary course of business;

(m) Indebtedness of the Borrower and/or any Restricted Subsidiary with respect to Capital Leases and purchase money Indebtedness in an aggregate outstanding principal amount not to exceed the greater of \$30,000,000 and 50% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(n) Indebtedness of any Person that becomes a Restricted Subsidiary and/or Indebtedness assumed in connection with any acquisition or similar Investment; provided that:

(i) such Indebtedness (A) existed at the time such Person became a Restricted Subsidiary or the assets subject to such Indebtedness were acquired and (B) was not created or incurred in contemplation of the applicable acquisition or similar Investment, and

(ii) after giving effect to such Indebtedness on a Pro Forma Basis, the Borrower is in compliance with Section 6.10(a);

(o) Indebtedness issued by the Borrower or any Restricted Subsidiary to any stockholder of any Parent Company or any current or former director, officer, employee, member of management, manager or consultant of any Parent Company, the Borrower or any subsidiary (or their respective Immediate Family Members) to finance the purchase or redemption of Capital Stock of any Parent Company permitted by Section 6.04(a);

(p) Indebtedness refinancing, refunding or replacing any Indebtedness permitted under clauses (a), (i), (j), (m), (n), (u), (w), (y), (z), (ii) and/or (jj) of this Section 6.01 (in any case, including any refinancing Indebtedness incurred in respect thereof, “Refinancing Indebtedness”) and any subsequent Refinancing Indebtedness in respect thereof; provided that:

(i) the principal amount of such Indebtedness does not exceed the principal amount of, and commitments in respect of, the Indebtedness being refinanced, refunded or replaced, except by (A) an amount equal to unpaid accrued interest, penalties and premiums (including tender premiums) thereon plus underwriting discounts, other reasonable and customary fees, commissions and expenses (including upfront fees, original issue discount or initial yield payments) incurred in connection with the relevant refinancing, refunding or replacement and the related refinancing transaction, (B) an amount equal to any existing commitments unutilized thereunder and (C) additional amounts permitted to be incurred pursuant to this Section 6.01 (provided that (1) any additional Indebtedness referenced in this clause (C) satisfies the other applicable requirements of this definition (with additional amounts incurred in reliance on this clause (C) constituting a utilization of the relevant basket or exception pursuant to which such additional amount is permitted) and (2) if such additional Indebtedness is secured, the Lien securing such Indebtedness satisfies the applicable requirements of Section 6.02);

(ii) in the case of Refinancing Indebtedness with respect to clauses (a), (w) and/or (z) (other than Customary Bridge Loans), such Indebtedness (other than revolving indebtedness) has (A) a final maturity equal to or later than (and, in the case of revolving Indebtedness, does not require mandatory commitment reductions, if any, prior to) the Latest Term Loan Maturity Date and (B) a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of the outstanding Term Loans at such time;

(iii) the terms of any Replacement Debt with an original principal amount in excess of the Threshold Amount (excluding, to the extent applicable, pricing (including any “MFN” provision), fees, premiums, rate floors, optional prepayment, funding discounts, maturity, amortization schedule, redemption terms or subordination terms and security), are not, taken as a whole (as determined by the Borrower in good faith), more favorable to the lenders providing such Indebtedness than those applicable to the Indebtedness being refinanced, refunded or replaced (other than (A) any covenant or any other provision applicable only to periods after the applicable maturity date of the debt then being refinanced as of such date, (B) any covenant or provision which constitutes a then-current market term for the applicable type of Indebtedness (as determined by the Borrower in good faith), or (C) any covenant or other provision which is conformed (or added) to the Loan Documents for the benefit of the Lenders or, as applicable, the Administrative Agent, pursuant to an amendment to this Agreement effectuated in reliance on Section 9.02(d)(ii), it being understood and agreed that if any Refinancing Indebtedness that constitutes a revolving facility includes a financial covenant, the requirement set forth in this clause (iii) shall be satisfied if such financial covenant is added to this Agreement for the benefit of the then-existing Revolving Facility but not any then-existing Term Facility);

(iv) in the case of Refinancing Indebtedness with respect to Indebtedness permitted under clauses (j), (m), (n)(ii)(C), (u), (w) (solely as it relates to the Fixed Incremental Amount), (y), (z) (solely as it relates to the Fixed Incremental Amount), (ii) and/or (jj) of this Section 6.01, the incurrence thereof shall be without duplication of any amount outstanding in reliance on the relevant clause such that the amount available under the relevant clause shall be reduced by the amount of the applicable Refinancing Indebtedness;

(v) except in the case of Refinancing Indebtedness constituting Replacement Debt, (A)(1) such Indebtedness, if secured, is secured only by Permitted Liens at the time of such refinancing, refunding or replacement (it being understood that secured Indebtedness may be refinanced with unsecured Indebtedness), and (2) either (x) if the Liens securing such Indebtedness were originally contractually subordinated to the Liens on the Collateral securing the Initial Term Loans, the Liens securing such Indebtedness are subordinated to the Liens on the Collateral securing the Initial Term Loans on terms not materially less favorable (as determined by the Borrower in good faith), taken as a whole, to the Lenders than those (I) applicable to the Liens securing the Indebtedness being refinanced, refunded or replaced, taken as a whole, or (II) set forth in any relevant Intercreditor Agreement or (y) the purchase, defeasance, redemption, repurchase, repayment, refinancing or other acquisition or retirement of such Indebtedness is permitted under Section 6.04(b) (other than Section 6.04(b)(i)); it being understood that the proceeds of any such Refinancing Indebtedness may be funded into Escrow pursuant to customary (in the good faith determination of the Borrower) escrow arrangements, (B) such Indebtedness is incurred by the obligor or obligors in respect of the Indebtedness being refinanced, refunded or replaced, except to the extent otherwise permitted pursuant to Section 6.01 (it being understood that (1) any entity that was a guarantor in respect of the relevant refinanced Indebtedness may be the primary obligor in respect of the refinancing Indebtedness, and any entity that was the primary obligor in respect of the relevant refinanced Indebtedness may be a guarantor in respect of the refinancing Indebtedness and (2) the obligation of any Person with respect to any Escrow arrangement into which the proceeds of such Refinancing Indebtedness are deposited shall not constitute a Guarantee) and (C) if the Indebtedness being refinanced, refunded or replaced was expressly contractually subordinated to the Obligations in right of payment, (x) such Indebtedness is contractually subordinated to the Obligations in right of payment, or (y) if not contractually subordinated to the Obligations in right of payment, the purchase, defeasance, redemption, repurchase, repayment, refinancing or other acquisition or retirement of such Indebtedness is permitted under Section 6.04(b) (other than Section 6.04(b)(i)); and

(vi) in the case of Refinancing Indebtedness constituting Replacement Debt, (A) such Indebtedness is *pari passu* or junior in right of payment and secured by the Collateral on a *pari passu* or junior basis with respect to the remaining Obligations hereunder, or is unsecured; provided that any such Refinancing Indebtedness that is *pari passu* or junior with respect to the Collateral shall be subject to an Intercreditor Agreement, (B) if the Indebtedness being refinanced, refunded or replaced is secured, it is not secured by any asset that does not constitute Collateral; it being understood that the proceeds of any such Refinancing Indebtedness may be funded into Escrow pursuant to customary (in the good faith determination of the Borrower) escrow arrangements, (C) if the Indebtedness being refinanced, refunded or replaced is Guaranteed, it shall not be Guaranteed by any Restricted Subsidiary of the Borrower other than one or more Loan Parties (it being understood that the obligation of any Person with respect to any Escrow arrangement into which the proceeds of such Refinancing Indebtedness are deposited shall not constitute a Guarantee) and (D) such Refinancing Indebtedness is incurred under (and pursuant to) documentation other than this Agreement;

(q) [reserved];

(r) [reserved];

(s) Indebtedness of the Borrower and/or any Restricted Subsidiary under any Derivative Transaction not entered into for speculative purposes;

(t) Indebtedness of the Borrower and/or any Restricted Subsidiary representing (i) deferred compensation to current or former directors, officers, employees, members of management, managers, and consultants of any Parent Company, the Borrower and/or any Restricted Subsidiary in the ordinary course of business and (ii) deferred compensation or other similar arrangements in connection with the Transactions, any Permitted Acquisition or any other Investment permitted hereby;

(u) Indebtedness of the Borrower and/or any Restricted Subsidiary in an aggregate outstanding principal amount not to exceed the greater of \$30,000,000 and 50% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(v) [reserved];

(w) Indebtedness of the Borrower and/or any Restricted Subsidiary (any Indebtedness incurred pursuant to this Section 6.01(w), “Ratio Debt”) so long as:

(i) after giving effect thereto, including the application of the proceeds thereof (in each case, without “netting” the cash proceeds of the applicable Indebtedness being incurred), the outstanding principal thereof does not exceed an amount equal to the sum of (x) the Fixed Incremental Amount, (y)(A) the Incremental Prepayment Amount minus (B) the amount of any Incremental Facility and/or Incremental Equivalent Debt incurred or implemented in reliance on clause (d) of the definition of “Incremental Cap” and (z) an additional unlimited amount, so long as, in the case of this clause (z), on a Pro Forma Basis:

(A) if such Ratio Debt constitutes First Lien Debt, the First Lien Rent Adjusted Net Leverage Ratio does not exceed 4.50:1.00;

(B) if such Ratio Debt constitutes Junior Lien Debt, the Secured Rent Adjusted Net Leverage Ratio does not exceed 5.00:1.00; or

(C) if such Ratio Debt is not secured by the Collateral or is unsecured, the Total Rent Adjusted Net Leverage Ratio does not exceed 5.25:1.00;

(ii) the aggregate outstanding principal amount of Ratio Debt incurred in reliance on this Section 6.01(w) by Restricted Subsidiaries that are not Loan Parties shall not, at any time, exceed an amount equal to the greater of \$30,000,000 and 50% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period; and

(iii) if such Ratio Debt is issued or incurred by any Loan Party and consists of third party Indebtedness for borrowed money (other than Indebtedness among the Borrower and its Restricted Subsidiaries):

(A) the final maturity date of such Indebtedness (other than revolving loans) is no earlier than the Latest Term Loan Maturity Date on the date of the issuance or incurrence thereof,

(B) the Weighted Average Life to Maturity applicable to such Indebtedness (other than revolving loans) is no shorter than the Weighted Average Life to Maturity of the then-existing Term Loans, and

(C) if such Indebtedness constitutes revolving loans, such Indebtedness will not mature or have any mandatory commitment reductions prior to the Initial Revolving Credit Maturity Date;

(x) [reserved];

(y) Indebtedness of the Borrower and/or any Restricted Subsidiary incurred in connection with any Sale and Lease-Back Transaction permitted pursuant to Section 6.07;

(z) any Incremental Equivalent Debt;

(aa) Indebtedness (including obligations in respect of letters of credit, bank guarantees, bankers’ acceptances, surety bonds, performance bonds or similar instruments with respect to such Indebtedness) incurred by the Borrower and/or any Restricted Subsidiary in respect of workers

compensation claims, unemployment, property, casualty or liability insurance (including premiums related thereto) or self-insurance, other reimbursement-type obligations regarding workers' compensation claims, other types of social security, pension obligations, vacation pay or health, disability or other employee benefits;

(ab) Indebtedness representing (i) deferred compensation to current or former directors, officers, employees, members of management, managers and consultants of any Parent Company, the Borrower or any Subsidiary in the ordinary course of business and (ii) deferred compensation or other similar arrangements in connection with the Transactions, any acquisition or any other Investment permitted hereby;

(ac) Indebtedness of the Borrower and/or any Restricted Subsidiary in respect of any letter of credit or bank guarantee issued in favor of any Issuing Bank or the Swingline Lender to support any Defaulting Lender's participation in Letters of Credit issued, or Swingline Loans made, hereunder;

(ad) Indebtedness of the Borrower or any Restricted Subsidiary supported by any Letter of Credit or any other letter of credit, bank guarantee or similar instrument permitted by this Section 6.01;

(ae) unfunded pension fund and other employee benefit plan obligations and liabilities incurred by the Borrower and/or any Restricted Subsidiary in the ordinary course of business to the extent that the unfunded amounts would not otherwise cause an Event of Default under Section 7.01(i);

(af) customer deposits and advance payments received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business;

(ag) without duplication of any other Indebtedness, all premiums (if any), interest (including post-petition interest and payment in kind interest), accretion or amortization of original issue discount, fees, expenses and charges with respect to Indebtedness of the Borrower and/or any Restricted Subsidiary hereunder;

(ah) Indebtedness in respect of Commercial Letters of Credit (and reimbursement obligations with respect thereto) in an aggregate outstanding principal amount not to exceed the greater of \$6,000,000 and 10% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(ai) [reserved];

(aj) Indebtedness owed on a short-term basis to banks and other financial institutions in the ordinary course of business to manage cash balances; and

(ak) Indebtedness in respect of earn-outs, seller notes or similar deferred purchase price obligations incurred in connection with any acquisition or other Investment permitted hereby.

SECTION 2. Liens. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, create, incur, assume or permit or suffer to exist any Lien on or with respect to any property of any kind owned by it, whether now owned or hereafter acquired, or any income or profits therefrom, except:

(a) Liens securing the Secured Obligations;

(b) Liens for Taxes which (i) are not then due, (ii) if due, are not at such time required to be paid pursuant to Section 5.03 or (iii) are being contested in accordance with Section 5.03;

(c) statutory Liens (and rights of set-off) of landlords, banks, carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by applicable Requirements of Law, in each case incurred in the ordinary course of business (i) for amounts not yet overdue by more than 60 days, (ii) for amounts that are overdue by more than 60 days and that are being contested in good faith by appropriate proceedings, so long as any reserves or other appropriate provisions required by

GAAP have been made for any such contested amounts or (iii) for amounts with respect to which the failure to make payment would not reasonably be expected to have a Material Adverse Effect;

(d) Liens granted or arising (i) in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security laws and regulations, (ii) in the ordinary course of business to secure the performance of tenders, statutory obligations, surety, stay, customs and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money), (iii) pursuant to pledges and deposits of Cash or Cash Equivalents in the ordinary course of business securing (A) any liability for reimbursement or indemnification obligations of insurance carriers providing property, casualty, liability or other insurance to the Borrower and its subsidiaries or (B) leases or licenses of property otherwise permitted by this Agreement and (iv) to secure obligations in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments posted with respect to the items described in clauses (i) through (iii) above;

(e) Liens consisting of survey exceptions, easements, rights-of-way, restrictions, encroachments, servitudes for railways, sewers, drains, gas and oil and other pipelines, gas and water mains, electric light and power and telecommunication, telephone or telegraph or cable television conduits, poles, wires and cables, covenants, conditions, declarations, encroachments, zoning restrictions and other defects or irregularities in title or environmental deed restrictions, in each case, which do not, in the aggregate, materially interfere with the ordinary conduct of the business of the Borrower and/or its Restricted Subsidiaries, taken as a whole;

(f) Liens consisting of any (i) interest or title of a lessor or sub-lessor under any lease of real estate permitted hereunder, (ii) landlord lien permitted by the terms of any lease, (iii) restriction or encumbrance to which the interest or title of such lessor or sub-lessor may be subject or (iv) subordination of the interest of the lessee or sub-lessee under such lease to any restriction or encumbrance referred to in the preceding clause (iii);

(g) Liens (i) solely on any Cash earnest money deposits and/or arising in connection with any escrow arrangement made by the Borrower and/or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement with respect to any Investment permitted hereunder and (ii) consisting of (A) an agreement to Dispose of any property in a Disposition permitted under Section 6.07 and/or (B) the pledge of Cash as part of an escrow arrangement required in any Disposition permitted under Section 6.07;

(h) (i) purported Liens evidenced by the filing of UCC financing statements or similar financing statements under applicable Requirements of Law relating solely to operating leases or consignment or bailee arrangements entered into in the ordinary course of business, (ii) Liens arising from precautionary UCC financing statements or similar filings and (iii) any Lien relating to the sale of accounts receivable for which a UCC financing statement or similar financing statement is required;

(i) 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;

(j) Liens in connection with any zoning, building, environmental or similar Requirements of Law or right reserved to or vested in any Governmental Authority to control or regulate the use or dimensions of any real property or the structures thereon, including Liens in connection with any condemnation or eminent domain proceeding or compulsory purchase order;

(k) Liens securing Indebtedness permitted pursuant to Section 6.01(p) (solely with respect to the permitted refinancing of (1) secured Indebtedness permitted pursuant to Sections 6.01(a), (i), (j), (m), (n), (u), (w), (y), (z), and/or (gg) and (2) Indebtedness that is secured in reliance on Section 6.02(u) (provided that the granting of the relevant Lien shall be without duplication of any Lien outstanding under Section 6.02(u) such that the amount available under Section 6.02(u) shall be reduced by the amount secured by the applicable Lien granted in reliance on this clause (2)); provided that (i) no such Lien extends to any asset not covered by the Lien securing (or permitted to secure) the Indebtedness that is being refinanced (it being understood that individual financings of the type permitted under

Section 6.01(m) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates), (ii) if the Lien securing the Indebtedness being refinanced was subject to intercreditor arrangements, then (A) the Lien securing any refinancing Indebtedness in respect thereof shall be subject to intercreditor arrangements that are not materially less favorable to the Secured Parties, taken as a whole, than the intercreditor arrangements governing the Lien securing the Indebtedness that is refinanced or (B) the intercreditor arrangements governing the Lien securing the relevant refinancing Indebtedness shall be set forth in an Intercreditor Agreement, (iii) except as permitted by another provision of this Section 6.02, no such Lien shall be senior in priority as compared to the Lien securing the Indebtedness being refinanced and (iv) subject to clauses (i) through (iii) above, any such Lien may be subject to an Intercreditor Agreement to the extent the Lien securing the Indebtedness being refinanced was permitted to be subject to an Intercreditor Agreement;

(l) Liens in existence on the Closing Date and any modification, replacement, refinancing, renewal or extension thereof; provided that any such Lien securing Indebtedness having an aggregate principal amount outstanding on the Closing Date in excess of \$5,000,000 shall be described on Schedule 6.02; provided, further that (i) no such Lien extends 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 6.01 and (B) proceeds and products thereof, replacements thereof, accessions or additions thereto and improvements thereon (it being understood that individual financings of the type permitted under Section 6.01(m) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates) and (ii) any such modification, replacement, refinancing, renewal or extension of the obligations secured or benefited by such Liens, if constituting Indebtedness, is permitted by Section 6.01;

(m) Liens arising out of Sale and Lease-Back Transactions permitted under Section 6.07;

(n) Liens securing Indebtedness permitted pursuant to Section 6.01(m); provided that any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness and proceeds and products thereof, replacements, accessions or additions thereto and improvements thereon (it being understood that individual financings of the type permitted under Section 6.01(m) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates);

(o) Liens securing Indebtedness permitted pursuant to Section 6.01(n) on the relevant acquired assets or on the Capital Stock and assets of the relevant newly acquired Restricted Subsidiary and/or any future subsidiary of such Restricted Subsidiary (including, for the avoidance of doubt, any after-acquired property of any such newly acquired subsidiary and/or any such subsidiary of such subsidiary); provided that no such Lien (i) extends to or covers any other assets (other than the proceeds or products thereof, replacements thereof, accessions or additions thereto and improvements thereon) (it being understood that (A) individual financings of the type permitted under Section 6.01(m) provided by any lender may be cross collateralized to other financings of such type provided by such lender or its affiliates and (B) any such Lien may extend to after-acquired property of any such Person) or (ii) was created in contemplation of the applicable acquisition of assets or Capital Stock;

(p) (i) Liens that are contractual rights of setoff or netting relating to (A) the establishment of depositary relations with banks not granted in connection with the issuance of Indebtedness, (B) pooled deposit or sweep accounts of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Restricted Subsidiary, (C) purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business and (D) commodity trading or other brokerage accounts incurred in the ordinary course of business, (ii) Liens encumbering reasonable customary initial deposits and margin deposits, (iii) bankers Liens and rights and remedies as to Deposit Accounts, (iv) Liens of a collection bank arising under Section 4-208 of the UCC on items in the ordinary course of business, (v) Liens in favor of banking or other financial institutions arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution and that are within the general parameters customary in the banking industry or arising pursuant to such banking institution's general terms and conditions, (vi) Liens on the proceeds of any Indebtedness incurred in connection with any transaction permitted hereunder, which proceeds have been deposited into an escrow account on customary terms to secure such Indebtedness pending the application

of such proceeds to finance such transaction and (vii) any general banking Lien over any bank account arising in the ordinary course of business;

(q) Liens on assets owned by, and/or Capital Stock of, Restricted Subsidiaries that are not Loan Parties (including Capital Stock owned by such Persons) securing Indebtedness of Restricted Subsidiaries that are not Loan Parties permitted pursuant to Section 6.01;

(r) Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business of the Borrower and/or its Restricted Subsidiaries;

(s) Liens securing Indebtedness incurred in reliance on, and subject to the provisions set forth in, Sections 6.01(w) and/or (z); provided that any Lien that is granted on the Collateral in reliance on this clause (s) shall be subject to an Intercreditor Agreement unless, in the case of any Lien granted to secure Indebtedness incurred in reliance on Section 6.01(w), the holders of such Indebtedness and the Administrative Agent have not requested or required an intercreditor arrangement;

(t) [reserved];

(u) Liens on assets securing Indebtedness or other obligations in an aggregate principal amount at any time outstanding not to exceed the greater of \$30,000,000 and 50% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, in each case, subject, in the case of any Lien on the Collateral, at the request of the relevant lender, to an Intercreditor Agreement;

(v) (i) Liens on assets securing judgments, awards, attachments and/or decrees and notices of *lis pendens* and associated rights relating to litigation being contested in good faith not constituting an Event of Default under Section 7.01(h) and (ii) any pledge and/or deposit securing any settlement of litigation;

(w) (i) leases, licenses, subleases or sublicenses (including with respect to IP Rights) in the ordinary course of business which do not secure any Indebtedness and (ii) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its subsidiaries are located;

(x) Liens on Securities that are the subject of repurchase agreements constituting Investments permitted under Section 6.06 arising out of such repurchase transaction;

(y) Liens securing obligations in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments permitted under Sections 6.01(d), (e), (g), (aa) and (cc);

(z) Liens arising (i) out of conditional sale, title retention, consignment or similar arrangements for the sale of any asset in the ordinary course of business and permitted by this Agreement or (ii) by operation of law under Article 2 of the UCC (or similar Requirement of Law under any jurisdiction);

(aa) Liens (i) in favor of any Loan Party and/or (ii) granted by any non-Loan Party in favor of any Restricted Subsidiary that is not a Loan Party, in the case of clauses (i) and (ii), securing intercompany Indebtedness permitted (or not restricted) under Section 5.16 or 6.01;

(ab) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(ac) (i) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof and (ii) Liens on specific items of inventory or other goods and the proceeds thereof securing the relevant Person's obligations in respect of documentary 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;

(ad) Liens securing (i) obligations of the type described in Section 6.01(f) and/or (ii) obligations of the type described in Section 6.01(s);

(ae) (i) Liens on Capital Stock of (A) joint ventures securing capital contributions to, or obligations of, such Persons and/or (B) Unrestricted Subsidiaries and (ii) customary rights of first refusal and tag, drag and similar rights in joint venture agreements and agreements with respect to non-Wholly-Owned Subsidiaries;

(af) Liens on cash or Cash Equivalents arising in connection with the defeasance, discharge or redemption of Indebtedness;

(ag) Liens consisting of the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(ah) Liens securing obligations under Section 6.01(hh), in each case, subject, in the case of any Lien on the Collateral, at the request of the relevant issuing bank, to an Intercreditor Agreement;

(ai) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(aj) Liens consisting of (i) any reservation, limitation, proviso and/or condition, if any, expressed in any original grant from the Crown of any real property or any interest therein and/or (ii) any right of expropriation, access, or user or any other right conferred or vested by statutes of Canada or any applicable province;

(ak) Liens that do not secure Indebtedness for borrowed money and are customary in the operation of the business of the Borrower and its Restricted Subsidiaries;

(al) Liens on specific items of inventory or other goods and the proceeds thereof securing the relevant Person's obligations in respect of documentary 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;

(am) [reserved]; and

(an) Liens arising in connection with escrow arrangements established in connection with the Transactions.

Notwithstanding anything to the contrary in this Section 6.02, if the proceeds of any Indebtedness the Liens securing which are required or permitted to be subject to an Intercreditor Agreement are funded into Escrow, at the election of the Borrower, either (x) the relevant Intercreditor Agreement shall not be required to be entered into or become effective until the release and/or termination of the relevant Escrow arrangement, so long as, prior to such release and/or termination, the relevant Indebtedness is secured only by a Lien on such proceeds so funded into Escrow or (y) the property subject to the applicable Escrow arrangement is not required to be subject to the relevant Intercreditor Agreement.

SECTION 3. [Reserved].

SECTION 4. Restricted Payments; Restricted Debt Payments.

(a) The Borrower shall not pay or make any Restricted Payment, except that:

(i) the Borrower may make, directly or indirectly, Restricted Payments to the extent necessary to permit any Parent Company:

(A) to pay general administrative and operating costs and expenses (including corporate overhead, legal or similar expenses and customary salary, bonus and

other benefits payable to any director, officer, employee, member of management, manager and/or consultant of any Parent Company) and franchise Taxes, and similar fees and expenses required to maintain the organizational existence or qualification to do business of such Parent Company, in each case, which are reasonable and customary and incurred in the ordinary course of business, plus the amount of any reasonable and customary indemnification claim made by any director, officer, member of management, manager, employee and/or consultant of any Parent Company, in each case, to the extent attributable to the ownership or operations of any Parent Company and/or its subsidiaries (but excluding, for the avoidance of doubt, the portion of any such amount, if any, that is attributable to the ownership or operations of any subsidiary of any Parent Company other than Holdings, the Borrower and/or its subsidiaries);

(B) any distribution to Holdings to pay (or to make any distribution to any direct or indirect parent of Holdings to pay) the aggregate amount of consolidated, combined, unitary or similar group tax liabilities attributable to the income of Holdings, the Borrower and its subsidiaries; provided that 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; provided that any amounts distributed in respect of any taxes attributable to the income of Unrestricted Subsidiaries may be made only to the extent that (x) such subsidiaries have made cash payments to any Loan Party or Restricted Subsidiary in at least the amount of such taxes or (y) the Borrower and its Restricted Subsidiaries with respect to making such a distribution are treated as deemed to have made an Investment in the amount of such taxes in the relevant Unrestricted Subsidiary and such Investment complies with the requirements of Section 6.06;

(C) to pay audit and other accounting and reporting expenses of any Parent Company to the extent such expenses are attributable to such Parent Company, the Borrower and its subsidiaries (but excluding, for the avoidance of doubt, the portion of any such expenses, if any, that is attributable to the ownership or operations of any subsidiary of any Parent Company other than Holdings, the Borrower and/or its subsidiaries);

(D) for the payment of any insurance premium that is payable by or attributable to any Parent Company, the Borrower and/or its subsidiaries (but excluding, for the avoidance of doubt, the portion of any such premium, if any, that is attributable to the ownership or operations of any subsidiary of any Parent Company other than Holdings, the Borrower and/or its subsidiaries);

(E) to pay (1) any fee and/or expense related to any debt and/or equity offering and/or the IPO, investment or acquisition (whether or not consummated) and/or any expense of, or indemnification obligation in favor of, any trustee, agent, arranger, underwriter or similar role, and (2) Public Company Costs;

(F) to finance any Investment permitted under Section 6.06 (other than Section 6.06(t)) (provided that (x) any Restricted Payment under this clause (a)(i)(F) shall be made substantially concurrently with the closing of such Investment (except with respect to any deferred purchase price or other contingent consideration, the Restricted Payments in respect of which may be made after the closing of such Investment) and (y) the relevant Parent Company shall, promptly following the closing thereof, cause (I) all property acquired to be contributed to the Borrower or one or more of its Restricted Subsidiaries, or (II) the merger, consolidation or amalgamation of the Person formed or acquired into the Borrower or one or more of its Restricted Subsidiaries, in order to consummate such Investment in compliance with the applicable requirements of Section 6.06 as if the relevant Investment was undertaken as a direct Investment by the Borrower or the relevant Restricted Subsidiary); and

(G) to pay customary salary, bonus, severance and other benefits payable to current or former directors, officers, members of management, managers, employees or consultants of any Parent Company (or any Immediate Family Member of any of the foregoing) to the extent such salary, bonuses, severance and other benefits are attributable and reasonably allocated to the operations of the Borrower and/or its subsidiaries,

in each case, so long as such Parent Company applies the amount of any such Restricted Payment for such purpose;

(ii) the Borrower may pay (or make Restricted Payments to allow any Parent Company) to repurchase, redeem, retire or otherwise acquire or retire for value the Capital Stock of any Parent Company or any subsidiary held by any future, present or former employee, director, member of management, officer, manager or consultant (or any Affiliate or Immediate Family Member thereof) of any Parent Company, the Borrower or any subsidiary:

(A) with Cash and Cash Equivalents (and including, to the extent constituting a Restricted Payment, amounts paid in respect of promissory notes issued to evidence any obligation to repurchase, redeem, retire or otherwise acquire or retire for value the Capital Stock of any Parent Company, the Borrower or any subsidiary held by any future, present or former employee, director, member of management, officer, manager or consultant (or any Affiliate or Immediate Family Member thereof) of any Parent Company, the Borrower or any subsidiary) in an amount not to exceed, in any Fiscal Year, the greater of \$12,000,000 and 20% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, in each case, which, if not used in such Fiscal Year, shall be carried forward to the next Fiscal Year (but not to any succeeding Fiscal Years to the extent not fully utilized in the immediately succeeding Fiscal Year; it being understood and agreed that such carried forward amounts shall be deemed utilized first in any Fiscal Year prior to utilization of the indicative amount for such Fiscal Year);

(B) with the proceeds of any sale or issuance of, or any capital contribution in respect of, the Capital Stock of the Borrower or any Parent Company that are Not Otherwise Applied (to the extent such proceeds are contributed in respect of Qualified Capital Stock to the Borrower or any Restricted Subsidiary); and/or

(C) with the net proceeds of any key-man life insurance policy;

(iii) the Borrower may make Restricted Payments in an amount not to exceed (A) the portion, if any, of the Available Amount on such date that the Borrower elects to apply to this clause (iii)(A) and/or (B) the portion, if any, of the Available Excluded Contribution Amount on such date that the Borrower elects to apply to this clause (iii)(B);

(iv) the Borrower may make Restricted Payments:

(A) to any Parent Company to enable such Parent Company to make Cash payments in lieu of the issuance of fractional shares in connection with any dividend, split or combination thereof in connection with any Investment permitted hereunder or the exercise or vesting of warrants, options, restricted stock units or similar incentive interests or other securities convertible into or exchangeable for Capital Stock of such Parent Company or otherwise to honor a conversion requested by a holder thereof or

(B) consisting of (1) payments made or expected to be made in respect of withholding or similar Taxes payable by any future, present or former officers, directors, employees, members of management, managers or consultants of the Borrower, any subsidiary of the Borrower or Parent Company or any of their respective Immediate Family Members, (2) payments or other adjustments to outstanding Capital Stock in accordance with any management equity plan, stock option plan or any other similar employee benefit or incentive plan, agreement or arrangement in connection with any Restricted Payment and/or (3) repurchases of Capital Stock in consideration of the

payments described in clauses (1) and/or (2) above, including demand repurchases, in connection with the exercise or vesting of stock options, restricted stock units or similar incentive interests;

(v) the Borrower may repurchase (or make Restricted Payments to any Parent Company to enable it to repurchase) Capital Stock upon the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock if such Capital Stock represents all or a portion of the exercise price of, or tax withholdings with respect to, such warrants, options or other securities convertible into or exchangeable for Capital Stock;

(vi) the Borrower may make Restricted Payments, the proceeds of which are applied (A) to effect the consummation of the Transactions and (B) to pay Transaction Costs;

(vii) [reserved];

(viii) the Borrower may make Restricted Payments to (i) redeem, repurchase, retire or otherwise acquire any (A) Capital Stock ("Treasury Capital Stock") of the Borrower and/or any Restricted Subsidiary or (B) Capital Stock of any Parent Company, in the case of each of subclauses (A) and (B), in exchange for, or out of the proceeds of the substantially concurrent sale (other than to the Borrower and/or any Restricted Subsidiary) of, Qualified Capital Stock of the Borrower or any Parent Company to the extent any such proceeds are contributed to the capital of the Borrower and/or any Restricted Subsidiary in respect of Qualified Capital Stock ("Refunding Capital Stock") to the extent such proceeds are Not Otherwise Applied and (ii) declare and pay dividends on any Treasury Capital Stock out of the proceeds of the substantially concurrent sale (other than to the Borrower or a Restricted Subsidiary) of any Refunding Capital Stock;

(ix) to the extent constituting a Restricted Payment, the Borrower may consummate any transaction permitted by Section 5.16 (other than Sections 5.16(d) and (j)), Section 6.06 (other than Sections 6.06(j) and (i)) and/or Section 6.07 (other than Section 6.07(g));

(x) so long as no Event of Default exists, the Borrower may make Restricted Payments in an aggregate amount not to exceed the greater of \$21,000,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(xi) so long as no Event of Default exists, the Borrower may make Restricted Payments so long as the Total Rent Adjusted Net Leverage Ratio, calculated on a Pro Forma Basis, would not exceed 3.50:1.00 as of the last day of the most recently ended Test Period;

(xii) the Borrower may declare and make dividend payments or other Restricted Payments payable solely in the Capital Stock of the Borrower or of any Parent Company;

(xiii) the Borrower may make Restricted Payments (other than in the form of Cash and Cash Equivalents) in connection with and/or relating to any internal reorganization or restructuring activities (including related to tax planning); provided that such activities do not result in any Capital Stock of the Borrower becoming an Excluded Asset;

(xiv) the Borrower may make payments or distributions to satisfy dissenters' or appraisal rights, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of assets that complies with Section 6.07;

(xv) [reserved];

(xvi) [reserved]; and/or

(xvii) any payment in connection with (or to allow the Parent to make any payment in connection with) (A) any Permitted Bond Hedge Transaction and/or (B) the settlement of any

Permitted Warrant Transaction by (1) delivery of shares of the Parent's common equity upon settlement thereof or (2) by (x) set-off against the related Permitted Bond Hedge Transaction or (y) payment of an early termination amount in common equity upon any early termination thereof, in each case, shall be permitted.

It is understood and agreed that, for purposes of this Section 6.04(a), any determination of the value of any asset other than Cash shall be made by the Borrower in good faith.

(b) The Borrower shall not, nor shall it permit any Restricted Subsidiary to make any voluntary prepayment in respect of principal outstanding of Restricted Debt, including any sinking fund or similar deposit, on account of the voluntary prepayment, repurchase, purchase, redemption, retirement, acquisition, cancellation or termination of any Restricted Debt, in each case, more than one year prior to the scheduled maturity date thereof (collectively, "Restricted Debt Payments"), except:

(i) with respect to any purchase, defeasance, redemption, refinancing repurchase, repayment or other acquisition or retirement thereof made by exchange for, or out of the proceeds of, Indebtedness permitted by Section 6.01 that constitutes Restricted Debt;

(ii) as part of an applicable high yield discount obligation catch-up payment;

(iii) payments of regularly scheduled principal or regularly scheduled interest (including any penalty interest, if applicable) and payments of fees, expenses and indemnification obligations as and when due (other than payments that are prohibited by the subordination provisions thereof);

(iv) so long as no Event of Default exists, Restricted Debt Payments in an aggregate amount not to exceed (A) the greater of \$21,000,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, plus (B) at the election of the Borrower, the amount of Restricted Payments then permitted to be made by the Borrower in reliance on Section 6.04(a)(x) (it being understood that any amount utilized under this clause (B) to make a Restricted Debt Payment shall result in a reduction in the amount available under Section 6.04(a)(x));

(v) (A) Restricted Debt Payments in exchange for, or with proceeds of any issuance of, Capital Stock of any Parent Company or Qualified Capital Stock of the Borrower and/or any capital contribution in respect of Qualified Capital Stock of the Borrower in each case, that are Not Otherwise Applied, (B) Restricted Debt Payments as a result of the conversion of all or any portion of any Restricted Debt into Qualified Capital Stock of the Borrower or the Capital Stock of any Parent Company and (C) to the extent constituting a Restricted Debt Payment, payment-in-kind interest with respect to any Restricted Debt that is permitted under Section 6.01;

(vi) Restricted Debt Payments in an aggregate amount not to exceed (A) the portion, if any, of the Available Amount on such date that the Borrower elects to apply to this clause (vi)(A), and/or (B) the portion, if any, of the Available Excluded Contribution Amount on such date that the Borrower elects to apply to this clause (vi)(B);

(vii) so long as no Event of Default exists, Restricted Debt Payments in an unlimited amount; provided that after giving effect thereto the Total Rent Adjusted Net Leverage Ratio, calculated on a Pro Forma Basis, would not exceed 3.75:1.00 as of the last day of the most recently ended Test Period; and/or

(viii) mandatory prepayments of Restricted Debt (and related payments of interest) made with Declined Proceeds (it being understood that any Declined Proceeds applied to make Restricted Debt Payments in reliance on this Section 6.04(b)(viii), shall not increase the amount available under clause (a)(ix) of the definition of "Available Amount" to the extent so applied).

SECTION 5. Burdensome Agreements. Except as provided herein or in any other Loan Document, any document with respect to any Incremental Equivalent Debt and/or in any agreement with

respect to any refinancing, renewal or replacement of any such Indebtedness that is permitted by Section 6.01, the Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, enter into or cause to exist any agreement (any such agreement, a “Burdened Agreement”) restricting the ability of any Loan Party to create, permit or grant a Lien on any of its properties or assets to secure the Secured Obligations (after giving effect to the applicable anti-assignment provisions of the UCC and/or any other applicable Requirement of Law), except restrictions:

(a) set forth in any agreement governing (i) Indebtedness of a Restricted Subsidiary that is not a Loan Party permitted by Section 6.01, (ii) Indebtedness permitted by Section 6.01 that is secured by a Permitted Lien if the relevant restriction applies only to the Person obligated under such Indebtedness and its Restricted Subsidiaries or the assets intended to secure such Indebtedness and (iii) Indebtedness permitted pursuant to clauses (j), (m), (p) (as it relates to Indebtedness in respect of clauses (a), (m), (u), (w), (y), (z) and/or (jj) of Section 6.01), (u), (w), (y), (z), (ii) and/or (jj) of Section 6.01;

(b) arising under customary provisions restricting assignments, subletting or other transfers (including the granting of any Lien) contained in leases, subleases, licenses, sublicenses, joint venture agreements and other agreements entered into in the ordinary course of business;

(c) that are or were created by virtue of any Lien granted upon, transfer of, agreement to transfer or grant of, any option or right with respect to any assets or Capital Stock not otherwise prohibited under this Agreement;

(d) that are assumed in connection with any acquisition of property or the Capital Stock of any Person, so long as the relevant encumbrance or restriction relates solely to the Person and its subsidiaries (including the Capital Stock of the relevant Person or Persons) and/or property so acquired and was not created in connection with or in anticipation of such acquisition;

(e) set forth in any agreement for any Disposition of any Restricted Subsidiary (or all or substantially all of the assets thereof) that restricts the payment of dividends or other distributions or the making of cash loans or advances by such Restricted Subsidiary pending such Disposition;

(f) set forth in provisions in agreements or instruments which prohibit the payment of dividends or the making of other distributions with respect to any class of Capital Stock of a Person other than on a pro rata basis;

(g) imposed by customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements and other similar agreements;

(h) on Cash, other deposits or net worth or similar restrictions imposed by any Person under any contract entered into in the ordinary course of business or for whose benefit such Cash, other deposits or net worth or similar restrictions exist;

(i) set forth in documents which exist on the Closing Date;

(j) arising pursuant to an agreement or instrument relating to any Indebtedness permitted to be incurred after the Closing Date if the relevant restrictions, taken as a whole, are not materially less favorable to the Lenders than the restrictions contained in this Agreement, taken as a whole (as determined in good faith by the Borrower);

(k) arising under or as a result of applicable Requirements of Law or the terms of any license, authorization, concession or permit;

(l) arising in any Hedge Agreement and/or any agreement or arrangement relating to any Banking Services and/or any other obligation of the type permitted under Section 6.01(f);

(m) relating to any asset (or all of the assets) of and/or the Capital Stock of the Borrower and/or any Restricted Subsidiary which is imposed pursuant to an agreement entered into in connection with

any Disposition of such asset (or assets) and/or all or a portion of the Capital Stock of the relevant Person that is permitted or not restricted by this Agreement or that would result in the occurrence of the Termination Date;

(n) set forth in any agreement relating to any Permitted Lien that limits the right of the Borrower and/or any Restricted Subsidiary to Dispose of or encumber the assets subject thereto;

(o) customary subordination and/or subrogation provisions set forth in guaranty or similar documentation (not relating to Indebtedness for borrowed money) that is entered into in the ordinary course of business;

(p) any restriction created in connection with any factoring program implemented in the ordinary course of business, so long as in the case of any prohibition on Liens, the relevant restriction relates solely to assets subject to such factoring program and the Capital Stock of any Person participating in such factoring program; and/or

(q) imposed by any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of any contract, instrument or obligation referred to in clauses (a) through (p) above; provided that no such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith judgment of the Borrower, more restrictive with respect to such restrictions, taken as a whole, than those in existence prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

SECTION 6. Investments. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, make or own any Investment in any other Person except:

(a) Cash or Investments that were Cash Equivalents at the time made;

(b) (i) Investments existing on the Closing Date in the Borrower or in any subsidiary, (ii) Investments made after the Closing Date among the Borrower and/or one or more Restricted Subsidiaries; provided that the aggregate outstanding amount of Investments by any Loan Party in any Restricted Subsidiary that is not a Loan Party in reliance on this Section 6.06(b)(ii) shall not exceed the greater of \$15,000,000 and 25% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, (iii) any Investment made after the Closing Date among the Borrower and/or one or more Restricted Subsidiaries in connection with cash management and (iv) Investments in any Restricted Subsidiary in the form of any contribution or Disposition of the Capital Stock of any Person that is not a Loan Party; provided that, in the case of this clause (iv), (x) there is a bona fide business purpose for such contribution or Disposition or (y) such contribution or Disposition is not consummated solely for the purpose of obtaining a release of the Collateral in respect of the Capital Stock in such Person, in the case of the foregoing clauses (x) and (y), as determined in good faith by the Borrower;

(c) Investments (i) constituting deposits, prepayments, trade credits and/or credits to suppliers, (ii) made in connection with obtaining, maintaining or renewing client and customer contracts or (iii) made in distributors, suppliers, licensors and licensees, in each case, in the ordinary course of business or, in the case of clause (iii), to the extent necessary to maintain the ordinary course of supplies to the Borrower or any Restricted Subsidiary;

(d) (i) Investments in joint ventures in an aggregate outstanding amount not to exceed the greater of \$21,000,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period and (ii) so long as no Event of Default under Section 7.01(a), (f) or (g) exists, Investments in Unrestricted Subsidiaries in an aggregate outstanding amount not to exceed the greater of \$21,000,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(e) (i) Permitted Acquisitions and (ii) any Investment in any Restricted Subsidiary that is not a Loan Party in an amount required to permit such Restricted Subsidiary to directly, or indirectly through one or more other Restricted Subsidiaries, consummate a Permitted Acquisition, which amount is applied,

by such Restricted Subsidiary, directly or indirectly, through one or more other Restricted Subsidiaries to consummate such Permitted Acquisition;

(f) (i) Investments existing on, or contractually committed to or contemplated as of, the Closing Date; provided that, to the extent the outstanding amount (or contractually committed or contemplated amount) of any such Investment on the Closing Date exceeds \$5,000,000, such Investment is described on Schedule 6.06 and (ii) any modification, replacement, renewal or extension of any Investment described in clause (i) above so long as no such modification, renewal or extension increases the amount of such Investment except by the terms thereof or as otherwise permitted by this Section 6.06;

(g) Investments received in lieu of Cash in connection with any Disposition permitted by Section 6.07 or any other disposition of assets not constituting a Disposition;

(h) loans or advances to present or former employees, directors, members of management, officers, managers or consultants or independent contractors (or their respective Immediate Family Members) of any Parent Company, the Borrower, its subsidiaries and/or any joint venture to the extent permitted by Requirements of Law, in connection with such Person's purchase of Capital Stock of any Parent Company or the Borrower, either (i) in an aggregate principal amount not to exceed \$2,000,000 at any one time outstanding or (ii) so long as the proceeds of such loan or advance are substantially contemporaneously contributed (or deemed to have been contributed) to the Borrower for the purchase of such Capital Stock;

(i) Investments 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;

(j) Investments consisting of (or resulting from) Indebtedness permitted under Section 6.01 (other than Indebtedness permitted under Sections 6.01(b) and (h)), Permitted Liens, Restricted Payments permitted under Section 6.04 (other than Section 6.04(a)(ix)), Restricted Debt Payments permitted by Section 6.04 and mergers, consolidations, amalgamations, liquidations, windings up, dissolutions or Dispositions permitted by Section 6.07 (other than Section 6.07(a) (if made in reliance on subclause (ii)(B) of the proviso thereto), Section 6.07(c)(ii) (if made in reliance on clause (B) therein) and Section 6.07(g));

(k) Investments (i) in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers and/or (ii) in the ordinary course of business and/or consistent with industry practice consisting of loans or advances made to distributors;

(l) Investments (including debt obligations and Capital Stock) received (i) in connection with the bankruptcy or reorganization of any Person, (ii) in settlement of delinquent obligations of, or other disputes with, customers, suppliers and other account debtors arising in the ordinary course of business, (iii) upon foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment and/or (iv) as a result of the settlement, compromise, resolution of litigation, arbitration or other disputes;

(m) loans and advances of payroll payments or other compensation (including deferred compensation) to present or former employees, directors, members of management, officers, managers or consultants of any Parent Company (to the extent such payments or other compensation relate to services provided to such Parent Company (but excluding, for the avoidance of doubt, the portion of any such amount, if any, attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrower and/or its subsidiaries)), the Borrower and/or any subsidiary in the ordinary course of business;

(n) Investments to the extent that payment therefor is made with Capital Stock of any Parent Company or Qualified Capital Stock of the Borrower or any Restricted Subsidiary that are Not Otherwise Applied, in each case, to the extent not resulting in a Change of Control; provided that in connection with any such Investment, any payment (or portion thereof) not made with Capital Stock of any Parent Company or Qualified Capital Stock of the Borrower or any Restricted Subsidiary must otherwise be permitted under this Section 6.06;

(o) (i) Investments of any Restricted Subsidiary acquired after the Closing Date, or of any Person acquired by, or merged into or consolidated or amalgamated with, the Borrower or any Restricted Subsidiary after the Closing Date, in each case as part of an Investment otherwise permitted by this Section 6.06 to the extent that such acquired Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of the relevant acquisition, merger, amalgamation or consolidation and (ii) any modification, replacement, renewal or extension of any Investment permitted under clause (i) of this Section 6.06(o) so long as no such modification, replacement, renewal or extension thereof increases the original amount of such Investment, except as otherwise permitted by this Section 6.06;

(p) Investments made in connection with the Transactions;

(q) Investments made after the Closing Date by the Borrower and/or any of its Restricted Subsidiaries in an aggregate amount at any time outstanding not to exceed:

(i) so long as no Event of Default under Section 7.01(a), (f) or (g) exists, (A) the greater of \$21,000,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, plus (B) at the election of the Borrower, the amount of Restricted Payments then permitted to be made by the Borrower in reliance on Section 6.04(a)(x) (it being understood that any amount utilized under this clause (B) to make an Investment shall result in a reduction in the amount available under Section 6.04(a)(x)), plus (C) at the election of the Borrower, the amount of Restricted Debt Payments then permitted to be made by the Borrower or any Restricted Subsidiary in reliance on Section 6.04(b)(iv)(A) (it being understood that any amount utilized under this clause (C) to make an Investment shall result in a reduction in the amount available under Section 6.04(b)(iv)(A)), plus

(ii) in the event that (A) the Borrower or any of its Restricted Subsidiaries makes any Investment after the Closing Date in any Person that is not a Restricted Subsidiary and (B) such Person subsequently becomes a Restricted Subsidiary, an amount equal to 100% of the fair market value of such Investment as of the date on which such Person becomes a Restricted Subsidiary;

(r) Investments made after the Closing Date by the Borrower and/or any of its Restricted Subsidiaries in an aggregate outstanding amount not to exceed (i) the portion, if any, of the Available Amount on such date that the Borrower elects to apply to this clause (r)(i) and/or (ii) the portion, if any, of the Available Excluded Contribution Amount on such date that the Borrower elects to apply to this clause (r)(ii);

(s) (i) Guarantees of leases (other than Capital Leases) or of other obligations of the Borrower and/or any Restricted Subsidiary not constituting Indebtedness and (ii) Guarantees of the lease obligations of suppliers, customers, franchisees and licensees of the Borrower and/or its Restricted Subsidiaries, in each case, in the ordinary course of business in an aggregate outstanding principal amount not to exceed the greater of \$2,500,000 and 5% of Consolidated Adjusted EBITDA;

(t) Investments in any Parent Company in amounts and for purposes for which Restricted Payments to such Parent Company are permitted under Section 6.04(a) (other than Section 6.04(a)(i)(E)); provided that any Investment made as provided above in lieu of any such Restricted Payment shall reduce availability under the applicable Restricted Payment basket under Section 6.04(a);

(u) Investments in Similar Businesses in an aggregate outstanding amount not to exceed the greater of \$21,000,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(v) Investments in the Borrower and/or any Restricted Subsidiary in connection with internal reorganizations and/or restructurings and/or activities related to tax planning; provided that, after giving effect to any such reorganization, restructuring or activity, in the good faith determination of the Borrower, neither the Loan Guaranty, taken as a whole, nor the security interest of the Administrative Agent in the Collateral, taken as a whole, is materially impaired;

- (w) Investments under Derivative Transactions of the type permitted under Section 6.01(s);
- (x) [reserved];
- (y) Investments made in joint ventures as required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture agreements and similar binding arrangements entered into in the ordinary course of business;
- (z) Investments made in connection with any nonqualified deferred compensation plan or arrangement for any present or former employee, director, member of management, officer, manager or consultant or independent contractor (or any Immediate Family Member thereof) of any Parent Company, the Borrower, its subsidiaries and/or any joint venture;
- (aa) Investments in the Borrower, any Restricted Subsidiary and/or joint venture in connection with intercompany cash management arrangements and related activities in the ordinary course of business;
- (ab) so long as no Event of Default under Section 7.01(a), (f) or (g) exists, any Investment so long as, after giving effect thereto on a Pro Forma Basis, the Total Rent Adjusted Net Leverage Ratio does not exceed 4.00:1.00 as of the last day of the most recently ended Test Period;
- (ac) any Investment made or committed to be made by any Unrestricted Subsidiary prior to the date on which such Unrestricted Subsidiary is designated as a Restricted Subsidiary so long as the relevant Investment was not made or committed to be made in contemplation of the designation of such Unrestricted Subsidiary as a Restricted Subsidiary;
- (ad) Investments consisting of the licensing, sublicensing or contribution of IP Rights, including pursuant to joint marketing, collaboration or joint development arrangements with other Persons in the ordinary course of business;
- (ae) any loan and/or advance to any Parent Company not in excess of the amount (after giving effect to any other loan, advance or Restricted Payment in respect thereof) of Restricted Payments that are permitted to be made to such Parent Company in accordance with Section 6.04(a)(i), such Investment being treated for purposes of the applicable provision of Section 6.04(a), including any limitation, as a Restricted Payment made pursuant to such clause;
- (af) Investments in franchisees in an aggregate outstanding amount not to exceed the greater of \$5,000,000 and 9% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, in which, if not used in such Fiscal Year, shall be carried forward to the next Fiscal Year (but not to any succeeding Fiscal Years to the extent not fully utilized in the immediately succeeding Fiscal Year; it being understood and agreed that such carried forward amounts shall be deemed utilized first in any Fiscal Year prior to utilization of the indicative amount for such Fiscal Year);
- (ag) [reserved];
- (ah) Investments made by any Restricted Subsidiary that is not a Loan Party with the proceeds received by such Restricted Subsidiary from an Investment permitted to be made by any Loan Party in such Restricted Subsidiary pursuant to this Section 6.06 (other than any Investment made pursuant to (x) Section 6.06(b)(ii), solely to the extent the proceeds thereof are to be used to make an Investment in any Unrestricted Subsidiary and/or (y) Section 6.06(e)(ii));
- (ai) Investments in the ordinary course of business to secure performance of operating leases and other contractual obligations that do not constitute Indebtedness;
- (aj) any Permitted Bond Hedge Transaction;

(ak) Investments consisting of prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits;

(al) Investments in receivables owing to the Borrower and/or any Restricted Subsidiary in the ordinary course of business on customary trade terms, including such concessionary trade terms as the Borrower or the relevant Restricted Subsidiary may deem reasonable under the applicable circumstances;

(am) any contribution to a "rabbi" trust for the benefit of any employee, director, consultant, independent contractor or other service provider or any other grantor trust; and/or

(an) Investments to acquire and hold accounts receivable and/or notes receivable from franchisees in the ordinary course of business to prevent or limit loss.

Notwithstanding the foregoing, it is understood and agreed that this Section 6.06 shall not permit (x) an IP Separation Transaction or (y) an Investment by the Borrower or any Restricted Subsidiary in the form of a contribution of the "First Watch" brand name to any Unrestricted Subsidiary.

SECTION 7. Fundamental Changes; Disposition of Assets. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, merge, consolidate, amalgamate, or liquidate, wind up or dissolve themselves (or suffer any liquidation or dissolution), or make any voluntary Disposition of assets outside the ordinary course of business having a fair market value in excess of the greater of \$6,000,000 and 10% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period in any single transaction or series of related transactions (including, in each case, pursuant to a Delaware LLC Division), except:

(a) the Borrower or any Subsidiary Guarantor may be merged, consolidated or amalgamated with another Person or, if applicable, effect a Delaware LLC Division, or any Restricted Subsidiary may be merged, consolidated or amalgamated with or into the Borrower or any Restricted Subsidiary or, if applicable, effect a Delaware LLC Division; provided that:

(i) in the case of any such merger, consolidation or amalgamation with or into the Borrower or any Delaware LLC Division relating to the Borrower, (A) the Borrower shall be the continuing or surviving Person or (B) if the Person formed by or surviving any such merger, consolidation, amalgamation or Delaware LLC Division is not the Borrower (any such Person, the "Successor Borrower"), (1) the Successor Borrower shall be an entity organized or existing under the law of the US, any state thereof or the District of Columbia, (2) the Successor Borrower shall expressly assume the Obligations of the Borrower in a manner reasonably satisfactory to the Administrative Agent and (3) except as the Administrative Agent may otherwise agree, each Guarantor, unless it is the other party to such merger, consolidation or amalgamation, shall have executed and delivered a reaffirmation agreement with respect to its obligations under the Loan Guaranty and the other Loan Documents; it being understood and agreed that if the foregoing conditions under clauses (1) through (3) are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement and the other Loan Documents, and

(ii) in the case of any such merger, consolidation or amalgamation with or into any Subsidiary Guarantor or any Delaware LLC Division relating to any Subsidiary Guarantor, either (A) the Borrower or a Subsidiary Guarantor shall be the continuing or surviving Person or the continuing or surviving Person (or, in the case of an amalgamation, the Person formed as a result thereof) shall expressly assume the obligations of such Subsidiary Guarantor in a manner reasonably satisfactory to the Administrative Agent or (B) the relevant transaction shall be treated as an Investment and shall comply with Section 6.06;

(b) Dispositions (including of Capital Stock) among the Borrower and/or any Restricted Subsidiary (upon voluntary liquidation or otherwise); provided that if the relevant Disposition is to a Restricted Subsidiary that is not a Loan Party, the relevant transaction shall be treated as an Investment and shall comply with Section 6.06;

(c) (i) the liquidation, dissolution or Delaware LLC Division of any Restricted Subsidiary if the Borrower determines in good faith that (A) such liquidation, dissolution or Delaware LLC Division is in the best interests of the Borrower and (B) is not materially disadvantageous to the Lenders (taken as a whole) and (ii) the Borrower or any Restricted Subsidiary receives the assets (if any) of the relevant liquidated, dissolved or divided Restricted Subsidiary; provided that in the case of any liquidation, dissolution or Delaware LLC Division of any Loan Party that results in a distribution of assets to any Restricted Subsidiary that is not a Loan Party, such distribution shall be treated as an Investment and shall comply with Section 6.06 (other than in reliance on clause (j) thereof); (ii) any merger, amalgamation, dissolution, liquidation, consolidation or Delaware LLC Division, the purpose of which is to effect (A) any Disposition otherwise permitted under this Section 6.07 (other than clause (a), clause (b) or this clause (c)) or (B) any Investment permitted under Section 6.06 (other than Section 6.06(j)); and (iii) the conversion of the Borrower or any Restricted Subsidiary into another form of entity, so long as such conversion does not, in the good faith determination of the Borrower, adversely affect the value of the Loan Guaranty or Collateral, if any;

(d) (i) Dispositions of inventory or equipment or immaterial assets in the ordinary course of business (including on an intercompany basis) and (ii) the leasing or subleasing of real property in the ordinary course of business;

(e) Dispositions of surplus, obsolete, used or worn out property or other property that, in the good faith judgment of the Borrower, is (i) no longer useful in its business (or in the business of any Restricted Subsidiary of the Borrower) or (ii) otherwise economically impracticable to maintain, including any property abandoned in connection with the termination of any lease;

(f) Dispositions of Cash and/or Cash Equivalents and/or other assets that were Cash Equivalents when the relevant original Investment was made;

(g) Dispositions, mergers, amalgamations, consolidations or conveyances that constitute (or would result in) (i) Investments permitted pursuant to Section 6.06 (other than Section 6.06(j)), (ii) Permitted Liens and (iii) Restricted Payments permitted by Section 6.04(a) (other than Section 6.04(a)(ix));

(h) Dispositions for fair market value; provided that:

(i) with respect to any such Disposition (other than any Permitted Asset Swap) with a purchase price in excess of the greater of \$6,000,000 and 10% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, at least 75% of the consideration for such Disposition (other than the portion of any such Disposition consisting of a Permitted Asset Swap) shall consist of Cash or Cash Equivalents;

(ii) for purposes of the 75% Cash consideration requirement described immediately above:

(A) the amount of any Indebtedness or other liabilities (other than Indebtedness or other liabilities that are subordinated to the Obligations or that are owed to the Borrower or any Restricted Subsidiary) of the Borrower or any Restricted Subsidiary (as shown on such Person's most recent balance sheet or statement of financial position (or in the notes thereto)) that are assumed by the transferee of any such assets (or that are otherwise terminated or cancelled in connection with the transaction with such transferee) and for which the Borrower and/or its applicable Restricted Subsidiary have been validly released by all relevant creditors in writing,

(B) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection with such Disposition,

(C) any Security received by the Borrower or any Restricted Subsidiary from such transferee that will be converted by such Person into Cash or Cash Equivalents (to

the extent of the Cash or Cash Equivalents received) within 180 days following the closing of the applicable Disposition, and

(D) any Designated Non-Cash Consideration received in respect of such Disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (D), that is at that time outstanding, not in excess of the greater of \$12,000,000 and 20% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period,

in each case, shall be deemed to be Cash; and

(iii) the amount of Dispositions made pursuant to this clause (h), together with the amount of Dispositions made pursuant to Section 6.07(aa) below, does not exceed the greater of \$21,000,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period in any Fiscal Year, which, if not used in such Fiscal Year, shall be carried forward to the next Fiscal Year (but not to any succeeding Fiscal Years to the extent not fully utilized in the immediately succeeding Fiscal Year; it being understood and agreed that such carried forward amounts shall be deemed utilized first in any Fiscal Year prior to utilization of the indicative amount for such Fiscal Year);

(i) Dispositions to the extent that (i) the relevant property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of the relevant Disposition are promptly applied to the purchase price of such replacement property;

(j) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to, buy/sell arrangements between joint venture or similar parties set forth in the relevant joint venture arrangements and/or similar binding arrangements;

(k) Dispositions, discounting or forgiveness of notes receivable or accounts receivable in the ordinary course of business (including to insurers which have provided insurance as to the collection thereof) or in connection with the collection or compromise thereof (including sales to factors);

(l) Dispositions and/or terminations of leases, subleases, licenses or sublicenses (including the provision of software under any open source license), (i) the Disposition or termination of which will not materially interfere with the business of the Borrower and its Restricted Subsidiaries (taken as a whole) or (ii) which relate to closed facilities or the discontinuation of any product line;

(m) (i) any termination of any lease in the ordinary course of business, (ii) any expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or litigation claims (including in tort) in the ordinary course of business;

(n) Dispositions of property subject to foreclosure, casualty, eminent domain or condemnation proceedings (including in lieu thereof or any similar proceeding);

(o) Dispositions or consignments of equipment, inventory or other assets (including leasehold interests in real property) with respect to facilities that are temporarily not in use, held for sale or closed;

(p) [reserved];

(q) Dispositions of non-core (as determined by the Borrower in good faith) assets acquired in connection with any acquisition or other Investment permitted hereunder and sales of Real Estate Assets acquired in any acquisition or other Investment permitted hereunder; provided that no Event of Default under Section 7.01(a), (f) or (g) exists on the date on which the definitive agreement governing the relevant Disposition is executed;

(r) exchanges or swaps, including transactions covered by Section 1031 of the Code (or any comparable provision of any foreign jurisdiction), of assets so long as any such exchange or swap is made for fair value (as determined by the Borrower in good faith) for like assets (including Related Business Assets);

(s) Dispositions of assets that do not constitute Collateral for fair market value;

(t) (i) any Disposition, licensing, sublicensing and/or cross-licensing arrangement involving any technology or IP Right of the Borrower or any Restricted Subsidiary in the ordinary course of business, and (ii) any Disposition, abandonment, cancellation or lapse of any IP Right, or any issuance or registration, or application for issuance or registration, of any IP Right, which, in the good faith determination of the Borrower is not material to the conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole, or is no longer economical to maintain in light of its use;

(u) any termination or unwind of Derivative Transactions or Banking Services Obligations;

(v) Dispositions of Capital Stock of, or sales of Indebtedness or other Securities of, Unrestricted Subsidiaries;

(w) Dispositions of Real Estate Assets and related assets in the ordinary course of business in connection with relocation activities for directors, officers, employees, members of management, managers or consultants of any Parent Company, the Borrower and/or any Restricted Subsidiary;

(x) Dispositions made to comply with any order of any Governmental Authority or any applicable Requirement of Law (including as a condition to, or in connection with, the consummation of the Transactions);

(y) any merger, consolidation, Disposition or conveyance the purpose of which is to reincorporate or reorganize (i) any Restricted Subsidiary in another jurisdiction in the US and/or (ii) any Foreign Subsidiary in the US or any other jurisdiction;

(z) any sale of motor vehicles and information technology equipment purchased at the end of an operating lease and resold thereafter;

(aa) Dispositions involving assets having a fair market value in the aggregate, together with the amount of Dispositions made pursuant to clause (h) above, of not more than the greater of \$21,000,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period in any Fiscal Year, which, if not used in such Fiscal Year, shall be carried forward to the next Fiscal Year (but not to any succeeding Fiscal Years to the extent not fully utilized in the immediately succeeding Fiscal Year; it being understood and agreed that such carried forward amounts shall be deemed utilized first in any Fiscal Year prior to utilization of the indicative amount for such Fiscal Year);

(ab) Dispositions in connection with reorganizations and/or restructurings and/or activities related to tax planning; provided that, after giving effect to any such reorganization, restructuring or activity, in the good faith determination of the Borrower, neither the Loan Guaranty, taken as a whole, nor the security interest of the Administrative Agent in the Collateral, taken as a whole, is materially impaired;

(ac) Dispositions of assets in connection with the closing or sale of an office in the ordinary course of business of the Borrower and the Restricted Subsidiaries, which consist of leasehold interests in the premises of such office, the equipment and fixtures located at such premises and the books and records relating exclusively and directly to the operations of such office; provided that any such sale shall be at a commercially reasonable price and on commercially reasonable terms in a bona fide arm's-length transaction;

(ad) [reserved];

(ae) Sale and Lease-Back Transactions; provided that (i) the fair market value of all property so Disposed of after the Closing Date shall not exceed the greater of \$21,000,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period and (ii) the Borrower shall be in compliance with Section 6.10(a) and Section 6.10(b), on a Pro Forma Basis;

(af) [reserved];

(ag) [reserved];

(ah) [reserved];

(ai) the settlement or early termination of any Permitted Bond Hedge Transaction and/or any related Permitted Warrant Transaction;

(aj) Dispositions of any asset acquired with the proceeds of an Available Excluded Contribution Amount; and

(ak) the granting of franchises with respect to restaurants (and Dispositions of property in connection therewith) made to franchisees meeting the Borrower's reasonable qualifications; provided that (A) such Dispositions are made for fair market value, (B) any such granting of a franchise with respect to a restaurant then owned by any Loan Party shall be subject to the absence of any Event of Default on the date on which such Disposition is consummated, (C) the Borrower is in compliance with Section 6.10(a) and Section 6.10(b), on a Pro Forma Basis, at the Borrower's election, either (1) at the time of the execution of the definitive agreement governing such Disposition or (2) on the date on which such Disposition is consummated and (D) the aggregate amount of Dispositions made pursuant to this clause (kk) does not exceed the greater of \$21,000,000 and 35% of Consolidated Adjusted EBITDA.

It is understood and agreed that (a) to the extent that any Collateral is Disposed of as permitted by this Section 6.07, such Collateral shall be Disposed of free and clear of the Liens created by the Loan Documents, which Liens shall be automatically released upon the consummation of such Disposition, and the Administrative Agent shall be authorized to take, and shall take, any action reasonably requested by the Borrower in order to effect the foregoing; provided that in the case of a Disposition made to any Loan Party, the relevant transferred assets shall become part of the Collateral of the transferee Loan Party (except to the extent such assets constitute Excluded Assets), (b) any determination of the fair market value of any asset other than Cash for purposes of this Section 6.07 shall be made by the Borrower in good faith at its election either (1) at the time of the execution of the definitive agreement governing such Disposition or (2) the date on which such Disposition is consummated and (c) notwithstanding the foregoing provisions of this Section 6.07, this Section 6.07 shall not permit (i) an IP Separation Transaction or (ii) a Disposition by the Borrower or any Restricted Subsidiary of the "First Watch" brand name to any Unrestricted Subsidiary.

SECTION 8. Amendments of or Waivers with Respect to Restricted Debt. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, amend or otherwise modify the subordination terms set forth in the documentation governing any Restricted Debt if the effect of such amendment or modification, together with all other amendments or modifications made, is, in the good faith determination of the Borrower, materially adverse to the interests of the Lenders (in their capacities as such); provided that, for purposes of clarity, it is understood and agreed that the foregoing limitation shall not otherwise prohibit any Refinancing Indebtedness or any other replacement, refinancing, amendment, supplement, modification, extension, renewal, restatement or refunding of any Restricted Debt, in each case, that is otherwise permitted to be incurred under this Agreement in respect thereof.

SECTION 9. Holdings. Holdings shall not:

(a) create or suffer to exist any Lien on any asset now owned or hereafter acquired by it other than (i) the Liens created under the Collateral Documents to which it is a party, (ii) any other Lien created in connection with the Transactions, (iii) Liens on the Collateral that are secured on a *pari passu* or junior basis with the Secured Obligations, so long as such Liens secure Guarantees of Indebtedness or other obligations of the Borrower and/or any Restricted Subsidiary that are otherwise permitted hereunder and

the underlying Indebtedness subject to such Guarantees is of the type permitted to be secured on the same basis pursuant to Section 6.02 and (iv) Liens of the type permitted under Section 6.02 (other than in respect of Indebtedness for borrowed money); or

(b) consolidate or amalgamate with, or merge with or into, or convey, sell or otherwise Dispose of all or substantially all of its assets to, any Person or dissolve or cancel its existence; provided that (A) Holdings may consolidate or amalgamate with, or merge with or into, any other Person so long as, to the extent after giving effect to such consolidation, amalgamation or merger (x) Holdings is the continuing or surviving Person or (y) if the Person formed by or surviving any such consolidation, amalgamation or merger is not Holdings and such Person is the direct Parent Company of the Borrower (any such surviving or successor Person, together with any Person referred to in clause (B) below and any immediate Parent Company of the Borrower referred to in clause (C) below, “Successor Holdings”), (i) Successor Holdings shall be an entity organized or existing under the law of the US, any state thereof or the District of Columbia and (ii) Successor Holdings shall expressly assume all Obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto and/or thereto in a form reasonably satisfactory to the Administrative Agent, (B) Holdings may otherwise convey, sell or otherwise transfer all or substantially all of its assets to any other Person (other than the Borrower and any of its Subsidiaries) so long as (x) no Change of Control results therefrom, (y) Successor Holdings shall be an entity organized or existing under the law of the US, any state thereof or the District of Columbia and (z) Successor Holdings shall expressly assume all of the Obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto and/or thereto in a form reasonably satisfactory to the Administrative Agent and (C) Holdings may dissolve or otherwise cancel its existence, so long as the immediate Parent Company of the Borrower (if any) after giving effect to such dissolution or cancellation, becomes Successor Holdings and complies with the requirements of the foregoing clause (A), applicable to Successor Holdings; provided, further, that (1) if the conditions set forth in the preceding proviso are satisfied, Successor Holdings will succeed to, and be substituted for, Holdings under this Agreement, (2) it is understood and agreed that Holdings may convert into another form of entity organized or existing under the law of the US, any state thereof or the District of Columbia so long as such conversion does not adversely affect the value of its Loan Guaranty or the Collateral.

SECTION 10. Financial Covenants.

(a) Total Rent Adjusted Net Leverage Ratio. On the last day of any Test Period (commencing with the Test Period ending March 27, 2022), the Borrower shall not permit the Total Rent Adjusted Net Leverage Ratio to be greater than (A) from the Test Period ending on March 27, 2022 to and including the Test Period ending on December 25, 2022, 5.50:1.00, (B) from the Test Period ending on March 26, 2023 to and including the Test Period ending on December 31, 2023, 5.25:1.00, and (C) from the Test Period ending on March 31, 2024 and each Test Period ending thereafter, 5.00:1.00; provided that, upon the consummation of a Material Acquisition, for the Fiscal Quarter in which such Material Acquisition is consummated and the three full Fiscal Quarters ending immediately thereafter (such period, the “Covenant Acquisition Increase Period”), the ratios set forth above applicable to each such Fiscal Quarter shall be increased by 0.50:1.00 (such increase, the “Covenant Acquisition Increase”); provided, further, that notwithstanding the foregoing, there shall be at least one Fiscal Quarter in which no Covenant Acquisition Increase is in effect between successive Covenant Acquisition Increase Periods (which, for the avoidance of doubt, may result in the delay of the commencement of a Covenant Acquisition Increase Period with respect to any Material Acquisition that occurs during another Covenant Acquisition Increase Period or such one Fiscal Quarter period).

(b) Fixed Charge Coverage Ratio. On the last day of any Test Period (commencing with the Test Period ending March 27, 2022), the Borrower shall not permit the Fixed Charge Coverage Ratio to be less than 1.25:1.00.

(c) Notwithstanding anything to the contrary in this Agreement (including Article 7), upon any failure by the Borrower to comply with Section 6.10(a) and/or Section 6.10(b) above for the Test Period ending on the last day of any Fiscal Quarter, the Borrower shall have the right (the “Cure Right”) at any time during such Fiscal Quarter or thereafter until the date that is 15 Business Days after the date on which financial statements for such Fiscal Quarter are required to be delivered pursuant to

Section 5.01(a) or (b), as applicable, to issue Qualified Capital Stock or other equity (such other equity to be on terms reasonably acceptable to the Administrative Agent) for Cash or otherwise receive Cash contributions in respect of its Qualified Capital Stock or other equity (such other equity to be on terms reasonably acceptable to the Administrative Agent) (the “Cure Amount”), and thereupon the Borrower’s compliance with Section 6.10(a) and/or Section 6.10(b) shall be recalculated giving effect to a pro forma increase in the amount of Consolidated Adjusted EBITDA in an amount equal to the Cure Amount (notwithstanding the absence of a related addback in the definition of “Consolidated Adjusted EBITDA”) solely for the purpose of determining compliance with Section 6.10(a) and/or Section 6.10(b), as applicable, as of the end of such Fiscal Quarter and for applicable subsequent periods that include such Fiscal Quarter. If, after giving effect to the foregoing recalculation (but not, for the avoidance of doubt, taking into account any immediate repayment of Indebtedness in connection therewith), the requirements of Section 6.10(a) and/or Section 6.10(b), as applicable, would be satisfied, then the requirements of Section 6.10(a) or Section 6.10(b), as applicable, shall be deemed to have been satisfied as of the end of the relevant Fiscal Quarter (and Test Period) with the same effect as though there had been no failure to comply therewith at such date. Notwithstanding anything herein to the contrary:

(i) in each four consecutive Fiscal Quarter period there shall be at least two Fiscal Quarters in which the Cure Right is not exercised (it being understood that, subject to clause (ii), the Cure Right may be exercised in consecutive Fiscal Quarters),

(ii) during the term of this Agreement, the Cure Right shall not be exercised more than five times (it being understood and agreed that the exercise of a Cure Right in any Fiscal Quarter with respect to any failure to comply with Section 6.10(a) and Section 6.10(b) shall constitute a single exercise of the Cure Right),

(iii) the Cure Amount shall be no greater than the amount required for the purpose of complying with Section 6.10(a) and/or Section 6.10(b), as applicable,

(iv) there shall be no pro forma or other reduction of the amount of Indebtedness by the amount of any Cure Amount for purposes of determining compliance with Section 6.10(a) or Section 6.10(b) for the Fiscal Quarter in respect of which the Cure Right was exercised (other than, with respect to any future period, to the extent of any portion of such Cure Amount that is actually applied to prepay Indebtedness (including by way of buyback or repurchase)),

(v) any pro forma adjustment to Consolidated Adjusted EBITDA resulting from any Cure Amount shall be disregarded for purposes of determining (A) whether any financial ratio-based condition to the availability of any carve-out set forth in Article 6 of this Agreement has been satisfied or (B) the Applicable Rate or the Commitment Fee Rate, in each case during each Fiscal Quarter in which the pro forma adjustment applies, and

(vi) no Revolving Lender or Issuing Bank shall be required to make any Revolving Loan or issue, amend or increase the face amount of any Letter of Credit from and after the date on which a Compliance Certificate demonstrating a failure to comply with Section 6.10(a) or Section 6.10(b) for the Test Period ending on the last day of any Fiscal Quarter is (or would be required to be) delivered pursuant to Section 5.01(c), until the date on which the Borrower receives the relevant Cure Amount.

ARTICLE 7

EVENTS OF DEFAULT

SECTION 1. Events of Default. If any of the following events (each, an “Event of Default”) shall occur:

(a) Failure To Make Payments When Due. Failure by the Borrower to pay (i) any installment of principal of any Loan when due, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or (ii) any interest on any Loan or any fee or any other amount due hereunder within five Business Days after the date due; or

(b) Default in Other Agreements. (i) Failure by the Borrower or any Restricted Subsidiary to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness for borrowed money of the Borrower or such Restricted Subsidiary (other than (x) Indebtedness referred to in clause (a) above and (y) intercompany Indebtedness) with an individual outstanding principal amount exceeding the Threshold Amount, in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by the Borrower or any Restricted Subsidiary with respect to any other term of (A) one or more items of third-party Indebtedness for borrowed money of the Borrower or such Restricted Subsidiary (other than (x) Indebtedness referred to in clause (a) above and (y) intercompany Indebtedness) with an individual outstanding principal amount exceeding the Threshold Amount or (B) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness (other than, for the avoidance of doubt, with respect to Indebtedness consisting of Hedging Obligations, termination events or equivalent events pursuant to the terms of the relevant Hedge Agreement which are not the result of any default thereunder by the Borrower or any Restricted Subsidiary), in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default 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) to cause (with the giving of notice, if required) such Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; provided that (I) clause (ii) of this paragraph (b) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property securing such Indebtedness if such sale or transfer is permitted hereunder, (II) any failure described under clauses (i) or (ii) above 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 this Article 7, (III) [reserved] and (IV) it is understood and agreed that the occurrence of any event described in this clause (b) that would, prior to the expiration of any applicable grace period, permit the holder or holders of the relevant Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (with the giving of notice, if required) such Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be, will not result in a Default or Event of Default under this Agreement prior to the expiration of such grace period; or

(c) Breach of Certain Covenants. Failure of any Loan Party, as required by the relevant provision, to perform or comply with Section 5.01(e)(i) (provided that any Event of Default arising from a failure to perform or comply with Section 5.01(e)(i) shall automatically be deemed to have been cured (and no longer continuing) immediately upon the earlier to occur of (x) the delivery of notice of the relevant Default or Event of Default and (y) the cessation of the existence of the underlying Default or Event of Default), in either case unless a Responsible Officer of the Borrower had knowledge of the underlying Default or Event of Default, Section 5.02 (as it applies to the preservation of the existence of the Borrower), or Article 6; provided that,

(i) any breach of Section 6.10(a) and/or Section 6.10(b) is subject to cure as provided in Section 6.10(c); and

(ii) no Default or Event of Default may arise under Section 6.10(a) or Section 6.10(b) until the 15th Business Day after the date on which financial statements are required to be delivered for the relevant Fiscal Quarter under Sections 5.01(a) or (b), as applicable (unless the Cure Right has previously been exercised in excess of the aggregate cap on Cure Rights contemplated by Section 6.10(c) over the life of this Agreement and/or the Cure Right has previously been exercised twice in the applicable four consecutive Fiscal Quarter period), and then only to the extent the Cure Amount has not been received on or prior to such date; or

(d) Breach of Representations, Etc. Any representation, warranty or certification made or deemed made by any Loan Party in any Loan Document or in any certificate required to be delivered in connection herewith or therewith (including, for the avoidance of doubt, any Perfection Certificate) being untrue in any material respect as of the date made or deemed made; it being understood and agreed that (i) any breach of any representation, warranty or certification resulting from the failure of the Administrative Agent to file any Uniform Commercial Code financing statement, amendment and/or continuation statement or the failure of the Administrative Agent to maintain possession of any Collateral actually delivered to it shall not result in an Event of Default under this Section 7.01(d) or any other provision of any Loan Document and (ii) if the relevant representation and warranty is capable of being

cured (including by the delivery of a restated certification or calculation or restated financial statements), no Default or Event of Default may arise under this Section 7.01(d) with respect to such representation and warranty unless such representation and warranty remains incorrect in any material respect for a period of 30 days following the delivery of a written notice by the Administrative Agent of the relevant inaccuracy to the Borrower; or

(e) Other Defaults Under Loan Documents. Default by any Loan Party in the performance of or compliance with any term contained herein or any of the other Loan Documents, other than any such term referred to in any other Section of this Article 7, which default has not been remedied or waived within 30 days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) The entry by a court of competent jurisdiction of a decree or order for relief in respect of Holdings, the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) in an involuntary case under any Debtor Relief Law now or hereafter in effect, which decree or order is not stayed; or any other similar relief in respect of Holdings, the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) shall be granted under any applicable Requirements of Law, which relief is not stayed; or (ii) the commencement of an involuntary case against Holdings, the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) under any Debtor Relief Law; the entry by a court having jurisdiction in the premises of a decree or order for the appointment of a receiver, receiver and manager, (preliminary) insolvency receiver, liquidator, sequestrator, trustee, administrator, custodian or other officer having similar powers over Holdings, the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary), or over all or a material part of its property; or the involuntary appointment of an interim receiver, trustee or other custodian of Holdings, the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) for all or a material part of its property, which remains, in any case under this Section 7.01(f), undismissed, unvacated, unbounded or unstayed pending appeal for 60 consecutive days; provided that it is understood and agreed that the occurrence of any event described in this clause (f) will not result in a Default or Event of Default under this Agreement prior to the expiration of such 60 consecutive day period; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) The entry against Holdings, the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) of an order for relief in, or the commencement by Holdings, the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) of, a voluntary case under any Debtor Relief Law, or the consent by Holdings, the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case, under any Debtor Relief Law, or the consent by Holdings, the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) to the appointment of or taking possession by a receiver, receiver and manager, insolvency receiver, liquidator, sequestrator, trustee, administrator, custodian or other like official for or in respect of itself or for all or a material part of the property of Holdings, the Borrower and any Restricted Subsidiary (other than any Immaterial Subsidiary), taken as a whole or (ii) the making by Holdings, the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) of a general assignment for the benefit of creditors; or

(h) Judgments and Attachments. The entry or filing of one or more final money judgments, writs or warrants of attachment or similar process against the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) individually or any of its assets involving in the aggregate at any time an amount in excess of the Threshold Amount (in either case, to the extent not adequately covered by indemnity from a third party (including any escrow arrangement), by self-insurance (if applicable) or by insurance as to which, in the case of any such third party insurance, the relevant third party insurance company has been notified and not denied coverage), which judgment, writ, warrant or similar process remains unpaid, undischarged, unvacated, unbounded or unstayed pending appeal for a period of 60 consecutive days; provided that it is understood and agreed that the occurrence of any event described in this clause (h) will not result in a Default or Event of Default under this Agreement prior to the expiration of such 60 consecutive day period; or

(i) Employee Benefit Plans. The occurrence of one or more ERISA Events with respect to the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary), which individually or

in the aggregate result in liability of any Loan Party in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect; or

(j) Change of Control. The occurrence of a Change of Control; or

(k) Guaranties, Collateral Documents and Other Loan Documents. At any time after the execution and delivery thereof, (i) any material Loan Guaranty for any reason, other than the occurrence of the Termination Date, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared, by a court of competent jurisdiction, to be null and void or any Loan Guarantor shall repudiate in writing its obligations thereunder (in each case, other than as a result of the discharge of such Loan Guarantor in accordance with the terms thereof and other than as a result of any act or omission by the Administrative Agent or any Lender), (ii) this Agreement or any material Collateral Document ceases to be in full force and effect or shall be declared, by a court of competent jurisdiction, to be null and void or any Lien on a material portion of the Collateral created under any Collateral Document ceases to be perfected with respect to a material portion of the Collateral (other than solely by reason of (1) such perfection not being required pursuant to the Collateral and Guarantee Requirement, the Collateral Documents, this Agreement or otherwise, (2) the failure of the Administrative Agent to maintain possession of any Collateral actually delivered to it or the failure of the Administrative Agent to file Uniform Commercial Code financing statements, amendments or continuation statements, (3) a release of Collateral in accordance with the terms hereof or thereof or (4) the occurrence of the Termination Date or any other termination of such Collateral Document in accordance with the terms thereof) or (iii) other than in any bona fide, good faith dispute as to the scope of Collateral or whether any Lien has been, or is required to be released, any Loan Party shall contest in writing, the validity or enforceability of any material provision of any Loan Document (or any Lien purported to be created by the Collateral Documents on any material portion of the Collateral or any Loan Guaranty) or deny in writing that it has any further liability (other than by reason of the occurrence of the Termination Date or any other termination of any other Loan Document in accordance with the terms thereof), including with respect to future advances by the Lenders, under any Loan Document to which it is a party; it being understood and agreed that the failure of the Administrative Agent to file any Uniform Commercial Code financing statement, amendment or continuation statement and/or maintain possession of any physical Collateral shall not result in an Event of Default under this Section 7.01(k) or any other provision of any Loan Document;

(l) Subordination. The Obligations ceasing or the assertion in writing by any Loan Party that the Obligations cease to constitute senior indebtedness under the subordination provisions of any document or instrument evidencing any Restricted Debt that is required to be subordinated pursuant to the terms of this Agreement or any such subordination provision being invalidated by a court of competent jurisdiction in a final non-appealable order, or otherwise ceasing, for any reason, to be valid, binding and enforceable obligations of the parties thereto;

then, and in every such event (other than an event described in Section 7.01(f) or Section 7.01(g)) at any time thereafter during the continuance of such event, the Administrative Agent may and at the request of the Required Lenders, shall by notice to the Borrower, take any of the following actions, at the same or different times: (i) terminate the Revolving Credit Commitments, and thereupon such Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and (iii) require that the Borrower deposit in the LC Collateral Account an additional amount in Cash as reasonably requested by the Issuing Banks (not to exceed 100% of the relevant face amount) of the then outstanding LC Exposure (minus the amount then on deposit in the LC Collateral Account); provided that upon the occurrence of an event described in Section 7.01(f) or Section 7.01(g), any such Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, and the obligation of the Borrower to Cash collateralize the outstanding Letters of Credit as aforesaid shall

automatically become effective, in each case, without further action of the Administrative Agent or any Lender. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders, shall exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

ARTICLE 8

THE ADMINISTRATIVE AGENT

SECTION 1. Appointment and Authorization of Administrative Agent. Each of the Lenders and the Issuing Banks, on behalf of itself and its applicable Affiliates in their respective capacities as such and as counterparties under Hedge Agreements and/or providers of Banking Services, as applicable, hereby irrevocably appoint Bank of America (or any successor appointed pursuant hereto) as Administrative Agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto.

SECTION 2. Rights as a Lender. Any Person serving as 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, unless the context otherwise requires or unless such Person is in fact not a Lender, include each Person serving as Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or any subsidiary of any Loan Party or other Affiliate thereof as if it were not the Administrative Agent hereunder. The Lenders acknowledge that, pursuant to such activities, the Administrative Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that the Administrative Agent shall not be under any obligation to provide such information to them.

SECTION 3. Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing:

(a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default exists, and the use of the term “agent” herein and in the other Loan Documents 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 Requirements of Law; it being understood that such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary power, except discretionary rights and powers that are expressly contemplated by the Loan Documents and which the Administrative Agent is required to exercise in writing as directed by the Required Lenders or Required Revolving Lenders (or such other number or percentage of the Lenders as shall be necessary under the relevant circumstances as provided in Section 9.02); provided that the Administrative Agent shall not be required to take any such 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 Requirements of Law;

(c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose to any Lender or Issuing Bank, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates or

relating to Holdings, the Borrower or any of its Restricted Subsidiaries that is communicated to or obtained by or in the possession of any Person serving as Administrative Agent, an Arranger or any of their respective Affiliates and Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein; it being understood that the Administrative Agent shall not be liable to the Lenders or any other Secured Party for any action taken or not taken by it with the consent or at the request of the Required Lenders or Required Revolving Lenders (or such other number or percentage of the Lenders as is necessary, or as the Administrative Agent believes in good faith shall be necessary, under the relevant circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct, as determined by the final judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein; and

(d) the Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or any Lender and such written notice is clearly identified as a “notice of default”, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any covenant, agreement or other term or condition set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the creation, perfection or priority of any Lien on the Collateral or the existence, value or sufficiency of the Collateral or to assure that the Liens granted to the Administrative Agent pursuant to any Loan Document have been or will continue to be properly or sufficiently or lawfully created, perfected or enforced or are entitled to any particular priority, (vi) the satisfaction of any condition set forth in Article 4 or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or (vii) any property, book or record of any Loan Party or any Affiliate thereof.

SECTION 4. Exclusive Right to Enforce Rights and Remedies. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, the Borrower, the Administrative Agent and each Secured Party agree that:

(a) (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the provisions of any Loan Document, including this Agreement, the Security Agreement and/or the Loan Guaranty; it being understood that any right to enforce any such provision (including to realize upon the Collateral or enforce any Loan Guaranty) against any Loan Party pursuant hereto or pursuant to any other Loan Document may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms hereof or thereof, (ii) each Lender, each Issuing Bank, the Swingline Lender and/or each counterparty to a Hedge Agreement and/or any agreement governing any Banking Services Obligation that is a Secured Party, in each case in their respective capacities as such, waives its right to commence any action, suit or litigation against any Loan Party in connection with the Loan Documents without the consent of the Required Lenders and (iii) in the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or in the event of any other Disposition (including pursuant to Section 363 of the Bankruptcy Code), (A) the Administrative Agent, as agent for and representative of the Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale, to use and apply all or any portion of the Obligations as a credit on account of the purchase price for any Collateral payable by the Administrative Agent at such sale or other Disposition and (B) the Administrative Agent or any Lender may be the purchaser or licensor of all or any portion of such Collateral at any such Disposition;

(b) no holder of any Secured Hedging Obligation or Banking Services Obligation in its respective capacity as such shall have any rights in connection with the management or release of any Collateral or of the obligations of any Loan Party under this Agreement; and

(c) each Secured Party agrees that the Administrative Agent may in its sole discretion, but is under no obligation to credit bid any part of the Secured Obligations or to purchase or retain or acquire any portion of the Collateral.

SECTION 5. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) that it believes to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the applicable Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent has received notice to the contrary from such Lender or Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 6. Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by it, or any of its Affiliates (in each case, other than any Disqualified Institution). The Administrative Agent and any such sub-agent or Affiliate may perform any and all of their respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent, Affiliate and to the Related Parties of the Administrative Agent and any such sub-agent or Affiliate and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent.

SECTION 7. Successor Administrative Agent.

(a) The Administrative Agent may resign at any time by giving 30 days' prior written notice to the Lenders, the Issuing Banks and the Borrower; provided that if no successor agent is appointed in accordance with the terms set forth below within such 30-day period, the Administrative Agent's resignation shall not be effective until the earlier to occur of (i) the date of the appointment of the successor agent (and acceptance thereof by such successor Administrative Agent) or (ii) the date that is specified in such notice (which shall be no earlier than 30 days after the date thereof) (or such later date as the resigning Administrative Agent may agree). The retiring Agent shall be automatically and unconditionally discharged from its duties and obligations hereunder and under the other Loan Documents (other than any duty or obligation under Section 9.13) in its capacity as Issuing Bank and Swingline Lender. If the Administrative Agent is a Defaulting Lender or an Affiliate of a Defaulting Lender, either the Required Lenders or the Borrower may, upon ten days' notice, remove the Administrative Agent; provided that if no successor agent is appointed in accordance with the terms set forth below within such 30-day period, the Administrative Agent's removal shall, at the option of the Borrower, not be effective until the earlier to occur of (A) the date of the appointment of the successor agent or (B) the last day of such 30-day period (or such later date as the Borrower may agree). Upon receipt of any such notice of resignation or delivery of any such notice of removal, the Required Lenders shall have the right, with the consent of the Borrower (not to be unreasonably withheld or delayed), to appoint a successor Administrative Agent which shall be a commercial bank, trust company or other Person acceptable to the Borrower, in each case, with offices in the US having combined capital and surplus in excess of \$1,000,000,000; provided that during the existence of an Event of Default under Section 7.01(a) or, with respect to the Borrower, Sections 7.01(f) or (g), no consent of the Borrower shall be required.

(b) If no successor has been appointed as provided above and accepted such appointment within 30 days after the resigning Administrative Agent gives notice of its resignation or the Administrative Agent receives notice of removal (or such later date as the resigning Administrative Agent may agree), then (i) in the case of a resignation, the resigning Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent

meeting the qualifications set forth above (including, for the avoidance of doubt, the consent of the Borrower) or (ii) in the case of a removal, the Borrower may, after consulting with the Required Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that (A) in the case of a resignation, if the Administrative Agent notifies the Borrower, the Lenders and the Issuing Banks that no qualifying Person has accepted such appointment or (B) in the case of a removal, the Borrower notifies the Required Lenders that no qualifying Person has accepted such appointment, then, in each case, such resignation or removal shall nonetheless become effective in accordance with the provisos to the first two sentences in Section 8.07(a), as applicable (unless the resigning Administrative Agent has agreed in its sole discretion to extend the effectiveness of its resignation) and (1) the resigning 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 in its capacity as collateral agent for the Secured Parties for purposes of maintaining the perfection of the Lien on the Collateral securing the Secured Obligations, the resigning Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations required to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each Issuing Bank directly (and each Lender and each Issuing Bank will cooperate with the Borrower to enable the Borrower to take such actions), until such time as the Required Lenders or the Borrower, as applicable, appoint a successor Administrative Agent, as provided above in this Article 8.

(c) Upon the acceptance of its appointment as Administrative Agent hereunder as a successor Administrative Agent, the successor Administrative Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the resigning or removed Administrative Agent (other than any rights to indemnity payments owed to the resigning Administrative Agent), and the resigning or removed Administrative Agent shall be discharged from its duties and obligations hereunder (if not already discharged therefrom as expressly provided above in this Section 8.07) (other than its obligations under Section 9.13 hereof).

(d) The fees payable by the Borrower to any successor Administrative Agent shall not be greater than those payable to its predecessor unless otherwise expressly agreed in writing between the Borrower and such successor Administrative Agent.

(e) After the Administrative Agent's resignation or removal hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such resigning or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any action taken or omitted to be taken by any of them (i) while the relevant Person was acting as Administrative Agent (including for this purpose holding any collateral security following the resignation or removal of the Administrative Agent) and (ii) after such resignation or removal, solely to the extent that such outgoing Administrative Agent (x) continues to act as collateral agent or otherwise holds any collateral security on behalf of the Lenders or (y) takes any actions in connection with transferring the agency to any successor Administrative Agent.

(f) Notwithstanding anything to the contrary herein, no Disqualified Institution (nor any Affiliate thereof) may be appointed as a successor Administrative Agent.

SECTION 8. Non-Reliance on Administrative Agent, the Arrangers or the Other Lenders. Each of each Lender and each Issuing Bank represents and warrants and acknowledges that it has, independently and without reliance upon the Administrative Agent, the Arrangers or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their 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 extend credit to the Borrower hereunder. Each of each Lender and each Issuing Bank expressly acknowledges that none of the Administrative Agent nor the Arrangers has made any representation or warranty to it, and that no act by the Administrative Agent or the Arrangers hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party of any Affiliate thereof, shall be deemed to constitute any representation or

warranty by the Administrative Agent or any Arranger to any Lender or each Issuing Bank as to any matter, including whether the Administrative Agent or the Arrangers have disclosed material information in their (or their Related Parties') possession. Each of each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Arrangers or any other Lender or any of their respective 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 related agreement or any document furnished hereunder or thereunder. Except for notices, reports and other documents expressly required to be furnished to the Lenders and the Issuing Banks by the Administrative Agent herein, the Administrative Agent shall not have any duty or responsibility to provide any Lender or any Issuing Bank with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of the Administrative Agent or any of its Related Parties.

Each Lender and each Issuing Bank represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is entering into this Agreement as a Lender or Issuing Bank 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 Issuing Bank, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing. Each Lender and each Issuing Bank 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 Issuing Bank, 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.

Notwithstanding anything to the contrary herein, the Arrangers shall not have any right, power, obligation, liability, responsibility or duty under this Agreement, except in their respective capacities as the Administrative Agent, an Issuing Bank or a Lender hereunder, as applicable.

SECTION 9. Collateral and Guaranty Matters. Each Lender and each other Secured Party irrevocably authorizes and instructs the Administrative Agent to, and the Administrative Agent shall:

(a) release (or evidence the release of) any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon the occurrence of the Termination Date, (ii) that is sold or otherwise Disposed of (or to be sold or otherwise Disposed of) as part of or in connection with any Disposition permitted under (or not restricted by) the Loan Documents (subject to the last paragraph of Section 6.07), (iii) that does not constitute (or ceases to constitute) Collateral (and/or otherwise becomes an Excluded Asset), (iv) if the property subject to such Lien is owned by a Subsidiary Guarantor, upon the release of such Subsidiary Guarantor from its Loan Guaranty otherwise in accordance with the Loan Documents, (v) as required under clause (d) below, (vi) pursuant to the provisions of any applicable Loan Document or (vii) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 9.02;

(b) subject to Section 9.22, release (or evidence the release of) any Subsidiary Guarantor from its obligations under the Loan Guaranty (i) if such Person ceases to be a Restricted Subsidiary (or is or becomes an Excluded Subsidiary as a result of a single transaction or series of related transactions not prohibited hereunder), (ii) on the Termination Date and/or (iii) in the case of any Discretionary Guarantor, at the election of the Borrower, upon notice from the Borrower to the Administrative Agent at any time; provided that if any Subsidiary Guarantor ceases to constitute a Wholly-Owned Subsidiary, such Subsidiary Guarantor shall not be released from its Loan Guaranty unless (A) such Subsidiary Guarantor is no longer a direct or indirect subsidiary of the Borrower, (B) after giving pro forma effect to such release and the consummation of the relevant transaction, the Borrower is deemed to have made a new Investment in such Person (as if such Person was then newly acquired) and such Investment is permitted by the Loan Documents or (C) such Dispositions of Capital Stock is a good faith Disposition to a bona fide unaffiliated third party (as determined by the Borrower in good faith) for fair market value and for a bona fide business purpose (as determined by the Borrower in good faith); it being understood that this

proviso shall not limit the release of any Subsidiary Guarantor that otherwise constitutes an Excluded Subsidiary for any reason other than not constituting a Wholly-Owned Subsidiary of the Borrower (this proviso, the “Specified Guarantor Release Provision”);

(c) 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 Sections 6.02(d), 6.02(e), 6.02(g)(i), 6.02(l), 6.02(m), 6.02(n), 6.02(o) (other than any Lien on the Capital Stock of any Subsidiary Guarantor), 6.02(q), 6.02(r), 6.02(s) (to the extent the relevant Lien is of the type to which the Lien of the Administrative Agent is otherwise required to be subordinated under this clause (c)) pursuant to any of the other exceptions to Section 6.02 that are expressly included in this clause (c)), 6.02(u) (to the extent the relevant Lien is of the type to which the Lien of the Administrative Agent is otherwise required to be subordinated under this clause (c)) pursuant to any of the other exceptions to Section 6.02 that are expressly included in this clause (c)), 6.02(x), 6.02(y), 6.02(z)(i), 6.02(bb), 6.02(cc), 6.02(dd) (in the case of clause (ii)) thereof, to the extent the relevant Lien covers cash collateral posted to secure the relevant obligation), 6.02(ee), 6.02(ff), 6.02(gg), 6.02(ii), and/or 6.02(mm) (and, in each case, any Lien securing any Refinancing Indebtedness in respect of any thereof to the extent such Refinancing Indebtedness is permitted to be secured under Section 6.02(k));

(d) enter into subordination, intercreditor, collateral trust and/or similar agreements (including any Intercreditor Agreement and/or any amendment to any Intercreditor Agreement) with respect to any Indebtedness that is (i) required or permitted to be subordinated hereunder and/or (ii) secured by Liens, and with respect to which Indebtedness, this Agreement contemplates an intercreditor, subordination, collateral trust or similar agreement, with each of the Lenders and the other Secured Parties irrevocably agreeing to the treatment of the Lien on the Collateral securing the Secured Obligations as set forth in any such agreement and that it will be bound by and will take no action contrary to the provisions of any such agreement; and

(e) execute and/or deliver, as applicable, any amendment to any UCC financing statement and/or any other document evidencing the security interest granted pursuant to the Collateral Documents to indicate that Excluded Assets and/or other assets that do not constitute Collateral are not subject to the security interest granted pursuant to the Collateral Documents.

Upon the request of 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 Loan Party from its obligations under the Loan Guaranty or its Lien on any Collateral pursuant to this Article 8. In each case as specified in this Article 8, the Administrative Agent will (and each Lender, and each Issuing Bank hereby authorizes the Administrative Agent to), without recourse or warranty (other than as to the Administrative Agent’s authority to execute and deliver the same) and 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, to subordinate its interest therein, or to release such Loan Party from its obligations under the Loan Guaranty, in each case in accordance with the terms of the Loan Documents and this Article 8; provided that, upon the request of the Administrative Agent, the Borrower shall deliver a certificate of a Responsible Officer certifying that the relevant transaction has been consummated in compliance with the terms of this Agreement.

Notwithstanding anything to the contrary in this Section 8.09 or in any other provision of any Loan Document, each Lender and each other Secured Party hereby authorizes the Administrative Agent to, and the Administrative Agent shall, execute and deliver any instruments, documents, consents, acknowledgments, and agreements necessary or desirable to evidence, effectuate or confirm the release of any Subsidiary Guarantor or Collateral or the subordination of any Lien pursuant to the provisions of this Section 8.09.

It is understood and agreed that, notwithstanding anything to the contrary herein, in any other Loan Document and/or in the documentation governing any Hedge Agreement and/or any agreement governing Banking Services, (a) unless otherwise agreed to by the Borrower and any applicable counterparty to any agreement governing any Secured Hedging Obligation and/or any Banking Service, the obligations of Holdings, the Borrower or any subsidiary under any such agreement shall be secured

and guaranteed pursuant to the Collateral Documents and the Loan Guaranty only to the extent that, and for so long as, the Obligations are so secured and guaranteed and (b) any release of any Lien on any Collateral and/or any Loan Guarantor effected in a manner permitted by this Agreement and/or any other Loan Document shall not require the consent of any such counterparty.

SECTION 10. Intercreditor Agreements. The Administrative Agent is authorized by the Lenders and each other Secured Party to, and shall, enter into any Intercreditor Agreement and any other intercreditor, subordination, collateral trust or similar agreement contemplated hereby with respect to any (a) Indebtedness (i) that is (A) required or permitted hereunder to be subordinated in right of payment or with respect to security and/or (B) secured by any Lien and (ii) which contemplates an intercreditor, subordination, collateral trust or similar agreement and/or (b) Secured Hedging Obligations and/or Banking Services Obligations, whether or not constituting Indebtedness (any such other intercreditor, subordination, collateral trust and/or similar agreement an "Additional Agreement"), and the Secured Parties party hereto acknowledge that any Intercreditor Agreement and any other Additional Agreement is binding upon them. Each Lender and each other Secured Party hereto hereby (a) agrees that it will be bound by, and will not take any action contrary to, the provisions of any Intercreditor Agreement or any other Additional Agreement and (b) authorizes and instructs the Administrative Agent to enter into any Intercreditor Agreement and/or any other Additional Agreement and to subject the Liens on the Collateral securing the Secured Obligations to the provisions thereof. The foregoing provisions are intended as an inducement to the Lenders and the other Secured Parties to extend credit to the Borrower, and the Lenders and the other Secured Parties are intended third-party beneficiaries of such provisions and the provisions of any Intercreditor Agreement and/or any other Additional Agreement.

SECTION 11. Indemnification of Administrative Agent. To the extent that the Administrative Agent (or any Affiliate thereof) is not reimbursed and indemnified by the Borrower in accordance with and to the extent required by Section 9.03(b) hereof, the Lenders will reimburse and indemnify the Administrative Agent (and any Affiliate thereof) in proportion to their respective Applicable Percentages (determined as if there were no Defaulting Lenders) for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature, including reasonable attorneys' fees, which may be imposed on, asserted against or incurred by the Administrative Agent (or any Affiliate thereof) in (i) performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document and/or (ii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto (and regardless of whether such matter is initiated by or against the Administrative Agent, a third party or a Lender or any Related Party of a Lender); provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's (or such affiliate's) gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

SECTION 12. Withholding Taxes. To the extent required by any applicable Requirements of Law (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 2.17, each Lender shall severally indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within ten 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, 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 or because such Lender failed to maintain a Participant/SPC Register in the manner required by Section 9.05(c)). 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 paragraph. The agreements in this paragraph shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document. For the avoidance of doubt, the term “Lender” shall, for all purposes of this paragraph, include any Issuing Bank and the Swingline Lender.

SECTION 13. Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loans 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 Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Secured Parties and the Administrative Agent and their respective agents and counsel and all other amounts due the Secured Parties and the Administrative Agent under Sections 2.12 and 9.03) 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 Secured Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Secured Parties, 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 2.12 and 9.03.

SECTION 14. Recovery of Erroneous Payments. Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender or any Issuing Bank (the “Lending Party”), whether or not in respect of an Obligation due and owing by the Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Lending Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lending Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Lending Party irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lending Party promptly upon determining that any payment made to such Lending Party comprised, in whole or in part, a Rescindable Amount. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no Loan Party shall have any obligation or liabilities for any actions, consequences or remediation (including the repayment of any amounts) contemplated by this Section 8.14 or Section 2.18(d) (including any Rescindable Amount); provided that under no circumstances shall this Section 8.14 or Section 2.18(d) affect the obligations or liabilities of any Loan Party with respect to any Obligations that remain outstanding.

SECTION 15. Banking Services Obligations and Secured Hedging Obligations. Except as otherwise expressly set forth herein or in the Loan Guaranty or any Collateral Document, no counterparty to a Hedge Agreement or agreement governing any Banking Services Obligation that obtains the benefits of Section 2.18(b), any Loan Guaranty or any Collateral by virtue of the provisions hereof or of the Loan 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, if applicable, 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 8 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, any obligation arising under a Hedge Agreement or any agreement governing any Banking Services Obligation.

ARTICLE 9

MISCELLANEOUS

SECTION 1. Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) 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 email, as follows:

- (i) if to any Loan Party, to such Loan Party in the care of the Borrower at:

FWR Holding Corporation
c/o First Watch Restaurants, Inc.
8725 Pendery Place, Suite 201
Bradenton, FL 34201
Attention: Mel Hope
Email: on file with the Administrative Agent

with copies to (which shall not constitute notice to any Loan Party):

Advent International Corporation
12 E. 49th Street, 45th Floor
New York, New York 10017
Attention: Ken Prince
Email: on file with the Administrative Agent

and

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: ~~Allison Liff~~Paul J. Overmyer
Email: ~~allison.liff~~paul.overmyer@weil.com

- (ii) if to the Administrative Agent or the Swingline Lender, at:

Bank of America, N.A.
900 W. Trade Street
NC-1-026-06-04
Charlotte, NC 28255
Attention: Libby Russell
Fax: 704-409-0004
Email: libby.russell@bofa.com

- (iii) if to any Issuing Bank, at:

if to any other Issuing Bank that is an Issuing Bank on the Closing Date, the relevant address specified in Schedule 9.01;

or

if to any other Issuing Bank, such address as may be specified in the documentation pursuant to which such Issuing Bank is appointed in its capacity as such; and

- (iv) if to any Lender, to it at its physical address or email address set forth in its Administrative Questionnaire.

All such notices and other communications (A) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof or three Business Days after dispatch if sent by certified or registered mail, in each case, delivered, sent or mailed (properly addressed) to the relevant party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01 or (B) sent by facsimile shall be deemed to have been given when sent and when receipt has been confirmed by telephone; provided that 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, such notices or other communications 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 clause (b) below shall be effective as provided in such clause (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including e-mail and Internet or intranet websites) pursuant to procedures set forth herein or otherwise approved by the Administrative Agent. The Administrative Agent or the Borrower (on behalf of any Loan Party) may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures set forth herein or otherwise approved by it; provided that approval of such procedures may be limited to particular notices or communications. All such notices and other communications (i) 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 any such notice or communication not given during the normal business hours of the recipient shall be deemed to have been given at the opening of business on the next Business Day for the recipient or (ii) 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 (b)(i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Any party hereto may change its address or facsimile number or other notice information hereunder by notice to the other parties hereto; it being understood and agreed that the Borrower may provide any such notice to the Administrative Agent as recipient on behalf of itself, the Swingline Lender, each Issuing Bank and each Lender.

(d) The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders and the Issuing Banks materials and/or information provided by, or on behalf of, Holdings or the Borrower hereunder (collectively, the "Borrower Materials") by posting the Borrower Materials on the Platform and (b) certain of the Lenders may be "public-side" Lenders (*i.e.*, Lenders that do not wish to receive material nonpublic information within the meaning of the US federal securities laws with respect to Holdings, the Borrower or their respective securities) (each, a "Public Lender"). At the reasonable request of the Administrative Agent, the Borrower hereby agrees that (i) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC", (ii) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as information of a type that (A) is publicly available or (B) would not be material with respect to Holdings, the Borrower, their respective subsidiaries, any of their respective securities or the Transactions, as determined in good faith by the Borrower, for purposes of the US federal securities laws and (iii) the Administrative Agent shall be required to treat Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not marked as "Public Investor." Notwithstanding the foregoing, (i) the Loan Documents shall be deemed to be marked "PUBLIC," unless the Borrower notifies the Administrative Agent promptly that any such document contains material nonpublic information (it being

understood that the Borrower shall have a reasonable opportunity to review the same prior to distribution and comply with SEC or other applicable disclosure obligations) and (ii) in no event shall any financial budget delivered pursuant to Section 5.01(h) be made available to Public Lenders.

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 US federal and state securities laws, to make reference to communications 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 US federal or state securities laws.

THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES WARRANTS THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS ON, OR THE ADEQUACY OF, THE PLATFORM, AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN ANY SUCH COMMUNICATION. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL ANY PARTY HERETO OR ANY OF ITS RELATED PARTIES HAVE ANY LIABILITY TO ANY OTHER PARTY HERETO OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY’S OR THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN A FINAL RULING BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH PERSON’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR MATERIAL BREACH OF THIS AGREEMENT.

SECTION 2. Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof except as provided herein or in any Loan Document, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any party hereto therefrom shall in any event be effective unless the same is permitted by this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is given. Without limiting the generality of the foregoing, to the extent permitted by applicable Requirements of Law, neither the making of any Loan nor the issuance of any Letter of Credit shall be construed as a waiver of any Default or Event of Default, regardless of whether the Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default or Event of Default at the time.

(b) Except as expressly provided in this Section 9.02 (or otherwise in this Agreement or the applicable Loan Document), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified, except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders (or the Administrative Agent with the consent of the Required Lenders) or (ii) in the case of any other Loan Document (other than any waiver, amendment or modification to effectuate any modification thereto expressly contemplated by the terms of such other Loan Document), pursuant to an agreement or

agreements in writing entered into by the Administrative Agent and each Loan Party that is party thereto, with the consent of the Required Lenders; provided that, notwithstanding the foregoing:

(A) the consent of each Lender directly and adversely affected thereby (but not the consent of the Required Lenders) shall be required for any waiver, amendment or modification that:

(1) increases the Commitment of such Lender (other than with respect to any Incremental Facility pursuant to Section 2.22 in respect of which such Lender has agreed to be an Incremental Lender); it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall constitute an increase of any Commitment of such Lender;

(2) reduces the principal amount of any Loan owed to such Lender or any amount due to such Lender on any Loan Installment Date;

(3) (x) extends the scheduled final maturity of any Loan or (y) postpones any Loan Installment Date or any Interest Payment Date with respect to any Loan held by such Lender or the date of any scheduled payment of any fee or premium payable to such Lender hereunder (in each case, other than any extension for administrative reasons agreed by the Administrative Agent);

(4) reduces the rate of interest (other than to waive any Default or Event of Default or any obligation of the Borrower to pay interest to such Lender at the default rate of interest under Section 2.13(d), which shall only require the consent of the Required Lenders) or the amount of any fee or premium owed to such Lender; it being understood that no change in the definition of "Total Rent Adjusted Net Leverage Ratio" or any other ratio used in the calculation of the Applicable Rate or the Commitment Fee Rate, or in the calculation of any other interest, fee or premium due hereunder (including any component definition thereof) shall constitute a reduction in any rate of interest or fee hereunder;

(5) extends the expiry date of such Lender's Commitment; it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of any Commitment shall constitute an extension of any Commitment of any Lender; and

(6) waives, amends or modifies the provisions of Sections 2.18(b) or (c) of this Agreement in a manner that would by its terms alter the pro rata sharing of payments required thereby (except in connection with any transaction permitted under Sections 2.22, 2.23, 9.02(c) and/or 9.05(g) or as otherwise provided in this Section 9.02 or otherwise in this Agreement);

(B) no such agreement shall:

(1) change (x) any of the provisions of Section 9.02(a) or (b) or the definition of "Required Lenders", in each case to reduce any voting percentage required to waive, amend or modify any right thereunder or make any determination or grant any consent thereunder, without the prior written consent of each Lender or (y) the definition of "Required Revolving Lenders" to reduce any voting percentage required to waive, amend or modify any right thereunder or make any determination or grant any consent thereunder, without the prior written consent of each Revolving Lender (it being understood that neither the consent of the Required Lenders nor the consent of any other Lender shall be

required in connection with any change to the definition of “Required Revolving Lenders”);

(2) (A) release all or substantially all of the Collateral from the Lien granted pursuant to the Collateral Documents (except as otherwise permitted herein or in the other Loan Documents, including pursuant to Article 8 or Section 9.22), without the prior written consent of each Lender or (B) subordinate the Lien on a material portion of the Collateral, taken as a whole (as determined by the Borrower in good faith), securing the Secured Obligations or subordinate the Obligations in right of payment, in either case, to any other Indebtedness for borrowed money (in each case, other than in connection with (1) any Acceptable Debtor-In-Possession Financing, (2) the implementation of an “asset-based” revolving credit facility, any permitted securitization, receivables facility, factoring facility, receivables financing or any similar financing and/or (3) any other financing with respect to which each relevant Lender has been offered the opportunity to provide such financing), in each case, without the prior written consent of each Lender; or

(3) release all or substantially all of the value of the Guarantees under the Loan Guaranty (except as otherwise permitted herein or in the other Loan Documents, including pursuant to Article 8 or Section 9.22), without the prior written consent of each Lender;

(C) solely with the consent of the Required Revolving Lenders (but without the consent of the Required Lenders or any other Lender), any such agreement may waive, amend or modify any condition precedent set forth in Section 4.02 as it pertains to any Revolving Loan and/or Letter of Credit; and

(D) solely with the consent of the relevant Issuing Bank, any such agreement may (x) increase or decrease the Letter of Credit Sublimit, (y) waive, amend or modify any condition precedent set forth in Section 4.02 as it pertains to the issuance of any Letter of Credit or (z) amend or modify the provisions of Section 2.05 or any letter of credit application and any bilateral agreement between the Borrower and any Issuing Bank regarding such Issuing Bank’s LC Exposure or the respective rights and obligations between the Borrower and such Issuing Bank in connection with the issuance of Letters of Credit;

(E) solely with the consent of the Swingline Lender, any such agreement may increase or decrease the amount of Swingline Loans available under Section 2.04;

(F) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, any Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, such Issuing Bank or the Swingline Lender, as the case may be.

(c) Notwithstanding the foregoing, this Agreement may be amended:

(i) with the written consent of the Borrower and the Lenders providing the relevant Replacement Term Loans to permit the refinancing or replacement of all or any portion of the outstanding Term Loans under any Class (any such loans being refinanced or replaced, the “Replaced Term Loans”) with one or more replacement term loans hereunder (“Replacement Term Loans”) pursuant to a Refinancing Amendment; provided that:

(A) the aggregate principal amount of any Class of Replacement Term Loans shall not exceed the aggregate principal amount of the relevant Replaced Term Loans plus (1) any additional amount permitted to be incurred under Section 6.01 and, to the extent any such additional amount is secured, the related Lien is permitted under Section 6.02, plus (2) the amount of any accrued interest, fee, expense, penalty and/or

premium (including any tender premium) on the relevant Replaced Term Loans and/or any committed but undrawn amount, plus (3) any underwriting discount, fee and/or initial yield payment associated therewith (including any upfront fee, original issue discount and/or initial yield payment, commission and/or expense) associated with the relevant Replacement Term Loan;

(B) any Class of Replacement Term Loans (other than Customary Bridge Loans) must have a final maturity date that is equal to or later than the final maturity date of, and have a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the applicable Replaced Term Loans at the time of the relevant refinancing;

(C) any Class of Replacement Term Loans may be *pari passu* with or junior to any then-existing Class of Term Loans in right of payment and may be *pari passu* with or junior to such Class of Term Loans with respect to the Collateral or unsecured; provided that any Class of Replacement Term Loans that is junior to any then-existing Class of Term Loan in right of payment or security shall be subject to an Intercreditor Agreement;

(D) any Class of Replacement Term Loans that is secured may not be secured by any asset other than the Collateral;

(E) any Class of Replacement Term Loans that is guaranteed may not be guaranteed by any subsidiary of the Borrower other than one or more Loan Parties;

(F) any Class of Replacement Term Loans that is *pari passu* with the Initial Term Loans in right of payment and security may participate (A) in any voluntary prepayment of Term Loans as set forth in Section 2.11(a)(i) and (B) in any mandatory prepayment of Term Loans as set forth in Section 2.11(b)(vi);

(G) any Class of Replacement Term Loans may have pricing (including “MFN” or other pricing terms), interest, fees, rate margins, rate floors, premiums (including prepayment premiums), funding discounts, subject to the preceding clause (E), optional prepayment and redemption terms and, subject to the preceding clause (B), an amortization schedule, as the Borrower and the lenders providing such Class of Replacement Term Loans may agree;

(H) the other terms and conditions of any Class of Replacement Term Loans (except as set forth above) shall be substantially consistent with the Replaced Term Loans (or any other then-existing Term Loans) or shall be reasonably satisfactory to the Administrative Agent; provided that any such terms and conditions shall be deemed to be satisfactory to the Administrative Agent so long as any such terms and conditions (1) that are not substantially consistent with those applicable to the relevant Replaced Term Loans are applicable after the latest Maturity Date of such Class of Replaced Term Loans (in each case, as of the date of incurrence of such Class of Replacement Term Loans), (2) are substantially identical to, or (taken as a whole) not more favorable (as determined by the Borrower in good faith) to the lenders providing such Class of Replacement Term Loans than those applicable to the relevant Replaced Term Loans (other than such terms to which clause (1) is applicable), (3) reflect then-current market terms and conditions (as determined by the Borrower in good faith) for the applicable type of Indebtedness or (4) if more favorable to the lenders or the agent of such Replacement Term Loans than those contained in the Loan Documents, are then conformed (or added) to the Loan Documents pursuant to the applicable Refinancing Amendment;

(I) Replacement Term Loans may be provided by any existing Lender or by any other Eligible Assignee; provided that the Administrative Agent shall have a right to consent (such consent not to be unreasonably withheld, conditioned or delayed) to the

relevant Person's provision of Replacement Term Loans if such consent would be required under Section 9.05(b) for an assignment of Loans to such Person; and

(J) the relevant outstanding Replaced Term Loans and all accrued but unpaid interest and fees then due and payable in connection therewith shall be paid in full, in each case on the date the applicable Replacement Term Loan is implemented; and

(ii) with the written consent of the Borrower and the Lenders providing the relevant Revolver Replacement Facility to permit the refinancing or replacement of all or any portion of any Revolving Credit Commitment of any Class (any such Revolving Credit Commitment being refinanced or replaced, a "Replaced Revolving Facility") with a replacement revolving facility and/or replacement term loans hereunder (a "Revolver Replacement Facility") pursuant to a Refinancing Amendment; provided that:

(A) the aggregate maximum amount of any Revolver Replacement Facility shall not exceed the aggregate maximum amount of the commitments in respect of the relevant Replaced Revolving Facility plus (x) any additional amount permitted to be incurred under Section 6.01 and, to the extent any such additional amount is secured, the related Lien is permitted under Section 6.02, plus (y) the amount of accrued interest, penalties and premium thereon, any committed but undrawn amounts and underwriting discounts, fees (including upfront fees, original issue discount or initial yield payments, commissions and expenses associated therewith and/or any underwriting discount, fees and/or initial yield payment associated with the applicable Revolver Replacement Facility);

(B) no Revolver Replacement Facility may have a final maturity date (or require commitment reductions) prior to the final maturity date of the relevant Replaced Revolving Facility at the time of such refinancing;

(C) any Revolver Replacement Facility may be *pari passu* with or junior to any then-existing Revolving Commitment in right of payment and *pari passu* with or junior to any then-existing Revolving Commitment with respect to the Collateral or may be unsecured; provided that any Revolver Replacement Facility that is junior to the then-existing Revolving Credit Commitments in right of payment or security shall be subject to an Intercreditor Agreement; provided, further, that if any Revolver Replacement Facility is not in the form of a loan constituting First Lien Debt, such Revolver Replacement Facility will be documented pursuant to separate documentation from the Loan Documents;

(D) any Revolver Replacement Facility that is secured may not be secured by any asset other than Collateral;

(E) any Revolver Replacement Facility that is guaranteed may not be guaranteed by any subsidiary of the Borrower other than one or more Loan Parties;

(F) (1) if the relevant Revolver Replacement Facility is a revolving facility, such Revolver Replacement Facility may provide for the borrowing and repayment of Revolving Loans with respect to any Revolving Facility after the effective date of such Revolver Replacement Facility on a pro rata basis or a non-pro rata basis with all other Revolving Facilities (it being understood that any Revolver Replacement Facility that participates in borrowings on a pro rata basis with other Revolving Facilities shall participate in repayments on a pro rata basis with such Revolving Facilities and that in the event of any Revolver Replacement Facility that must participate in borrowings on a less than pro rata basis as compared to other Revolving Facilities, such Revolver Replacement Facility shall participate in repayments on a less than pro rata basis as compared to such other Revolving Facilities (in each case, except, in any case, for (x) payments of interest and fees at different rates on the Revolving Facilities (and related outstandings), (y) repayments required on the Maturity Date of any Revolving Facility and

(z) repayments made in connection with a permanent repayment and termination of the Revolving Credit Commitments under any Revolving Facility (subject to clause (3) below)), (2) if the relevant Revolver Replacement Facility is a revolving facility, all Letters of Credit and Swingline Loans shall be participated on a pro rata basis by all Revolving Lenders, (3) if the relevant Revolver Replacement Facility is a revolving facility, any permanent repayment of Revolving Loans with respect to, and reduction and termination of Revolving Credit Commitments under, any Revolver Replacement Facility after the effective date of such Revolver Replacement Facility shall be made on a pro rata basis or a non-pro rata basis with all other Revolving Facilities (it being understood that a Revolver Replacement Facility that participates in borrowings on a pro rata basis with other Revolving Facilities shall participate in permanent repayments of Revolving Loans with respect to, and reduction and termination of Revolving Credit Commitments under, such Revolving Facility on a pro rata basis with such other Revolving Facilities and that in the event of any Revolver Replacement Facility that must participate in borrowings on a less than pro rata basis with other Revolving Facilities, such Revolver Replacement Facility shall participate in permanent repayments of Revolving Loans with respect to, and reduction and termination of Revolving Credit Commitments under, such other Revolving Facility on a less than pro rata basis as compared to such other Revolving Facilities; provided that, in each case, notwithstanding the foregoing, to the extent any such Revolving Commitments are terminated in full and refinanced or replaced with another Revolver Replacement Facility or Replacement Debt, such Revolving Commitments may be terminated on a greater than pro rata basis) and (4) if the relevant Revolver Replacement Facility is a term loan, it shall be subject to the “ratability” provisions applicable to Replacement Term Loans, consistent with clause (F) of Section 9.02(c)(i);

(G) any Revolver Replacement Facility may have pricing (including “MFN” or other pricing terms), interest, fees, rate margins, rate floors, premiums (including prepayment premiums), funding discounts, and, subject to the preceding clause (E), optional prepayment and redemption terms as the Borrower and the lenders providing such Revolver Replacement Facility may agree;

(H) the other terms of any Revolver Replacement Facility (excluding as set forth above) shall be substantially consistent with the Replaced Revolving Facility (or any other then-existing Revolving Facility) or be reasonably satisfactory to the Administrative Agent; provided that such terms and conditions shall be deemed to be satisfactory to the Administrative Agent so long as any such terms and conditions (i)(1) that are not substantially consistent with those applicable to the relevant Replaced Revolving Facility are applicable only to periods after the latest Maturity Date of such Replaced Revolving Facility (in each case, as of the date of implementation of such Revolver Replacement Facility), (2) are substantially identical to, or (taken as a whole) no more favorable (as determined by the Borrower in good faith) to the lenders providing such Revolver Replacement Facility than those applicable to the relevant Replaced Revolving Facility (other than such terms to which clause (1) is applicable), (3) reflect then-current market terms and conditions (as determined by the Borrower in good faith) for the applicable type of Indebtedness or are reasonably acceptable to the Administrative Agent or (4) are more favorable to the lenders or the agent of such Revolver Replacement Facility than those contained in the Loan Documents and are then conformed (or added) to the Loan Documents pursuant to the applicable Refinancing Amendment) or (ii) in the case of a Revolver Replacement Facility that consists of replacement term loans, consistent with the provisions of Section 9.02(c)(i)(H);

(I) the commitments in respect of the relevant Replaced Revolving Facility (or the relevant portion thereof) shall be terminated, and all loans outstanding in respect of such Replaced Revolving Facility and all accrued but unpaid interest and fees then due and payable in connection therewith shall be paid in full, in each case on the date any Revolver Replacement Facility is implemented; and

(J) any Revolver Replacement Facility may be provided by any existing Lender and/or any other Eligible Assignee; provided that the Administrative Agent (and, in the case of any Revolver Replacement Facility that constitutes a revolving facility, any Issuing Bank) shall have a right to consent (such consent not to be unreasonably withheld, conditioned or delayed) to the relevant Person's provision of a Revolver Replacement Facility if such consent would be required under Section 9.05(b) for an assignment of Loans to the relevant Person;

provided, further, that, in respect of each of subclauses (i) and (ii) of this clause (c), any Non-Debt Fund Affiliate and/or any Debt Fund Affiliate shall (x) be permitted without the consent of the Administrative Agent to provide any Class of Replacement Term Loans and/or any Revolver Replacement Facility in the form of a term loan, it being understood that in connection therewith, the relevant Non-Debt Fund Affiliate or Debt Fund Affiliate, as applicable, shall be subject to the restrictions applicable to such Person under Section 9.05 and (y) no Non-Debt Fund Affiliate may provide any Revolver Replacement Facility in the form of revolving facility.

Each party hereto hereby agrees that this Agreement may be amended by the Borrower, the Administrative Agent and the lenders providing the relevant Class of Replacement Term Loans or the relevant Revolver Replacement Facility, as applicable, to the extent (but only to the extent) necessary to reflect the existence and terms of such Class of Replacement Term Loans or Revolver Replacement Facility, incurred or implemented pursuant thereto (including any amendment necessary to treat the loans and commitments subject thereto as a separate "tranche" and "Class" of Loans and/or commitments hereunder). It is understood that any Lender approached to provide all or a portion of any Class of Replacement Term Loans or any Revolver Replacement Facility, may elect or decline, in its sole discretion, to provide such Class of Replacement Term Loans or such Revolver Replacement Facility.

(d) Notwithstanding anything to the contrary contained in this Section 9.02 or any other provision of this Agreement or any provision of any other Loan Document:

(i) the Borrower and the Administrative Agent may, without the input or consent of any Lender, amend, supplement and/or waive this Agreement and/or any guaranty, collateral security agreement, pledge agreement and/or related document (if any) executed in connection with this Agreement to (A) comply with any Requirement of Law or the advice of counsel or (B) cause any such guaranty, collateral security agreement, pledge agreement or other document to be consistent with this Agreement and/or the relevant other Loan Documents,

(ii) the Borrower and the Administrative Agent may, without the input or consent of any other Lender (other than the relevant Lenders providing Loans under such Sections), effect amendments to this Agreement and the other Loan Documents as may be necessary or advisable in the reasonable opinion of the Borrower and the Administrative Agent to (A) effect the provisions of Sections 2.22, 2.23, 5.12, 5.17, 5.18 and/or 9.02(c), or any other provision of this Agreement or any other Loan Document specifying that any waiver, amendment or modification may be made with the consent or approval of the Administrative Agent and/or (B) add terms (including representations and warranties, conditions, prepayments, covenants or events of default) that are favorable to the then-existing Lenders, as reasonably determined by the Administrative Agent (it being understood that, where applicable, any such amendment may be effectuated as part of an Incremental Facility Amendment, an Extension Amendment and/or a Refinancing Amendment),

(iii) if the Administrative Agent and the Borrower have jointly identified any ambiguity, mistake, defect, inconsistency, obvious error or any error or omission of a technical nature or any necessary or desirable technical change, in each case, in any provision of any Loan Document, then the Administrative Agent and the Borrower shall be permitted to amend such provision solely to address such matter as reasonably determined by them,

(iv) the Administrative Agent and the Borrower may amend, restate, amend and restate or otherwise modify any Intercreditor Agreement and/or any other Additional Agreement as provided therein,

(v) the Administrative Agent may amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.05, Commitment reductions or terminations pursuant to Section 2.09, implementations of Additional Commitments or incurrences of Additional Loans pursuant to Sections 2.22, 2.23 or 9.02(c), and reductions or terminations of any such Additional Commitments or Additional Loans,

(vi) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except as permitted pursuant to Section 2.21(b),

(vii) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit any extension of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the relevant benefits of this Agreement and the other Loan Documents and/or (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders on substantially the same basis as the Lenders prior to such inclusion,

(viii) any amendment, waiver or modification of any term or provision that solely affects Lenders under one or more Classes and does not directly and adversely affect Lenders under one or more other Classes (including any waiver or modification of any condition to any extension of credit under any Class of Commitments, pricing or other modification) may be effected with the consent of Lenders owning more than 50% of the aggregate commitments or Loans of such directly affected Class in lieu of the consent of the Required Lenders, so long as such amendment, waiver or modification is not of the type that would require the consent each Lender directly and adversely affected thereby or each Lender,

(ix) this Agreement may be amended in the manner prescribed in Sections 1.13 and/or 2.05(h),

(x) this Agreement may be amended in the manner prescribed in Sections 2.22(i) and 2.23(c); it being understood and agreed that any such amendment may provide that with respect to any Class of Loans and/or Commitments that is structured as a “delayed draw” or similar facility, (i) any condition precedent to the funding of any Loan thereunder and/or (ii) any Event of Default arising as a result of any inaccuracy of any representation and/or warranty (including any certification) made in connection with the satisfaction of any such condition precedent, in each case, may be waived, amended or modified solely with the consent of a majority of the holders of such Loans and/or Commitments (or such other percentage of such holders as may be required in the amendment implementing such Class of Loans and/or Commitments (and without the consent of the Required Lenders or any other Lenders),

(xi) for the avoidance of doubt, any “MFN” provision may be amended solely with the consent of the Borrower and the Required Lenders, and

(xii) the Required Lenders, without the consent of any other Lender, may (A) rescind any acceleration of the Loans and/or any other Obligation pursuant to Article 7 hereof and/or (B) agree that the Administrative Agent and the Lenders will forbear from exercising any remedy provided under any Loan Document with respect to any Event of Default.

(e) It is understood that:

(i) notwithstanding anything to the contrary herein, in connection with any determination as to whether the Required Lenders or Required Revolving Lenders, as applicable, have (A) consented (or not consented) to any amendment or waiver of any provision of this Agreement or any other Loan Document or any departure by any Loan Party therefrom, (B) otherwise acted on any matter related to any Loan Document, or (C) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, any Lender (other than (i) any Arranger or Revolving Lender or an affiliate of any such Arranger or Revolving Lender or (ii) any Lender that

is a Regulated Bank or an affiliate of any such Lender) that, as a result of its interest in any total return swap, total rate of return swap, credit default swap or other derivative contract (other than any such total return swap, total rate of return swap, credit default swap or other derivative contract entered into pursuant to bona fide market making activities), has a net short position with respect to the Loans and/or Commitments (each, a “Net Short Lender”) shall, unless the Borrower otherwise elects (in its sole discretion), have no right to vote any of its Loans and Commitments and shall be deemed to have voted its interest as a Lender without discretion in the same proportion as the allocation of voting with respect to such matter by Lenders who are not Net Short Lenders;

(ii) for purposes of determining whether a Lender has a “net short position” on any date of determination: (i) derivative contracts with respect to the Loans and Commitments and such contracts that are the functional equivalent thereof shall be counted at the notional amount thereof in Dollars, (ii) notional amounts in other currencies shall be converted to the Dollar equivalent thereof by such Lender in a commercially reasonable manner consistent with generally accepted financial practices and based on the prevailing conversion rate (determined on a mid-market basis) on the date of determination, (iii) derivative contracts in respect of an index that includes the Borrower and/or any other Loan Party or any instrument issued or guaranteed by the Borrower and/or any other Loan Party shall not be deemed to create a short position with respect to the Loans and/or Commitments, so long as (x) such index is not created, designed, administered or requested by such Lender and (y) the Borrower and/or any other Loan Party and any instrument issued or guaranteed by the Borrower and/or any other Loan Party, collectively, represent less than 5% of the components of such index, (iv) derivative transactions that are documented using either the 2014 ISDA Credit Derivatives Definitions or the 2003 ISDA Credit Derivatives Definitions (collectively, the “ISDA CDS Definitions”) shall be deemed to create a short position with respect to the Loans and/or Commitments if such Lender is a protection buyer or the equivalent thereof for such derivative transaction and (1) the Loans or the Commitments are a “Reference Obligation” under the terms of such derivative transaction (whether specified by name in the related documentation, included as a “Standard Reference Obligation” on the most recent list published by Markit, if “Standard Reference Obligation” is specified as applicable in the relevant documentation or in any other manner), (2) the Loans or the Commitments would be a “Deliverable Obligation” under the terms of such derivative transaction or (3) the Borrower and/or any other Loan Party is designated as a “Reference Entity” under the terms of such derivative transactions, and (v) credit derivative transactions or other derivative transactions not documented using the ISDA CDS Definitions shall be deemed to create a short position with respect to the Loans and/or Commitments if such transactions are functionally equivalent to a transaction that offers the Lender protection in respect of the Loans or the Commitments, or as to the credit quality of the Borrower and/or any other Loan Party other than, in each case, as part of an index so long as (x) such index is not created, designed, administered or requested by such Lender and (y) the Borrower and/or any other Loan Party and any instrument issued or guaranteed by the Borrower and/or any other Loan Party, collectively, represent less than 5% of the components of such index;

(iii) in connection with any such determination, each Lender shall promptly notify the Administrative Agent in writing that it is a Net Short Lender, or shall otherwise be deemed to have represented and warranted to the Borrower and the Administrative Agent that it is not a Net Short Lender (it being understood and agreed that the Borrower and the Administrative Agent shall be entitled to rely on each such representation and deemed representation); and

(iv) once deemed effective, no amendment or waiver of any provision of this Agreement or any other Loan Document or any departure by any Loan Party therefrom shall be deemed to be invalid on the basis that a consenting Lender is determined to be a Net Short Lender after the effective date of such amendment or waiver.

The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Section 9.02(e). Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or

prospective Lender or participant is a Net Short Lender or (y) have any liability with respect to or arising out of the voting in any amendment or waiver to any Loan Document by any Net Short Lender.

SECTION 3. Expenses; Indemnity.

(a) Subject to Section 9.05(f), the Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by each Arranger, the Administrative Agent and their respective Affiliates (but limited, in the case of legal fees and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one firm of outside counsel to all such Persons taken as a whole and, if necessary, of one local counsel in any relevant material jurisdiction to all such Persons, taken as a whole) in connection with the syndication and distribution (including via the Internet or through a service such as Intralinks) of the Credit Facilities, the preparation, execution, delivery and administration of the Loan Documents and any related documentation, including in connection with any amendment, modification or waiver of any provision of any Loan Document (whether or not the transactions contemplated thereby are consummated, but only to the extent the preparation of any such amendment, modification or waiver was requested by the Borrower and except as otherwise provided in a separate writing between the Borrower, the relevant Arranger and/or the Administrative Agent) and (ii) without duplication of the obligation set forth in Section 9.03(b), all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Arrangers, the Issuing Banks or the Lenders or any of their respective Affiliates (but limited (x) in the case of legal fees and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one firm of outside counsel to all such Persons taken as a whole and, if necessary, of one local counsel in any relevant material jurisdiction to all such Persons, taken as a whole (and solely in the case of a conflict of interest, (A) one additional counsel to all affected Persons, taken as a whole, and (B) one additional local counsel in any such jurisdiction to all affected Persons, taken as a whole), and (y) in the case of other third party advisors, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of only third party advisors the engagement of whom has been approved by the Borrower (such approval not to be unreasonably withheld, delayed or conditioned) in writing) in connection with the enforcement, collection or protection of their respective rights in connection with the Loan Documents, including their respective rights under this Section, or in connection with the Loans made and/or Letters of Credit issued hereunder. Except to the extent required to be paid on the Closing Date, all amounts due under this paragraph (a) shall be payable by the Borrower within 30 days of receipt by the Borrower of an invoice setting forth such expenses in reasonable detail, together with backup documentation supporting the relevant reimbursement request.

(b) The Borrower shall indemnify each Arranger, the Administrative Agent, each Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages and liabilities (but limited, in the case of any such loss, claim, damage and/or liability constituting legal fees and expenses to the actual 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 in any relevant material jurisdiction to all Indemnitees, taken as a whole and solely in the case of a conflict of interest, (x) one additional counsel to all affected Indemnitees, taken as a whole, and (y) one additional local counsel to all affected Indemnitees, taken as a whole), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby or thereby and/or the enforcement of the Loan Documents, (ii) the use of the proceeds of the Loans or any Letter of Credit, (iii) any actual or alleged Release or presence of Hazardous Materials on, at, under or from any property currently or formerly owned, leased or operated by the Borrower, any of its Restricted Subsidiaries or any other Loan Party or any Environmental Liability related to the Borrower, any of its Restricted Subsidiaries or any other Loan Party and/or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto (and regardless of whether such matter is initiated by or against a third party or by or against the Borrower, any other Loan Party or any of their respective Affiliates); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that any such loss, claim,

damage, or liability (i) is determined by a final and non-appealable judgment of a court of competent jurisdiction (or documented in any settlement agreement referred to below) to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or, to the extent such judgment finds (or any such settlement agreement acknowledges) that any such loss, claim, damage, or liability has resulted from such Person's (or such Person's Related Party's) material breach of the Loan Documents (other than, with the written consent of the Borrower in its sole discretion, the Administrative Agent, in its capacity as such, in respect of obligations not owed to the Loan Parties) or (ii) arises out of any claim, litigation, investigation or proceeding brought by such Indemnitee against another Indemnitee (other than any claim, litigation, investigation or proceeding that is brought by or against the Administrative Agent, any Issuing Bank or any Arranger, acting in its capacity as the Administrative Agent, as an Issuing Bank or as an Arranger) that does not involve any act or omission of Holdings, the Borrower or any of its subsidiaries. Each Indemnitee shall be obligated to refund or return any and all amounts paid by the Borrower pursuant to this [Section 9.03\(b\)](#) to such Indemnitee for any fees, expenses, or damages to the extent such Indemnitee is not entitled to payment thereof in accordance with the terms hereof. Any amount due under this [Section 9.03\(b\)](#) shall be payable by the Borrower within 30 days (x) after receipt by the Borrower of a written demand therefor, in the case of any indemnification obligations and (y) in the case of reimbursement of costs and expenses, after receipt by the Borrower of an invoice setting forth such costs and expenses in reasonable detail, together with reasonable backup documentation supporting the relevant reimbursement request. This [Section 9.03\(b\)](#) shall not apply to Taxes other than any Taxes that represent losses, claims, damages or liabilities in respect of a non-Tax claim.

(c) The Borrower shall not be liable for any settlement of any proceeding effected without its written consent (which consent shall not be unreasonably withheld, delayed or conditioned) or any other losses, claims, damages, liabilities and/or expenses incurred in connection therewith, but if any proceeding is settled with the written consent of the Borrower, or if there is a final judgment against any Indemnitee in any such proceeding, the Borrower agrees to indemnify and hold harmless each Indemnitee to the extent and in the manner set forth above. The Borrower shall not, without the prior written consent of the affected Indemnitee (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement of any pending or threatened proceeding in respect of which indemnity could have been sought hereunder by such Indemnitee unless (i) such settlement includes an unconditional release of such Indemnitee from all liability or claims that are the subject matter of such proceeding and (ii) such settlement does not include any statement as to any admission of fault or culpability.

SECTION 4. Waiver of Claim. To the extent permitted by applicable Requirements of Law, no party to this Agreement nor any Secured Party shall assert, and each hereby waives on behalf of itself and its Related Parties, any claim against any other party hereto, any Loan Party and/or any Related Party of any thereof, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or any Letter of Credit or the use of the proceeds thereof, except, in the case of any claim by any Indemnitee against the Borrower, to the extent such damages would otherwise be subject to indemnification pursuant to, and in accordance with, the terms of [Section 9.03](#).

SECTION 5. 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 permitted assigns; provided that (i) except as permitted under [Section 6.07](#), the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with the terms of this Section (any attempted assignment or transfer not complying with the terms of this Section shall be null and void (other than an assignment or transfer to a Disqualified Institution, which shall be subject to [Section 9.05\(f\)](#)). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and permitted assigns, to the extent provided in [Section 9.05\(c\)](#)), Participants and, to the extent expressly contemplated hereby, the Related Parties of each of the Arrangers, the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of any Loan or Additional Commitment added pursuant to Sections 2.22, 2.23 or 9.02(c), at the time owing to it) with the prior written consent of:

(A) the Borrower (such consent not to be unreasonably withheld, conditioned or delayed); provided that (x) the Borrower shall be deemed to have consented to any assignment of Term Loans (other than any assignment to any Disqualified Institution or any natural person (or any holding company, investment vehicle or trust for, or owned and operated by, or for the primary benefit of, one or more natural persons)) unless it has objected thereto by written notice to the Administrative Agent within 10 Business Days after receipt by the Borrower of a written notice for consent thereto and (y) the consent of the Borrower shall not be required for any assignment (1) of Term Loans or Term Commitments to any Term Lender or any Affiliate of any Term Lender or an Approved Fund, (2) at any time when an Event of Default under Section 7.01(a) or Section 7.01(f) or (g), (3) of Revolving Loans or Revolving Credit Commitments to any other Revolving Lender, or (4) of Revolving Loans or Revolving Credit Commitments from Goldman Sachs Bank USA (or any of its Affiliates) to Goldman Sachs Lending Partners LLC; it being understood and agreed that the Borrower may withhold its consent (in its sole discretion) to any assignment to any Person that is known by it to be an Affiliate of a Disqualified Institution and/or an Affiliate of a Competitor (other than a Competitor Debt Fund Affiliate, unless the Borrower has other reasonable grounds on which to withhold its consent);

(B) the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed); provided that no consent of the Administrative Agent shall be required for any assignment to another Lender, any Affiliate of a Lender or any Approved Fund; and

(C) in the case of any Revolving Facility, each Issuing Bank and the Swingline Lender (such consent not to be unreasonably withheld, conditioned or delayed); provided that no consent of any Issuing Bank or the Swingline Lender shall be required for any assignment to a Revolving Lender or an Affiliate of a Revolving Lender.

(i) Assignments shall be subject to the following additional conditions:

(A) except in the case of any assignment to another Lender, any Affiliate of any Lender or any Approved Fund or any assignment of the entire remaining amount of the relevant assigning Lender's Loans or Commitments of any Class, the principal amount of Loans or Commitments of the assigning Lender subject to the relevant assignment (determined as of the date on which the Assignment Agreement with respect to such assignment is delivered to the Administrative Agent and determined on an aggregate basis in the event of concurrent assignments to Related Funds or by Related Funds) shall not be less than (x) \$1,000,000 in the case of Term Loans and Term Commitments or (y) \$5,000,000 in the case of Revolving Loans and Revolving Credit Commitments, in each case unless the Borrower and the Administrative Agent otherwise consent;

(B) any partial assignment shall be made as an assignment of a proportionate part of all the relevant assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment Agreement via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent); and

(D) the relevant Eligible Assignee, if it is not a Lender, shall deliver on or prior to the effective date of such assignment, to the Administrative Agent (1) an Administrative Questionnaire and (2) any IRS form required under Section 2.17.

(ii) Subject to the acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in any Assignment Agreement, the Eligible Assignee thereunder shall be a party hereto and, to the extent of the interest assigned pursuant to such Assignment Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment Agreement 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 (A) entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03 with respect to facts and circumstances occurring on or prior to the effective date of such assignment and (B) subject to its obligations thereunder and under Section 9.13). If any assignment by any Lender holding any Promissory Note is made after the issuance of such Promissory Note, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender such Promissory Note to the Administrative Agent for cancellation, and, following such cancellation, if requested by either the assignee or the assigning Lender, the Borrower shall issue and deliver a new Promissory Note to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

(iii) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the US a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders and their respective successors and assigns, and the commitment of, and principal amount of and interest on the Loans and LC Disbursements owing to, each Lender or Issuing Bank pursuant to the terms hereof from time to time (the "Register"). Failure to make any such recordation, or any error in such recordation, shall not affect the Borrower's obligations in respect of such Loans and LC Disbursements. The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent, the Issuing Banks 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, each Issuing Bank and each Lender (but only as to its own holdings), at any reasonable time and from time to time upon reasonable prior notice.

(iv) Upon its receipt of a duly completed Assignment Agreement executed by an assigning Lender and an Eligible Assignee, the Eligible Assignee's completed Administrative Questionnaire and any tax certification required by Section 9.05(b)(ii)(D)(2) (unless the assignee is already a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section, if applicable, and any written consent to the relevant assignment required by paragraph (b) of this Section, the Administrative Agent shall promptly accept such Assignment Agreement and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(v) By executing and delivering an Assignment Agreement, the assigning Lender and the Eligible Assignee thereunder shall be deemed to confirm and agree with each other and the other parties hereto as follows: (A) the assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that the amount of its commitments, and the outstanding balances of its Loans, in each case without giving effect to any assignment thereof which has not become effective, are as set forth in such Assignment Agreement, (B) except as set forth in clause (A) above, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statement, warranty or representation made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial

condition of the Borrower or any Restricted Subsidiary or the performance or observance by the Borrower or any Restricted Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (C) the assignee represents and warrants that it is (1) an Eligible Assignee and (2) not a Disqualified Institution or an Affiliate of any Disqualified Institution, legally authorized to enter into such Assignment Agreement; (D) the assignee confirms that it has received a copy of this Agreement and each applicable Intercreditor Agreement, together with copies of the financial statements referred to in Section 4.01(c) or the most recent financial statements delivered pursuant to Section 5.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment Agreement; (E) the assignee will independently and without reliance upon the Administrative Agent, the assigning Lender or any other Lender and based on such documents and information as it deems appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (F) the assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent, by the terms hereof, together with such powers as are reasonably incidental thereto; and (G) the assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent, any Issuing Bank or any other Lender, sell participations to any bank or other entity (other than to any Disqualified Institution, any natural person (or any holding company, investment vehicle or trust for, or owned and operated by, or for the primary benefit of, one or more natural persons) or, other than with respect to any participation to any Debt Fund Affiliate (any such participations to a Debt Fund Affiliate being subject to the limitation set forth in the first proviso of the final paragraph set forth in Section 9.05(g), as if the limitation applied to such participations), the Borrower or any of its Affiliates) (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its commitments and the Loans owing to it); provided, that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Issuing Banks 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 any Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the relevant Participant, agree to any amendment, modification or waiver described in (x) clause (A) of the first proviso to Section 9.02(b) that directly and adversely affects the Loans or commitments in which such Participant has an interest and (y) clauses (B)(1), (2) or (3) of the first proviso to Section 9.02(b); it being understood and agreed that no Lender may enter into any agreement or other arrangement with any Participant that provides such Participant with the right to agree to or approve (or direct such Lender to agree, approve, consent or not to agree, approve or consent) any other amendment, modification or waiver in respect of any Loan Document, and any such agreement or arrangement shall be deemed to be null and void and of no force or effect. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the limitations and requirements of such Sections and Section 2.19) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section and it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender, and if additional amounts are required to be paid pursuant to Section 2.17(a) or Section 2.17(c), to the Borrower and the Administrative Agent). To the extent permitted by applicable Requirements of Law, each Participant also shall be entitled to the benefits of Section 9.09 as though it were a Lender; provided that such Participant shall be subject to Section 2.18(c) as though it were a Lender.

(i) No Participant shall be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 than the participating Lender would have been entitled to receive with respect to the participation sold to such Participant unless the participation is made with the prior written consent of the Borrower (in its sole discretion), expressly acknowledging that such

Participant's entitlement to benefits under Sections 2.15, 2.16 and 2.17 is not limited to what the participating Lender would have been entitled to receive absent the grant to such Participant.

Each Lender that sells a participation or makes a grant to an SPC (as defined in Section 9.05(e)) 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 each SPC and their respective successors and registered assigns, and the principal of and interest amounts on each Participant's and each SPC's interest in the Loans or other obligations under the Loan Documents (a "Participant/SPC Register"); provided that no Lender shall have any obligation to disclose all or any portion of any Participant/SPC Register (including the identity of any Participant or SPC or any information relating to any Participant's or SPC's interest in any Commitment, Loan, Letter of Credit or any other obligation under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) or Proposed Section 1.163-5(b) of the Treasury Regulations (or any amended or successor version). The entries in the Participant/SPC Register shall be conclusive absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant/SPC Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant/SPC Register.

(d) (i) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (other than to any Disqualified Institution or any natural person (or any holding company, investment vehicle or trust for, or owned and operated by, or for the primary benefit of, one or more natural persons)) to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to any Federal Reserve Bank or other central bank having jurisdiction over such Lender, and this Section 9.05 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release any Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(i) No Lender may at any time enter into a total return swap, total rate of return swap, credit default swap or other derivative instrument under which any Secured Obligation is a reference obligation (any such swap or other derivative instrument, an "Obligations Derivative Instrument") with any counterparty that is a Disqualified Institution.

(e) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPC"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of any 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. Each party hereto hereby agrees that (i) 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 (including its obligations under Section 2.15, 2.16 or 2.17) and no SPC shall be entitled to any greater amount under Section 2.15, 2.16 or 2.17 or any other provision of this Agreement or any other Loan Document that the Granting Lender would have been entitled to receive, unless the grant to such SPC is made with the prior written consent of the Borrower (in its sole discretion), expressly acknowledging that such SPC's entitlement to benefits under Sections 2.15, 2.16 and 2.17 is not limited to what the Granting Lender would have been entitled to receive absent the grant to the SPC, (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender) and (iii) the Granting Lender shall for all purposes including approval of any amendment, waiver or other modification of any provision of the Loan Documents, remain the Lender of record hereunder. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding

commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the Requirements of Law of the US or any State thereof; provided that (i) such SPC's Granting Lender is in compliance in all material respects with its obligations to the Borrower hereunder and (ii) each Lender designating any SPC hereby agrees to indemnify, save and hold harmless each other party hereto for any loss, cost, damage or expense arising out of its inability to institute such a proceeding against such SPC during such period of forbearance. In addition, notwithstanding anything to the contrary contained in this Section 9.05, any SPC may (i) with notice to, but without the prior written consent of, the Borrower or the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guaranty or credit or liquidity enhancement to such SPC.

(f) (i) Any assignment, participation, entry into an Obligations Derivative Instrument or pledge by a Lender (A) to or with any Disqualified Institution or (B) in the case of any assignment and/or participation, without the Borrower's consent to the extent the Borrower's consent is required under this Section 9.05 (and, if applicable, not deemed to have been given pursuant to Section 9.05(b)(i)(A)), in each case, to any Person shall be null and void unless, solely in the case of any assignment, solely to the extent that there has been any subsequent assignment by a Disqualified Institution or any such other Person to an Eligible Assignee that complies with the requirements of Section 9.05(b), in which case such subsequent assignment will be deemed to be a valid and enforceable assignment for the purposes hereof, and Holdings and the Borrower shall each be entitled to seek specific performance to unwind any such assignment, participation, Obligations Derivative Instrument or pledge and/or specifically enforce this Section 9.05(f) in addition to injunctive relief (without posting a bond or presenting evidence of irreparable harm) or any other remedy available to the Borrower at law or in equity; it being understood and agreed that the Borrower, Holdings and its subsidiaries will suffer irreparable harm if any Lender breaches any obligation under this Section 9.05 as it relates to any assignment or participation to a Disqualified Person, any entry into any Obligations Derivative Instrument with any Disqualified Person, the pledge or assignment of any security interest in any Loan or Commitment to a Disqualified Person and/or any assignment or participation of, or pledge or assignment of a security interest in, any Loan or Commitment to any Person to whom the Borrower's consent is required but not obtained. Nothing in this Section 9.05(f) shall be deemed to prejudice any right or remedy that Holdings or the Borrower may otherwise have at law or equity. The Administrative Agent may make the list of Disqualified Institutions available on a confidential basis in accordance with Section 9.13 to any Lender who specifically requests a copy thereof, and such Lender may provide such list of Disqualified Institutions to any potential assignee or participant or counterparty to any Obligations Derivative Instrument who agrees to keep such list confidential in accordance with Section 9.13 solely for the purpose of permitting such Person to verify whether such Person (or any Affiliate thereof) constitutes a Disqualified Institution.

(i) If any assignment or participation under this Section 9.05 is made to any Disqualified Institution and/or any Affiliate of any Disqualified Institution (other than any Competitor Debt Fund Affiliate) and/or any other Person to whom the Borrower's consent is required but not obtained, in each case, without the Borrower's prior written consent (any such person, a "Disqualified Person"), then the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Person and the Administrative Agent, (A) terminate any Commitment of such Disqualified Person and repay all obligations of the Borrower owing to such Disqualified Person, (B) in the case of any outstanding Term Loan, held by such Disqualified Person, purchase such Term Loan by paying the lesser of (x) par and (y) the amount that such Disqualified Person paid to acquire such Term Loan, plus accrued interest thereon, accrued fees and all other amounts payable to it hereunder and/or (C) require such Disqualified Person to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 9.05), all of its interests, rights and obligations under this Agreement to one or more Eligible Assignees; provided that (I) in the case of clause (B), the applicable Disqualified Person has received payment of an amount equal to the lesser of (1) par and (2) the amount that such Disqualified Person paid for the applicable Loans and participations in Letters of Credit and Swingline Loans, plus accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the Borrower, (II) in the case of clauses (A) and (B), the Borrower shall not be liable to the relevant Disqualified Person under Section 2.16 if any LBO Rate Term SOFR Loan

owing to such Disqualified Person is repaid or purchased other than on the last day of the Interest Period relating thereto, (III) in the case of clause (C), the relevant assignment shall otherwise comply with this Section 9.05 (except that (x) no registration and processing fee required under this Section 9.05 shall be required with any assignment pursuant to this paragraph and (y) any Term Loan acquired by any Affiliated Lender pursuant to this paragraph will not be included in calculating compliance with the Affiliated Lender Cap for a period of 90 days following such transfer; provided that, to the extent the aggregate principal amount of Term Loans held by Affiliated Lenders exceeds the Affiliated Lender Cap on the 91st day following such transfer, then such excess amount shall either be (x) contributed to the Borrower or any of its subsidiaries and retired and cancelled immediately upon such contribution or (y) automatically cancelled) and (IV) in no event shall such Disqualified Person be entitled to receive amounts to which it would otherwise be entitled under Section 2.13(d). Further, whether or not the Borrower has taken any action described in the preceding sentence, (A) no Disqualified Person identified by the Borrower to the Administrative Agent shall be permitted to (x) receive information (including financial statements) provided by any Loan Party, the Administrative Agent or any Lender and/or (y) attend and/or participate in conference calls or meetings attended solely by the Lenders and the Administrative Agent, (B) (x) for purposes of determining whether the Required Lenders or the majority Lenders under any Class have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, have a right to consent (or not consent), otherwise act or direct or require the Administrative Agent or any Lender to take (or refrain from taking) any such action; it being understood that all Loans held by any Disqualified Person shall be deemed to be not outstanding for all purposes of calculating whether the Required Lenders, majority Lenders under any Class, all Lenders or all affected Lenders, as the case may be, have taken any action, and (y) shall be deemed to vote in the same proportion as Lenders that are not Disqualified Persons (1) in any proceeding under any Debtor Relief Law commenced by or against the Borrower or any other Loan Party and/or (2) for purposes of any matter requiring the consent of each Lender or each affected Lender and (C) shall not be entitled to receive the benefits of Section 9.03. For the sake of clarity, the provisions in this Section 9.05(f) shall not apply to any Person that is an assignee of any Disqualified Person, if such assignee is not a Disqualified Person.

(ii) Notwithstanding anything to the contrary herein, each of Holdings, the Borrower and each Lender acknowledges and agrees that the Administrative Agent shall not (x) have any liability for any assignment or participation made to any Disqualified Institution or Affiliated Lender (regardless of whether the consent of the Administrative Agent is required thereto) or (y) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Lender, and none of the Borrower, any Lender or any of their respective Affiliates will bring any claim to that effect.

(g) Notwithstanding anything to the contrary contained herein, any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement in respect of its Term Loans to any Affiliated Lender on a non-pro rata basis (A) through Dutch Auctions open to all Lenders holding the relevant Term Loans on a pro rata basis or (B) through open market purchases, in each case with respect to clauses (A) and (B), without the consent of the Administrative Agent; provided that:

(i) any Term Loan acquired by Holdings, the Borrower or any of its Restricted Subsidiaries shall, to the extent permitted by applicable Requirements of Law, be retired and cancelled immediately upon the acquisition thereof; provided that, upon any such retirement and cancellation, the aggregate outstanding principal amount of the Term Loans shall be deemed reduced by the full par value of the aggregate principal amount of the Term Loans so retired and cancelled, and each principal repayment installment with respect to the Term Loans pursuant to Section 2.10(a) shall be reduced on a pro rata basis by the full par value of the aggregate principal amount of Term Loans so cancelled;

(ii) any Term Loan acquired by any Non-Debt Fund Affiliate (other than Holdings, the Borrower or any of its Restricted Subsidiaries) may (but shall not be required to) be contributed to the Borrower or any of its subsidiaries (it being understood that any such Term Loans shall, to the extent permitted by applicable Requirements of Law, be retired and cancelled promptly upon such contribution); provided that, upon any such cancellation, the aggregate outstanding principal amount of the Term Loans shall be deemed reduced, as of the date of such contribution, by the full par value of the aggregate principal amount of the Term Loans so contributed and cancelled, and each principal repayment installment with respect to the Term Loans pursuant to Section 2.10(a) shall be reduced pro rata by the full par value of the aggregate principal amount of Initial Term Loans so contributed and cancelled;

(iii) the relevant Affiliated Lender and assigning or purchasing, as applicable, Lender shall have executed an Affiliated Lender Assignment and Assumption;

(iv) subject to Section 9.05(f)(ii), after giving effect to the relevant assignment and to all other assignments to all Affiliated Lenders, the aggregate outstanding principal amount of all Term Loans then held by all Affiliated Lenders shall not exceed 25% of the aggregate principal amount of the Term Loans then outstanding (after giving effect to any substantially simultaneous cancellation thereof) (the “Affiliated Lender Cap”); provided that each party hereto acknowledges and agrees that the Administrative Agent shall not be liable for any losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever incurred or suffered by any Person in connection with any compliance or non-compliance with this clause (g)(iv) or any purported assignment exceeding the Affiliated Lender Cap (it being understood and agreed that the Affiliated Lender Cap is intended to apply to any Loan made available to Affiliated Lenders by means other than formal assignment (e.g., as a result of an acquisition of another Lender (other than any Debt Fund Affiliate) by any Affiliated Lender or the provision of Additional Term Loans by any Affiliated Lender); provided, further, that to the extent that any assignment to any Affiliated Lender would result in the aggregate principal amount of Term Loans held by Affiliated Lenders exceeding the Affiliated Lender Cap (after giving effect to any substantially simultaneous cancellations thereof), the assignment of the relevant excess amount shall be null and void (except to the extent such excess amount is subsequently assigned to a Person that is not an Affiliated Lender);

(v) in connection with any assignment effected pursuant to a Dutch Auction and/or open market purchase conducted by Holdings, the Borrower or any of its Restricted Subsidiaries, (A) the relevant Person may not use the proceeds of any Revolving Loan to fund such assignment and (B) no Event of Default exists at the time of the launch of the relevant Dutch Auction or the confirmation of such open market purchase, as applicable; and

(vi) by its acquisition of Term Loans, each relevant Affiliated Lender shall be deemed to have acknowledged and agreed that:

(A) subject to clause (iv) above, the Term Loans held by such Affiliated Lender shall be disregarded in both the numerator and denominator in the calculation of any Required Lender or other Lender vote; provided that (x) such Affiliated Lender shall have the right to vote (and the Term Loans held by such Affiliated Lender shall not be so disregarded) with respect to any amendment, modification, waiver, consent or other action that requires the vote of all Lenders or all Lenders directly and adversely affected thereby, as the case may be, and (y) no amendment, modification, waiver, consent or other action shall (1) disproportionately affect such Affiliated Lender in its capacity as a Lender as compared to other Lenders of the same Class that are not Affiliated Lenders or (2) deprive any Affiliated Lender of its share of any payment in which the Lenders are entitled to share on a pro rata basis hereunder, in each case without the consent of such Affiliated Lender; and

(B) such Affiliated Lender, solely in its capacity as an Affiliated Lender, will not be entitled to (i) attend (including by telephone) or participate in any meeting or discussion (or portion thereof) among the Administrative Agent or any Lender or among

Lenders to which the Loan Parties or their representatives are not invited or (ii) receive any information or material prepared by the Administrative Agent or any Lender or any communication by or among the Administrative Agent and one or more Lenders, except to the extent such information or materials have been made available by the Administrative Agent or any Lender to any Loan Party or its representatives (and in any case, other than the right to receive notices of Borrowings, prepayments and other administrative notices in respect of its Term Loans required to be delivered to Lenders pursuant to Article 2);

(vii) no Affiliated Lender shall be required to represent or warrant that it is not in possession of material non-public information with respect to Holdings and/or any subsidiary thereof and/or their respective securities in connection with any assignment permitted by this Section 9.05(g); and

(viii) in any proceeding under any Debtor Relief Law, (A) the interest of any Affiliated Lender in any Term Loan will be deemed to be voted in the same proportion as the vote of Lenders that are not Affiliated Lenders on the relevant matter; provided that each Affiliated Lender will be entitled to vote its interest in any Term Loan to the extent that any plan of reorganization or other arrangement with respect to which the relevant vote is sought proposes to treat the interest of such Affiliated Lender (in its capacity as a Lender) in such Term Loan in a manner that is less favorable to such Affiliated Lender than the proposed treatment of Term Loans held by other Term Lenders and (B) all Affiliated Lenders shall be treated as a single lender for purposes of any “numerosity” or similar requirement applicable therein.

Notwithstanding anything to the contrary contained herein, any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement in respect of its Loans and/or Commitments to any Debt Fund Affiliate, and any Debt Fund Affiliate may, from time to time, purchase Loans and/or Commitments (x) on a pro rata basis through Dutch Auctions open to all applicable Lenders in accordance with customary procedures or (y) on a non-pro rata basis through open market purchases without the consent of the Administrative Agent, in each case, notwithstanding the requirements set forth in subclauses (i) through (viii) of this clause (g); provided that the Loans and Commitments held by all Debt Fund Affiliates shall not account for more than 49.9% of the amounts included in determining whether the Required Lenders or Required Revolving Lenders have (A) consented to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, (B) otherwise acted on any matter related to any Loan Document or (C) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document; it being understood and agreed that the portion of the Loan and/or Commitments that accounts for more than 49.9% of the relevant Required Lender or Required Revolving Lender action shall be deemed to be voted pro rata along with other Lenders that are not Debt Fund Affiliates. Any Loan acquired by any Debt Fund Affiliate may (but shall not be required to) be contributed to Holdings or any of its subsidiaries for purposes of cancelling such Indebtedness (it being understood that any Loan so contributed shall, to the extent permitted by applicable Requirements of Law, be retired and cancelled immediately upon thereof); provided that upon any such cancellation, the aggregate outstanding principal amount of the relevant Class of Loans shall be deemed reduced, as of the date of such contribution, by the full par value of the aggregate principal amount of the Loans so contributed and cancelled, and each principal repayment installment with respect to the Term Loans pursuant to Section 2.10(a) shall be reduced pro rata by the full par value of the aggregate principal amount of any applicable Term Loans so contributed and cancelled.

SECTION 6. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loan and issuance of any Letter of Credit regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect until the Termination Date. The provisions of Sections 2.15, 2.16, 2.17, 9.03 and 9.13 and Article 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Revolving Credit Commitment, the occurrence of the Termination Date or the termination of this Agreement or any provision hereof but in each case, subject to the limitations set forth in this Agreement.

SECTION 7. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, each Intercreditor Agreement and the Fee Letter constitute the entire agreement among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it has been executed by Holdings, the Borrower and the Administrative Agent and when

the Administrative Agent has received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or by email as a “.pdf” or “.tif” attachment shall be effective as delivery of a manually executed counterpart of this Agreement. It is understood and agreed that, subject to any Requirement of Law, the words “execution”, “signed”, “signature”, “delivery” and words of like import in or relating to any Loan Document shall be deemed to include any Electronic Signature, delivery or the keeping of any record in electronic form, each of which shall have the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system to the extent and as provided for in any applicable Requirement of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state laws based on the Uniform Electronic Transactions Act.

SECTION 8. Severability. To the extent permitted by applicable Requirements of Law, any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9. Right of Setoff. At any time when an Event of Default exists, the Administrative Agent and, upon the written consent of the Administrative Agent, each Issuing Bank and each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations (in any currency) at any time owing by the Administrative Agent, such Issuing Bank or such Lender, respectively, to or for the credit or the account of any Loan Party against any of and all the Secured Obligations held by the Administrative Agent, such Issuing Bank or such Lender, irrespective of whether or not the Administrative Agent, such Issuing Bank or such Lender shall have made any demand under the Loan Documents and although such obligations may be contingent or unmatured or are owed to a branch or office of such Lender or Issuing Bank different than the branch or office holding such deposit or obligation on such Indebtedness. The Administrative Agent shall promptly notify the Borrower and any applicable Lender or Issuing Bank shall promptly notify the Borrower and the Administrative Agent of such set-off or application, as applicable; provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender, each Issuing Bank and the Administrative Agent under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender, such Issuing Bank or the Administrative Agent may have. For the avoidance of doubt, the term “Lender” shall, for all purposes of this paragraph, include the Swingline Lender.

SECTION 10. Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN ANY OTHER LOAN DOCUMENT) AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN ANY OTHER LOAN DOCUMENT), WHETHER IN TORT, CONTRACT (AT LAW OR IN EQUITY) OR OTHERWISE, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF ANY US FEDERAL OR NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK (OR ANY APPELLATE COURT THEREFROM) OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING SHALL (EXCEPT AS PERMITTED BELOW) BE HEARD AND DETERMINED IN SUCH NEW YORK

STATE OR, TO THE EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, FEDERAL COURT. EACH PARTY HERETO AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY REGISTERED MAIL ADDRESSED TO SUCH PERSON SHALL BE EFFECTIVE SERVICE OF PROCESS AGAINST SUCH PERSON FOR ANY SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT. EACH PARTY HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY APPLICABLE REQUIREMENTS OF LAW. EACH PARTY HERETO AGREES THAT THE ADMINISTRATIVE AGENT RETAINS THE RIGHT TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION SOLELY IN CONNECTION WITH THE EXERCISE OF ITS RIGHTS UNDER ANY COLLATERAL DOCUMENT.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, ANY CLAIM OR DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION, SUIT OR PROCEEDING IN ANY SUCH COURT.

(d) TO THE EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL) DIRECTED TO IT AT ITS ADDRESS FOR NOTICES AS PROVIDED FOR IN SECTION 9.01. EACH PARTY HERETO HEREBY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY LOAN DOCUMENT THAT SERVICE OF PROCESS WAS INVALID AND INEFFECTIVE. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW.

SECTION 11. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY SUIT, ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 12. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 13. Confidentiality. Each of the Administrative Agent, each Lender, each Issuing Bank and each Arranger agrees (and each Lender agrees to cause its SPC, if any) to maintain the

confidentiality of the Confidential Information (as defined below), except that Confidential Information may be disclosed:

(a) to its and its Affiliates' members, partners, directors (or equivalent managers), officers, managers, employees, agents, independent auditors, or other experts and advisors, including accountants, legal counsel and other advisors (collectively, the "Representatives") on a "need to know" basis solely in connection with the transactions contemplated hereby and who are informed of the confidential nature of the Confidential Information and are or have been advised of their obligation to keep the Confidential Information of this type confidential; provided that such Person shall be responsible for its Affiliates' and their Representatives' compliance with this paragraph; provided, further, that unless the Borrower otherwise consents, no such disclosure shall be made by the Administrative Agent, any Issuing Bank, any Arranger, any Lender or any Affiliate or Representative thereof to any Affiliate or Representative of the Administrative Agent, any Issuing Bank, any Arranger, or any Lender that is a Disqualified Institution,

(b) to the extent compelled by legal process in, or reasonably necessary to, the defense of such legal, judicial or administrative proceeding, in any legal, judicial or administrative proceeding or otherwise as required by applicable Requirements of Law (in which case such Person shall, except with respect to any audit or examination conducted by bank accountants or any governmental, regulatory or self-regulatory authority exercising examination or regulatory authority, (i) to the extent practicable and permitted by applicable Requirements of Law, inform the Borrower promptly in advance thereof and (ii) use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment),

(c) upon the demand or request of any Governmental Authority (including any self-regulatory body) purporting to have jurisdiction over such Person or its Affiliates (in which case such Person shall, except with respect to any audit or examination conducted by bank accountants or any Governmental Authority or regulatory or self-regulatory authority exercising examination or regulatory authority, to the extent permitted by applicable Requirements of Law, (i) to the extent practicable and permitted by applicable Requirements of Law, inform the Borrower promptly in advance thereof and (ii) use commercially reasonable efforts to ensure that any information so disclosed is accorded confidential treatment),

(d) to the extent provided by or on behalf of the Borrower to the Administrative Agent for distribution to the Issuing Banks and/or Lenders, by the Administrative Agent to any Lender or Issuing Bank party to this Agreement, as applicable,

(e) subject to an acknowledgment and agreement by the relevant recipient that the Confidential Information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as otherwise reasonably acceptable to the Borrower and the Administrative Agent) in accordance with the standard syndication process of the Arrangers or market standards for dissemination of the relevant type of information, which shall in any event require "click through" or other affirmative action on the part of the recipient to access the Confidential Information and acknowledge its confidentiality obligations in respect thereof, to (i) any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or prospective Participant in, any of its rights or obligations under this Agreement, including any SPC (in each case other than a Disqualified Institution and/or any Person to whom the Borrower has, at the time of disclosure, affirmatively declined to consent to any assignment or participation), (ii) any pledgee referred to in Section 9.05 and/or (iii) any actual or prospective, direct or indirect contractual counterparty (or its advisors) to any Derivative Transaction (including any credit default swap) or similar derivative product to which any Loan Party is a party,

(f) subject to the Borrower's prior approval of the information to be disclosed, to the CUSIP Service Bureau or any similar agency on a confidential basis in connection with the issuance and monitoring of CUSIP numbers with respect to the facilities or

(g) (i) the existence of this Agreement (but not the terms hereof) and the existence of the Credit Facilities (but not the terms thereof) and (ii) certain other limited generic information regarding the Credit Facilities (but not any other Confidential Information), may be disclosed to market data collectors and other similar service providers to the lending industry and, in the case of the Administrative Agent, to

service providers to the Administrative Agent in connection with the administration of the Credit Facilities,

(h) to the extent the Confidential Information becomes publicly available other than as a result of a breach of this Section by such Person, its Affiliates or their respective Representatives, and

(i) with the prior written consent of the Borrower.

For purposes of this Section, “Confidential Information” means all information relating to Holdings, the Borrower and/or any of its subsidiaries and their respective businesses or the Transactions (including any information obtained by the Administrative Agent, any Issuing Bank, any Lender or any Arranger, or any of their respective Affiliates or Representatives, based on a review of any books and records relating to Holdings, the Borrower and/or any of its subsidiaries and their respective Affiliates from time to time, including prior to the date hereof) other than any such information that is publicly available to the Administrative Agent or any Arranger, Issuing Bank, or Lender on a non-confidential basis prior to disclosure by Holdings or any of its subsidiaries. For the avoidance of doubt, in no event shall any disclosure of any Confidential Information be made to any Person that is a Disqualified Institution at the time of disclosure.

SECTION 14. No Fiduciary Duty. Each of the Administrative Agent, the Arrangers, each Lender, each Issuing Bank and their respective Affiliates (collectively, solely for purposes of this paragraph, the “Credit Parties”), may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their respective affiliates. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Credit Party, on the one hand, and such Loan Party, its respective stockholders or its respective affiliates, on the other. Each Loan Party acknowledges and agrees that: (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Credit Parties, on the one hand, and the Loan Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Credit Party, in its capacity as such, has assumed an advisory or fiduciary responsibility in favor of any Loan Party, its respective stockholders or its respective affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Credit Party has advised, is currently advising or will advise any Loan Party, its respective stockholders or its respective Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents and (y) each Credit Party, in its capacity as such, is acting solely as principal and not as the agent or fiduciary of such Loan Party, its respective management, stockholders, creditors or any other Person. Each Loan Party acknowledges and agrees that such Loan Party has consulted its own legal, tax and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto.

SECTION 15. Several Obligations. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan, issue any Letter of Credit or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder.

SECTION 16. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act and the requirements of the Beneficial Ownership Regulation hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act and the Borrower in accordance with the Beneficial Ownership Regulation.

SECTION 17. Disclosure of Agent Conflicts. Each Loan Party, each Issuing Bank and each Lender hereby acknowledge and agree that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

SECTION 18. Appointment for Perfection. Each Lender hereby appoints each other Lender and each Issuing Bank as its agent for the purpose of perfecting Liens for the benefit of the Administrative Agent, the Issuing Banks and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other applicable Requirement of Law can be perfected only by possession. If any Lender or Issuing Bank (other than the Administrative Agent) obtains possession of any Collateral, such Lender or Issuing Bank shall notify the Administrative Agent thereof and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

SECTION 19. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or Letter of Credit, together with all fees, charges and other amounts which are treated as interest on such Loan or Letter of Credit under applicable Requirements of Law (collectively, the "Charged Amounts"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender or Issuing Bank holding such Loan or Letter of Credit in accordance with applicable Requirements of Law, the rate of interest payable in respect of such Loan or Letter of Credit hereunder, together with all Charged Amounts payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charged Amounts that would have been payable in respect of such Loan or Letter of Credit but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charged Amounts payable to such Lender or Issuing Bank in respect of other Loans or Letters of Credit or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, have been received by such Lender or Issuing Bank.

SECTION 20. Intercreditor Agreements. REFERENCE IS MADE TO EACH INTERCREDITOR AGREEMENT. EACH SECURED PARTY HEREUNDER AGREES THAT IT WILL BE BOUND BY AND WILL TAKE NO ACTION CONTRARY TO THE PROVISIONS OF EACH INTERCREDITOR AGREEMENT AND AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT TO ENTER INTO EACH APPLICABLE INTERCREDITOR AGREEMENT AS "FIRST LIEN AGENT" (OR EQUIVALENT) AND ON BEHALF OF SUCH SECURED PARTY. THE PROVISIONS OF THIS SECTION 9.20 ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF ANY INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO EACH INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH SECURED PARTY IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF EACH INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION TO ANY SECURED PARTY AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN ANY INTERCREDITOR AGREEMENT. THE FOREGOING PROVISIONS ARE INTENDED AS AN INDUCEMENT TO THE LENDERS OR HOLDERS OF ANY OTHER INDEBTEDNESS SUBJECT TO ANY APPLICABLE INTERCREDITOR AGREEMENT TO EXTEND CREDIT THEREUNDER AND SUCH LENDERS AND/OR HOLDERS ARE INTENDED THIRD PARTY BENEFICIARIES OF SUCH PROVISIONS AND THE PROVISIONS OF EACH APPLICABLE INTERCREDITOR AGREEMENT.

SECTION 21. Conflicts. Notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event of any conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall govern and control; provided that, in the case of any conflict or inconsistency between any Intercreditor Agreement and any Loan Document, the terms of such Intercreditor Agreement shall govern and control.

SECTION 22. Release of Guarantors. Notwithstanding anything in Section 9.02(b) to the contrary, (a) any Subsidiary Guarantor shall automatically be released from its obligations hereunder (and its Loan Guaranty and any Lien granted by such Subsidiary Guarantor pursuant to any Collateral Document shall be automatically released) (i) upon the consummation of any transaction or series of related transactions not prohibited hereunder if as a result thereof such Subsidiary Guarantor ceases to be a Restricted Subsidiary (or is or becomes an Excluded Subsidiary as a result of a single transaction or series of related transactions not prohibited hereunder), (ii) upon the occurrence of the Termination Date

and/or (iii) in the case of any Discretionary Guarantor, at the election of the Borrower, upon notice from the Borrower to the Administrative Agent at any time and (b) any Subsidiary Guarantor that meets the definition of an “Excluded Subsidiary” shall be released by the Administrative Agent promptly following the request therefor by the Borrower, subject, if applicable, to the Specified Guarantor Release Provision. In connection with any such release, the Administrative Agent shall promptly execute and deliver to the relevant Loan Party, at such Loan Party’s expense, all documents that such Loan Party shall reasonably request to evidence termination or release; provided that, upon the request of the Administrative Agent, the Borrower shall deliver a certificate of a Responsible Officer certifying that the relevant transaction has been consummated in compliance with the terms of this Agreement. Any execution and delivery of any document pursuant to the preceding sentence of this Section 9.22 shall be without recourse to or warranty by the Administrative Agent (other than as to the Administrative Agent’s authority to execute and deliver such documents).

SECTION 23. Acknowledgement 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 of the parties hereto, each such party acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of 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 the applicable Resolution Authority.

SECTION 24. Certain ERISA Matters. 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, that at least one of the following is and will be true:

- (a) 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,
- (b) 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,
- (c) (i) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (ii) 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, (iii) 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 (iv) 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

(d) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

In addition, unless either (1) subclause (i) in the immediately preceding paragraph is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with subclause (iv) in the immediately preceding paragraph, 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). To the extent the Administrative Agent (or any sub-agent thereof), any Issuing Bank or any Related Party of any of the foregoing is not reimbursed and indemnified by the Borrower, the Lenders severally agree to reimburse and indemnify the Administrative Agent (or any such sub-agent), such Issuing Bank or such Related Party, as the case may be, in proportion to their respective "pro rata shares" (determined as set forth below) for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Administrative Agent (or such sub-agent), such Issuing Bank or such Related Party in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's, such Issuing Bank's or such Related Party's, as applicable, gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). For purposes of this paragraph, a Lender's "pro rata share" shall be determined based upon its share of the sum of, without duplication, the total Revolving Credit Exposures, unused Commitments and outstanding Loans, in each case, at the time (or most recently outstanding and in effect).

SECTION 25. Judgment Currency. If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable Requirements of Law).

SECTION 26. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Derivative Transactions 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 “US 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 US or any other state of the US):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a US 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 US 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 US or a state of the US. In the event a Covered Party or a BHC ACT Affiliate of a Covered Party becomes subject to a proceeding under a US 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 US Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the US or a state of the US. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 9.26, the following terms have the following meanings:

“BHC ACT Affiliate” means an “affiliate” (as defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)).

“Covered Entity” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

FWR HOLDING CORPORATION,
as the Borrower

By: /s/ Henry Melville Hope III
Name: Henry Melville Hope III
Title: Chief Financial Officer,
Executive Vice President and
Treasurer

AI FRESH PARENT, INC.,
as Holdings

By: /s/ Christopher Tomasso
Name: Christopher Tomasso
Title: President

Signature Page to Credit Agreement

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BANK OF AMERICA, N.A.,
as Administrative Agent, an Issuing Bank, an Initial Revolving Lender, the Swingline
Lender and an Initial Term Lender

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

Signature Page to Credit Agreement

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PNC BANK, N.A., as an Initial Revolving Lender, an Issuing Bank and as an Initial Term Lender

By: /s/ Carmen Campise Jr.
Name: Carmen Campise Jr.
Title: Vice President

Signature Page to Credit Agreement

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MUFG BANK, LTD., as an Initial Revolving Lender, an Issuing Bank and as an Initial Term Lender

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

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SYNOVUS BANK, as an Initial Revolving Lender, an Issuing Bank and as an Initial Term Lender

By: /s/ Michael Sawicki
Name: Michael Sawicki
Title: Director, Corporate Banking

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GOLDMAN SACHS BANK, N.A., as an Initial Revolving Lender and as an Initial Term Lender

By: /s/ Jacob Elder
Name: Jacob Elder
Title: Authorized Signator

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BARCLAYS BANK PLC, as an Initial Revolving Lender, an Issuing Bank and as an Initial Term Lender

By: /s/ Christopher M. Aitkin
Name: Christopher M. Aitkin
Title: Vice President

Signature Page to Credit Agreement

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CITIBANK, N.A., as an Initial Revolving Lender, an Issuing Bank and as an Initial Term Lender

By: /s/ Ioannis Theocharis
Name: Ioannis Theocharis
Title: Vice President

Signature Page to Credit Agreement

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JEFFRIES FINANCE LLC, as an Initial Revolving Lender and an Issuing Bank

By: /s/ Brian Buoye
Name: Brian Buoye
Title: Managing Director

Signature Page to Credit Agreement

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Summary report:	
Litera® Change-Pro for Word 10.8.2.11 Document comparison done on 3/2/2023 2:17:49 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://WEILDMS/WEIL/98997375/1	
Modified DMS: iw://WEILDMS/WEIL/98997375/7	
Changes:	
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Delete	306
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Table Insert	0
Table Delete	1
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	747

**FIRST WATCH RESTAURANT GROUP, INC.
2021 EQUITY INCENTIVE PLAN**

Restricted Stock Unit Award Agreement

This Restricted Stock Unit Award Agreement (this “Agreement”) is made by and between First Watch Restaurant Group, Inc., a Delaware corporation (the “Company”), and [•] (the “Participant”), effective as of [•] (the “Date of Grant”).

RECITALS

WHEREAS, the Company has adopted the First Watch Restaurant Group, Inc., 2021 Equity Incentive Plan (the “Plan”), which is incorporated herein by reference and made a part of this Agreement. Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to those terms in the Plan; and

WHEREAS, the Committee has authorized and approved the grant of an Award to the Participant that will provide the Participant the opportunity to receive shares of Common Stock upon the settlement of stock units on the terms and conditions set forth in the Plan and this Agreement (“Restricted Stock Units”).

NOW THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement, the parties agree as follows:

1. **Grant of Award**. The Company hereby grants to the Participant, effective as of the Date of Grant, [•]¹ Restricted Stock Units, on the terms and conditions set forth in the Plan and this Agreement.
2. **Vesting and Forfeiture**. Subject to the terms and conditions set forth in the Plan and this Agreement, the Restricted Stock Units shall vest as follows:
 - (a) **General**. One-third (1/3) of the Restricted Stock Units shall vest on each of the first three (3) anniversaries of the Date of Grant (with such amounts rounded down to the nearest whole number for the first two anniversary dates and rounded up to the nearest whole number for the third anniversary date), subject to the Participant’s continued Service through the vesting date.
 - (b) Except as set forth in Section 2(c), upon termination of Participant’s Service for any reason or no reason, any then unvested Restricted Stock Units will be forfeited immediately, automatically and without consideration.
 - (c) **Change in Control**. Upon the Participant’s termination of Service by the Company without Cause or by the Participant for Good Reason (as defined on Exhibit A), in each case, on or prior to the first anniversary of a Change in Control, a portion of the Restricted Stock Units, if any, that remain unvested as of the date of such termination of Service, representing the lower of (i) the number of Participant’s Restricted Stock Units that remain unvested as of the date of such termination of Service and (ii) [25%] / [37.5%] / [50%] of the Restricted Stock Units (rounded down to the nearest whole number) granted pursuant to this Agreement which

¹ NTD: Determined by dividing target award grant value by the closing price of FWRG common stock on the date of grant and rounding down to the nearest whole share.

have not yet become vested as of the date of such termination of Service shall become fully vested upon the date of such termination of Service.²

3. Payment

- (a) Settlement. The Company shall deliver to the Participant within sixty (60) days following the vesting date of the Restricted Stock Units, a number of shares of Common Stock equal to the aggregate number of Restricted Stock Units that have vested pursuant to Section 2(a) or Section 2(c). No fractional shares of Common Stock shall be delivered and the Committee shall determine whether cash, other securities or other property shall be paid or transferred in lieu of any fractional shares of Common Stock or whether such fractional shares or any rights thereto shall be canceled, terminated or otherwise eliminated. The Company may deliver such shares of Common Stock either through book entry accounts held by, or in the name of, the Participant or cause to be issued a certificate or certificates representing the number of shares to be issued in respect of the Restricted Stock Units, registered in the name of the Participant.
- (b) Withholding Requirements. The Company shall have the right to deduct or withhold from any shares of Common Stock deliverable under this Agreement, or in its discretion to require the Participant to remit to the Company, amounts necessary to satisfy all federal, state and local taxes required to be withheld in connection with the settlement of the Restricted Stock Units. In addition, subject to Section 16 of the Exchange Act, withholding may be satisfied through an open-market, broker-assisted sales transaction pursuant to which the Company is promptly delivered the amount of proceeds necessary to satisfy the withholding amount, which shall be subject to any terms and conditions imposed by the Committee.

4. Section 280G. In the event that it is determined that any payments or benefits provided under the Plan and this Agreement, together with any payments or benefits to be provided under any other plan, program, arrangement or agreement, would constitute parachute payments within the meaning of Section 280G of the Code and would, but for this Section 4 be subject to the excise tax imposed under Section 4999 of the Code (or any successor provision thereto) or any similar tax imposed by state or local law or any interest or penalties with respect to such taxes (the "Excise Tax"), then the amounts of any such payments or benefits under the Plan, this Agreement and such other arrangements shall be either (a) paid in full or (b) reduced to the minimum extent necessary to ensure that no portion of the payments or benefits is subject to the Excise Tax, whichever of the foregoing (a) or (b) results in the Participant's receipt on an after-tax basis of the greatest amount of payments and benefits after taking into account the applicable federal, state, local and foreign income, employment and excise taxes (including the Excise Tax). The Company shall cooperate in good faith with the Participant in making such determination, including but not limited to providing the Participant with an estimate of any parachute payments as soon as reasonably practicable prior to an event constituting a change in the ownership or effective control of the Company or in the ownership of a substantial portion of the assets of the Company (within the meaning of Section 280G(b)(2)(A) of the Code). Any such reduction pursuant to this Section 4 shall be made in a manner that results in the greatest economic benefit for the Participant and is consistent with the requirements of Section 409A. Any

² NTD: Include 50% acceleration for CEO and CFO, 37.5% acceleration for Section 16 Officers other than CEO and CFO and 25% acceleration for employees at the level of senior vice president and below.

determination required under this Section 4 shall be made in writing in good faith by a nationally recognized public accounting firm selected by the Company. The Company and the Participant shall provide the accounting firm with such information and documents as the accounting firm may reasonably request in order to make a determination under this Section 4.

5. Miscellaneous Provisions

- (a) Rights of a Shareholder; Dividend Equivalents. Prior to settlement of the Restricted Stock Units in shares of Common Stock, neither the Participant nor the Participant's representative will have any rights as a shareholder of the Company with respect to any shares of Common Stock underlying the Restricted Stock Units. If cash dividends or other cash distributions are paid in respect of the shares of Common Stock underlying unvested Restricted Stock Units, then a dividend equivalent equal to the amount paid in respect of one Share shall accumulate and be paid with respect to each unvested Restricted Stock Unit at time of settlement; provided that any dividend equivalent rights granted shall be subject to the same vesting terms as the related Restricted Stock Units.
- (b) Transfer Restrictions. The shares of Common Stock delivered hereunder will be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the Plan or the rules, regulations and other requirements of the Securities and Exchange Commission, any stock exchange upon which such shares are listed, any applicable federal or state laws and any agreement with, or policy of, the Company or the Committee to which the Participant is a party or subject, and the Committee may cause orders or designations to be placed upon the books and records of the Company's transfer agent to make appropriate reference to such restrictions.
- (c) Clawback Policy. The Participant acknowledges that the Participant is subject to the provisions of Section 12 (Forfeiture Events) and Section 14.6 (Trading Policy and Other Restrictions) of the Plan and any compensation recovery, "clawback" or similar policy adopted by the Company from time to time and/or made applicable by law including the provisions of Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection and Act and the rules, regulations and requirements adopted thereunder by the Securities and Exchange Commission and/or any national securities exchange on which the Company's equity securities may be listed.
- (d) Adjustments. In the event of any change with respect to the outstanding shares of Common Stock contemplated by Section 4.5 of the Plan, the Restricted Stock Units may be adjusted in accordance with Section 4.5 of the Plan.
- (e) No Right to Continued Service. Nothing in this Agreement or the Plan confers upon the Participant any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Subsidiary retaining the Participant) or of the Participant, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.
- (f) Successors and Assigns. The provisions of this Agreement will inure to the benefit of, and be binding upon, the Company and its successors and assigns and upon the Participant, the Participant's executor, personal representative(s), distributees, administrator, permitted transferees, permitted assignees,

beneficiaries, and legatee(s), as applicable, whether or not any such person will have become a party to this Agreement and have agreed in writing to be joined herein and be bound by the terms hereof.

- (g) Severability. The provisions of this Agreement are severable, and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, then the remaining provisions will nevertheless be binding and enforceable.
- (h) Amendment. Except as otherwise provided in the Plan, this Agreement will not be amended unless the amendment is agreed to in writing by both the Participant and the Company.
- (i) Choice of Law; Jurisdiction. This Agreement and all claims, causes of action or proceedings (whether in contract, in tort, at law or otherwise) that may be based upon, arise out of or relate to this Agreement will be governed by the internal laws of the State of Delaware, excluding any conflicts or choice-of-law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction.
- (j) Signature in Counterparts. This Agreement may be signed in counterparts, manually or electronically, each of which will be an original, with the same effect as if the signatures to each were upon the same instrument.
- (k) Electronic Delivery. The Company may, in its sole discretion, decide to deliver any documents related to any Awards granted under the Plan by electronic means or to request the Participant's consent to participate in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and to agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.
- (l) Acceptance. The Participant hereby acknowledges receipt of a copy of the Plan and this Agreement. The Participant has read and understands the terms and provisions of the Plan and this Agreement, and accepts the Restricted Stock Units subject to all of the terms and conditions of the Plan and this Agreement. In the event of a conflict between any term or provision contained in this Agreement and a term or provision of the Plan, the applicable term and provision of the Plan will govern and prevail. The Participant understands they have a right to consult with counsel and have been afforded the opportunity to consult with an attorney to the extent they wish to do so.

[Signature page follows.]

IN WITNESS WHEREOF, the Company and the Participant have executed this Restricted Stock Unit Award Agreement as of the dates set forth below.

PARTICIPANT

FIRST WATCH RESTAURANT GROUP, INC.

_____ By: _____

Date: _____ Date: _____

Exhibit A

“Good Reason” shall mean the occurrence of any of the following events without the consent of the Participant: (i) the Company materially reduces the Participant’s annual base salary or annual bonus opportunity percentage; (ii) a material diminution in the Participant’s responsibilities; or (iii) the Company relocates the Participant’s principal place of employment more than twenty (20) miles from the existing location as of the Date of Grant (unless such relocation results in a reduction in the Participant’s one-way commute). Notwithstanding the foregoing, the events described in clauses (i), (ii) or (iii) shall not constitute Good Reason unless (A) the Participant has given the Company written notice of the Participant’s resignation for Good Reason, setting forth the conduct of the Company that is alleged to constitute Good Reason, within thirty (30) days following the first occurrence of such event, and (B) the Participant has provided the Company at least thirty (30) days following the date on which such notice is provided to cure such conduct and the Company has failed to do so.

**FIRST WATCH RESTAURANT GROUP, INC.
2021 EQUITY INCENTIVE PLAN**

Restricted Stock Unit Award Agreement

This Restricted Stock Unit Award Agreement (this “Agreement”) is made by and between First Watch Restaurant Group, Inc., a Delaware corporation (the “Company”), and [•] (the “Participant”), effective as of [•] (the “Date of Grant”).

RECITALS

WHEREAS, the Company has adopted the First Watch Restaurant Group, Inc., 2021 Equity Incentive Plan (the “Plan”), which is incorporated herein by reference and made a part of this Agreement. Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to those terms in the Plan; and

WHEREAS, the Committee has authorized and approved the grant of an Award to the Participant that will provide the Participant the opportunity to receive shares of Common Stock upon the settlement of stock units on the terms and conditions set forth in the Plan and this Agreement (“Restricted Stock Units”).

NOW THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement, the parties agree as follows:

1. Grant of Award. The Company hereby grants to the Participant, effective as of the Date of Grant, [•] Restricted Stock Units, on the terms and conditions set forth in the Plan and this Agreement.
2. Vesting and Forfeiture. Subject to the terms and conditions set forth in the Plan and this Agreement, the Restricted Stock Units shall vest as follows:
 - (a) General. One-hundred percent (100%) of the Restricted Stock Units granted under this Agreement shall vest on the first anniversary of the Date of Grant, subject to the Participant’s continued Service through the vesting date.
 - (b) Change in Control. Upon the Participant’s termination of Service by the Company without Cause upon or immediately prior to a Change in Control, one-hundred percent (100%) of the Restricted Stock Units granted under this Agreement shall vest.
 - (c) Termination of Service. Termination of Service. Upon the Participant’s termination of service for any reason or no reason (other than a termination described in Section 2(b)), any then unvested Restricted Stock Units will be forfeited immediately, automatically and without consideration.

3. Payment

(a) Settlement. The Company shall deliver to the Participant within sixty (60) days following the vesting date of the Restricted Stock Units, a number of shares of Common Stock equal to the aggregate number of Restricted Stock Units that have vested pursuant to Section 2(a) or Section 2(b). No fractional shares of Common Stock shall be delivered and the Committee shall determine whether cash, other securities or other property shall be paid or transferred in lieu of any fractional shares of Common Stock or whether such fractional shares or any rights thereto shall be canceled, terminated or otherwise eliminated. The Company may deliver such shares of Common Stock either through book entry accounts held by, or in the name of, the Participant or cause to be issued a certificate or certificates representing the number of shares to be issued in respect of the Restricted Stock Units, registered in the name of the Participant.

(b) Withholding Requirements. The Company shall have the right to deduct or withhold from any shares of Common Stock deliverable under this Agreement, or in its discretion to require the Participant to remit to the Company, amounts necessary to satisfy all federal, state and local taxes required to be withheld in connection with the settlement of the Restricted Stock Units. In addition, subject to Section 16 of the Exchange Act, withholding may be satisfied through an open-market, broker-assisted sales transaction pursuant to which the Company is promptly delivered the amount of proceeds necessary to satisfy the withholding amount, which shall be subject to any terms and conditions imposed by the Committee.

4. Section 280G. In the event that it is determined that any payments or benefits provided under the Plan and this Agreement, together with any payments or benefits to be provided under any other plan, program, arrangement or agreement, would constitute parachute payments within the meaning of Section 280G of the Code and would, but for this Section 4 be subject to the excise tax imposed under Section 4999 of the Code (or any successor provision thereto) or any similar tax imposed by state or local law or any interest or penalties with respect to such taxes (the "Excise Tax"), then the amounts of any such payments or benefits under the Plan, this Agreement and such other arrangements shall be either (a) paid in full or (b) reduced to the minimum extent necessary to ensure that no portion of the payments or benefits is subject to the Excise Tax, whichever of the foregoing (a) or (b) results in the Participant's receipt on an after-tax basis of the greatest amount of payments and benefits after taking into account the applicable federal, state, local and foreign income, employment and excise taxes (including the Excise Tax). The Company shall cooperate in good faith with the Participant in making such determination, including but not limited to providing the Participant with an estimate of any parachute payments as soon as reasonably practicable prior to an event constituting a change in the ownership or effective control of the Company or in the ownership of a substantial portion of the assets of the Company (within the meaning of Section 280G(b)(2)(A) of the Code). Any such reduction pursuant to this Section 4 shall be made in a manner that results in the greatest economic benefit for the Participant and is consistent with the requirements of Section 409A. Any determination required under this Section 4 shall be made in writing in good faith by a nationally recognized public accounting firm selected by the Company. The Company and the Participant shall provide the accounting firm with such information and

documents as the accounting firm may reasonably request in order to make a determination under this Section 4.

5. Miscellaneous Provisions

- (a) Rights of a Shareholder; Dividend Equivalents. Prior to settlement of the Restricted Stock Units in shares of Common Stock, neither the Participant nor the Participant's representative will have any rights as a shareholder of the Company with respect to any shares of Common Stock underlying the Restricted Stock Units. If cash dividends or other cash distributions are paid in respect of the shares of Common Stock underlying unvested Restricted Stock Units, then a dividend equivalent equal to the amount paid in respect of one Share shall accumulate and be paid with respect to each unvested Restricted Stock Unit at time of settlement; provided that any dividend equivalent rights granted shall be subject to the same vesting terms as the related Restricted Stock Units.
- (b) Transfer Restrictions. The shares of Common Stock delivered hereunder will be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the Plan or the rules, regulations and other requirements of the Securities and Exchange Commission, any stock exchange upon which such shares are listed, any applicable federal or state laws and any agreement with, or policy of, the Company or the Committee to which the Participant is a party or subject, and the Committee may cause orders or designations to be placed upon the books and records of the Company's transfer agent to make appropriate reference to such restrictions.
- (c) Clawback Policy. The Participant acknowledges that the Participant is subject to the provisions of Section 12 (Forfeiture Events) and Section 14.6 (Trading Policy and Other Restrictions) of the Plan and any compensation recovery, "clawback" or similar policy adopted by the Company from time to time and/or made applicable by law including the provisions of Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection and Act and the rules, regulations and requirements adopted thereunder by the Securities and Exchange Commission and/or any national securities exchange on which the Company's equity securities may be listed.
- (d) Adjustments. In the event of any change with respect to the outstanding shares of Common Stock contemplated by Section 4.5 of the Plan, the Restricted Stock Units may be adjusted in accordance with Section 4.5 of the Plan.
- (e) No Right to Continued Service. Nothing in this Agreement or the Plan confers upon the Participant any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Subsidiary retaining the Participant) or of the Participant, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.
- (f) Successors and Assigns. The provisions of this Agreement will inure to the benefit of, and be binding upon, the Company and its successors and assigns and

upon the Participant, the Participant's executor, personal representative(s), distributees, administrator, permitted transferees, permitted assignees, beneficiaries, and legatee(s), as applicable, whether or not any such person will have become a party to this Agreement and have agreed in writing to be joined herein and be bound by the terms hereof.

- (g) Severability. The provisions of this Agreement are severable, and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, then the remaining provisions will nevertheless be binding and enforceable.
- (h) Amendment. Except as otherwise provided in the Plan, this Agreement will not be amended unless the amendment is agreed to in writing by both the Participant and the Company.
- (i) Choice of Law; Jurisdiction. This Agreement and all claims, causes of action or proceedings (whether in contract, in tort, at law or otherwise) that may be based upon, arise out of or relate to this Agreement will be governed by the internal laws of the State of Delaware, excluding any conflicts or choice-of-law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction.
- (j) Signature in Counterparts. This Agreement may be signed in counterparts, manually or electronically, each of which will be an original, with the same effect as if the signatures to each were upon the same instrument.
- (k) Electronic Delivery. The Company may, in its sole discretion, decide to deliver any documents related to any Awards granted under the Plan by electronic means or to request the Participant's consent to participate in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and to agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.
- (l) Acceptance. The Participant hereby acknowledges receipt of a copy of the Plan and this Agreement. The Participant has read and understands the terms and provisions of the Plan and this Agreement, and accepts the Restricted Stock Units subject to all of the terms and conditions of the Plan and this Agreement. In the event of a conflict between any term or provision contained in this Agreement and a term or provision of the Plan, the applicable term and provision of the Plan will govern and prevail. The Participant understands they have a right to consult with counsel and have been afforded the opportunity to consult with an attorney to the extent they wish to do so.

[Signature page follows.]

IN WITNESS WHEREOF, the Company and the Participant have executed this Restricted Stock Unit Award Agreement as of the dates set forth below.

PARTICIPANT FIRST WATCH RESTAURANT GROUP, INC.

_____ By: _____
Date: _____ Date: _____

Subsidiaries of First Watch Restaurant Group, Inc.

As of December 25, 2022

Entity Name	Jurisdiction of Formation
AI Fresh Parent, Inc.	Delaware
E&I Holdings, Inc.	Colorado
First Watch E&I Restaurant Group, LLC	Delaware
First Watch Franchise Development Co.	Delaware
First Watch Restaurants Texas, Inc.	Delaware
First Watch Restaurants, Inc. (d/b/a First Watch)	Florida
First Watch Texas Holding, Inc.	Delaware
FWR Holding Corporation	Delaware
Good Egg Restaurants, LLC	Arizona
TFW-NC, LLC	North Carolina

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-268197) and Form S-8 (No. 333-259937) of First Watch Restaurant Group, Inc. of our report dated March 7, 2023 relating to the financial statements, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP
Tampa, Florida
March 7, 2023

Certification of Principal Executive Officer Pursuant to Exchange Act Rule 13a-14(a)/15d-14(a) as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Christopher A. Tomasso, certify that:

1. I have reviewed this Annual Report on Form 10-K of First Watch Restaurant Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, 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;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 7, 2023

/s/ Christopher A. Tomasso

Christopher A. Tomasso
Chief Executive Officer
(Principal Executive Officer)

**Certification of Principal Financial Officer Pursuant to Exchange Act Rule 13a-14(a)/15d-14(a) as Adopted
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Mel Hope, certify that:

1. I have reviewed this Annual Report on Form 10-K of First Watch Restaurant Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, 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;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 7, 2023 /s/ Mel Hope

Mel Hope
Chief Financial Officer
(Principal Financial Officer)

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER 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 First Watch Restaurant Group, Inc. (the “Company”) for the fiscal year ended December 25, 2022, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), Christopher A. Tomasso, Chief Executive Officer of the Company, and Mel Hope, Chief Financial Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to their knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 7, 2023

/s/ Christopher A. Tomasso

Christopher A. Tomasso
Chief Executive Officer
(Principal Executive Officer)

/s/ Mel Hope

Mel Hope
Chief Financial Officer
(Principal Financial Officer)