Amendment No. 3 to confidential submission
As submitted confidentially with the Securities and Exchange Commission on July 29, 2021
This draft registration statement has not been publicly filed with the Securities and Exchange Commission and all information herein remains strictly confidential.
Registration No. 333-

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

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

First Watch Restaurant Group, Inc.
(Exact name of registrant as specified in its charter)

Delaware	5812	82-4271369
(State or Other Jurisdiction of Incorporation or Organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

8725 Pendery Place, Suite 201, Bradenton, FL 34201
(941) 907-9800
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Christopher A. Tomasso
President, Chief Executive Officer and Director
8725 Pendery Place, Suite 201, Bradenton, FL 34201
(941) 907-9800
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

Alexander D. Lynch, Esq. Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, New York 10153 (212) 310-8000 (Phone) (212) 310-8007 (Fax)	*Copies to:* Jay Wolszczak, Esq. General Counsel and Secretary 8725 Pendery Place, Suite 201, Bradenton, FL 34201 (941) 907-9800	Marc D. Jaffe, Esq. Ian D. Schuman, Esq. Peter J. Sluka, Esq. Latham & Watkins LLP 1271 Avenue of the Americas New York, New York 10020 (212) 906-1894

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

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

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

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

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

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

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

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee
Common stock, $0.01 par value per share	$	$

(1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) promulgated under the Securities Act of 1933, as amended.
(2) Includes shares of common stock that may be issuable upon exercise of an option to purchase additional shares granted to the underwriters.

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

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

Subject to Completion, Dated

PRELIMINARY PROSPECTUS

FIRST WATCH
THE DAYTIME CAFE

Shares

First Watch Restaurant Group, Inc.

Common Stock

This is an initial public offering of common stock by First Watch Restaurant Group, Inc. (the "Company"). We are offering shares of our common stock.

Prior to this offering, there has been no public market for our common stock. It is currently estimated that the initial public offering price per share will be between $ and $. We intend to apply to have our common stock listed on the Nasdaq Capital Market ("Nasdaq") under the symbol "FWRG."

We are an "emerging growth company" as defined under the federal securities laws and, as such, will be subject to reduced public company reporting requirements. See "Prospectus Summary – Implications of Being an Emerging Growth Company."

Following the closing of this offering, Advent (as defined on page 4 of this prospectus) will indirectly beneficially own approximately of our outstanding common stock, or if the underwriters' option to purchase additional shares is fully exercised. As a result, Advent will beneficially own shares sufficient for majority votes over all matters requiring stockholder votes and will be able to exercise significant voting influence over fundamental and significant corporate matters and transactions. Therefore, after the completion of this offering, we expect to be a "controlled company" within the meaning of the corporate governance standards of Nasdaq. See "Risk Factors—Risks Related to Our Initial Public Offering and Ownership of Our Common Stock," "Management—Director Independence and Controlled Company Exemption" and "Principal Stockholders."

See "Risk Factors" on page 26 to read about factors you should consider before buying shares of our common stock.

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

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

(1) We refer you to "Underwriting," beginning on page 137 of this prospectus, for additional information regarding total underwriter compensation.

To the extent that the underwriters sell more than shares of common stock, the underwriters have an option to purchase up to an additional shares from us at the initial public offering price less the underwriting discount.

BofA Securities **Goldman Sachs & Co. LLC** **Jefferies**

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

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

Trademarks and Trade Names

We and our subsidiaries own or have the rights to various trademarks, trade names, service marks and copyrights, including the following: "First Watch," "You First," "Yeah, It's Fresh!" and various logos used in association with these terms. Solely for convenience, the trademarks, trade names, service marks and copyrights referred to herein are listed without the ©, ® and ™ symbols, but such references are not intended to indicate, in any way, that we, or the applicable owner, will not assert, to the fullest extent under applicable law, our or their, as applicable, rights to these trademarks, trade names, service marks and copyrights. Other trademarks, trade names, service marks or copyrights appearing in this prospectus are the property of their respective owners.

Market and Industry Information

Unless otherwise indicated, market data and industry for information used throughout this prospectus is based on management's knowledge of the industry and the good faith estimates of management. We also relied, to the extent available, upon independent industry surveys and publications and other publicly available information prepared by a number of sources, including third-party industry sources, such as a market report titled "Restaurant, Food & Beverage Market Research Handbook 2020-2021" published in September 2019 by Richard K. Miller & Associates ("RKMA"), information published by the NPD Group and a five-year longitudinal study of employee surveys on Glassdoor published in June 2019 by William Blair. All of the market data and industry information used in this prospectus involves a number of assumptions and limitations, and you are cautioned not to give undue weight to such estimates. Although we believe that these sources are reliable, neither we nor the underwriters can guarantee the accuracy or completeness of this information and neither we nor the underwriters have independently verified this information. While we believe the estimated market position, market opportunity and market size information included in this prospectus is generally reliable, such information, which is derived in part from management's estimates and beliefs, is inherently uncertain and imprecise. Projections, assumptions and estimates of our future performance and the future performance of the industry in which we operate are necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described in "Risk Factors," "Cautionary Note Regarding Forward-Looking Statements" and elsewhere in this prospectus. These and other factors could cause results to differ materially from those expressed in our estimates and beliefs and in the estimates prepared by independent parties.

Basis of Financial Presentation

We use a 52- or 53-week fiscal year ending on the last Sunday of each calendar year. All references to fiscal 2020 and fiscal 2019 reflect the results of the 52-week fiscal year ended December 27, 2020 and the 52-week fiscal year ended December 29, 2019, respectively. Our fiscal quarters are comprised of 13 weeks each, except for fiscal years consisting of 53 weeks for which the fourth quarter will consist of 14 weeks, and end on the 13th Sunday of each quarter (14th Sunday of the fourth quarter, when applicable). All consolidated financial statements presented in this prospectus have been prepared in U.S. dollars and in accordance with generally accepted accounting principles in the United States of America ("GAAP"). We report financial and operating information in one segment.

Key Metrics

Average Unit Volume ("AUV")

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

Average Weekly Sales ("AWS")

AWS is the restaurant sales (excluding gift card breakage) for an individual or group of restaurants divided by the total number of operating weeks in the period being measured.

Cash-on-Cash Return

Cash-on-Cash Return is defined as restaurant level operating profit (excluding gift card breakage) in the third year of operation (months 25-36 of operation) for our company-owned restaurants divided by their cash build-out expenses, net of landlord incentives. Restaurant level operating profit is defined as restaurant sales, less restaurant operating expenses, which include food and beverage costs, labor and other related expenses, other restaurant operating expenses and occupancy expenses. Restaurant level operating profit excludes corporate level expenses, pre-opening expenses, deferred rent expense and other items that we do not consider in our evaluation of ongoing core operating performance of our restaurants as identified in the reconciliation of Net loss from operations, the most directly comparable GAAP measure, to restaurant level operating profit, included in "Prospectus Summary – Summary Historical Consolidated Financial and Other Data."

Franchise-owned New Restaurant Openings ("Franchise-owned NROs")

Franchise-owned NROs are the number of new franchise-owned First Watch restaurants commencing operations during the period.

New Restaurant Openings ("NROs")

NROs are the number of new company-owned First Watch restaurants commencing operations during the period.

Same-Restaurant Sales Growth

Same-restaurant sales growth is the percentage change in year-over-year restaurant sales (excluding gift card breakage) for the Comparable Restaurant Base. For fiscal 2020 and fiscal 2019, there were 212 restaurants and 168 restaurants, respectively, in our Comparable Restaurant Base.

We gather daily sales data and regularly analyze the customer traffic counts and the mix of menu items sold to aid in developing menu pricing, product offerings and promotional strategies designed to produce sustainable same-restaurant sales growth.

Same-Restaurant Traffic Growth

Same-restaurant traffic growth is the percentage change in traffic counts as compared to the same period in the prior year using the Comparable Restaurant Base. For fiscal 2020 and fiscal 2019, there were 212 restaurants and 168 restaurants, respectively, in our Comparable Restaurant Base. We gather daily traffic data and regularly analyze customer traffic to aid in developing menu pricing, product offerings and promotional strategies.

System-wide New Restaurant Openings ("System-wide NROs")

System-wide NROs are the number of NROs and Franchise-owned NROs commencing operations during the period.

System-wide restaurants

System-wide restaurants is the total number of restaurants, including all company-owned and franchised restaurants.

System-wide sales

System-wide sales consist of restaurant sales from our company-owned restaurants and franchised restaurants. We do not recognize the restaurant sales from our franchised restaurants as revenue. See Note 2, *Summary of Significant Accounting Policies* in the notes to the audited consolidated financial statements included elsewhere in this prospectus for a description of our revenue recognition policy.

PROSPECTUS SUMMARY

This summary highlights information appearing elsewhere in this prospectus. This summary is not complete and does not contain all of the information that you should consider before making a decision to participate in the offering. You should carefully read the entire prospectus, including the information presented under "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," the consolidated financial statements as of and for the fiscal years ended December 27, 2020 and December 29, 2019 and notes related thereto included elsewhere in this prospectus, before making an investment decision. Unless the context requires otherwise, references to "our company," "the Company," "we," "us," "our" and "First Watch" refer to First Watch Restaurant Group, Inc. and its direct and indirect subsidiaries on a consolidated basis.

We Are First Watch

We are First Watch – an award-winning high-growth daytime restaurant concept serving made-to-order breakfast, brunch and lunch using fresh ingredients, based on year-over-year system-wide sales growth metrics according to Nation's Restaurant News. Since our founding in 1983, we have built our brand on our commitment to operational excellence, our "You First" culture and our culinary mission centered around a fresh, innovative menu that is always evolving. These foundational brand pillars have established First Watch as a leader in daytime dining ("Daytime Dining") – a fast growing restaurant segment that has emerged and differentiated itself from other legacy segments by operating exclusively during daytime hours with a progressive on-trend chef-driven menu, with such leadership demonstrated by our dramatic growth in number of locations over the past 15 years, as discussed in Market Force's annual consumer study. Our one shift, from 7:00 a.m. to 2:30 p.m., and one main menu enable us to optimize restaurant operations and attract and retain employees who are passionate about hospitality and drawn to our "No Night Shifts Ever" approach. This differentiation has driven strong consumer demand and operating performance as evidenced by our 28 consecutive quarters of same-restaurant sales growth from fiscal 2013 to fiscal 2019 and positive annual same-restaurant traffic growth from fiscal 2014 to fiscal 2019, prior to the emergence of the COVID-19 pandemic.

Our unique positioning, due to our one-shift and one-menu approach, coupled with our commitment to our employees and customers throughout the pandemic allowed us to reopen our restaurants with accelerating operating momentum in the second half of 2020 and into 2021, recording same restaurant sales growth of % in the second fiscal quarter ended June 27, 2021 ("second fiscal quarter of 2021") relative to the fiscal quarter ended June 30, 2019 ("second fiscal quarter of 2019"). Throughout the COVID-19 pandemic, we invested in supplemental compensation and expanded health and wellness benefits for our people while at the same time we accelerated strategic investments in our business and continued to expand our footprint, opening 42 and System-wide NROs in fiscal 2020 and during the twenty-six weeks ended June 27, 2021, respectively. In January 2020, the Company was recognized as "America's Favorite Restaurant Brand" in Market Force's annual consumer study and as one of three industry finalists for Black Box Intelligence's 2020 Best Practices award. As of June 27, 2021, we had restaurants across states, of our restaurants were company-owned and were operated by our franchisees.

At First Watch, we take a creative approach to Daytime Dining led by a focus on freshness. Each item is made-to-order and prepared with care – you will not find 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, lunch and brunch, along with First Watch-specific specialties such as our protein-packed Quinoa Power Bowl®, Farmstand Breakfast Tacos, Avocado Toast, Morning Meditation (juiced in-house daily), our new Vodka Kale Tonic, Chickichangas and our famous Million Dollar Bacon. While our menu constantly evolves, our focus on – and commitment to – freshness never wavers.

Our Mission: You First

For more than 38 years, our management has cultivated an organizational culture built on our mission 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 give back in meaningful ways to the local communities in which we operate and also support national and international causes we care about, such as our Project Sunrise partnership that supports women-owned coffee farms in Colombia, which in turn empowers them to reinvest in their communities. Our "You First" mission, in addition to our quality of life advantage inherent in our single-shift operating model, has led us to be recognized as an employer of choice in our industry, according to a five-year longitudinal study of employee surveys on Glassdoor published in June 2019 by William Blair.

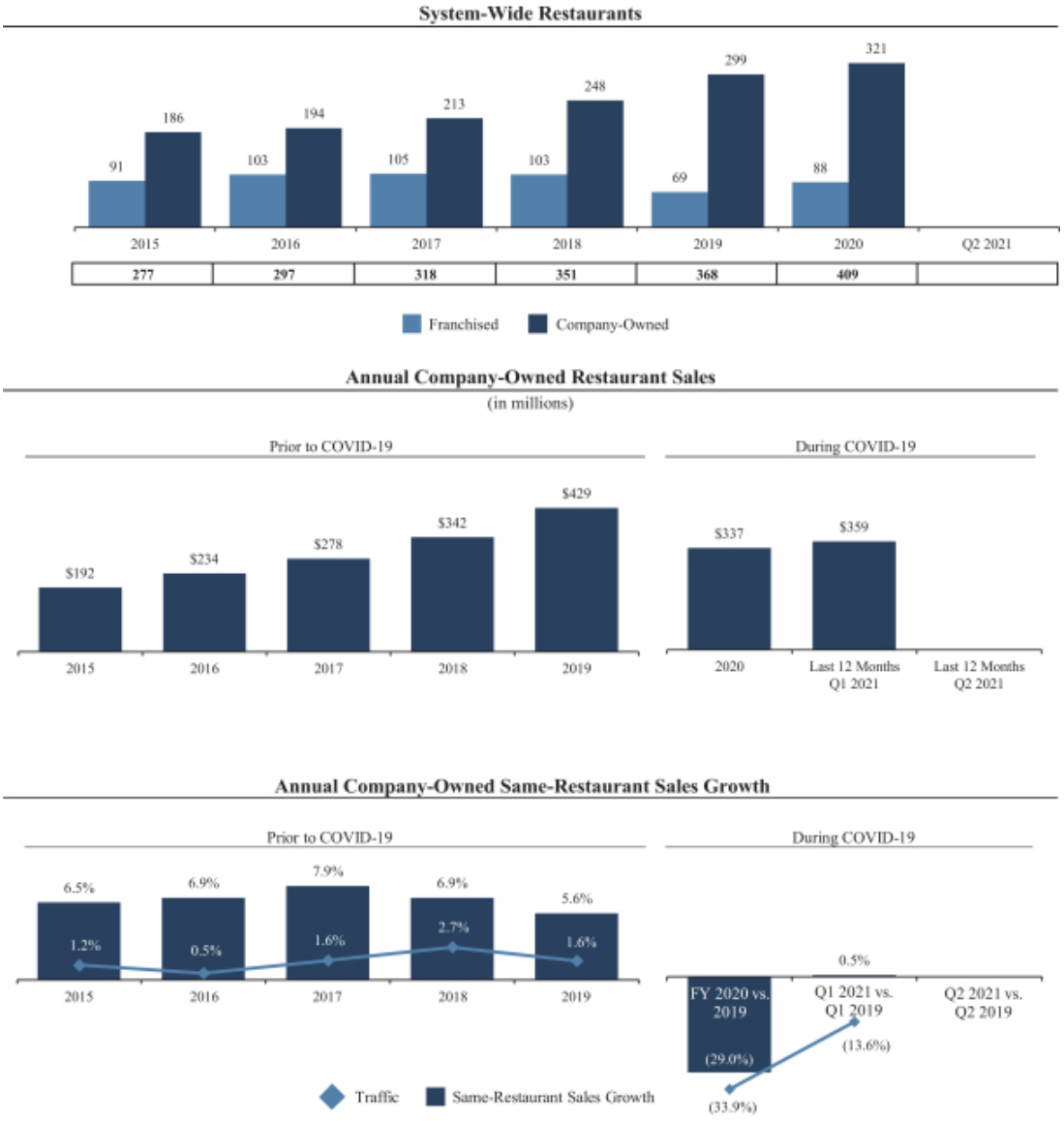
Proven Record of Sustained Growth

Our long track record of sales and unit growth, spanning almost four decades, demonstrates our broad brand appeal, compelling economic proposition and difficult-to-replicate business model. We have achieved consistent growth in total restaurants to as of June 27, 2021, from 277 restaurants in fiscal 2015. Over the six-year period ended December 29, 2019 (prior to the emergence of the COVID-19 pandemic), we:

- Consistently delivered same-restaurant sales growth, averaging 6.3% annually
- Consistently achieved positive annual same-restaurant traffic growth, averaging 1.4% annually

Over the five-year period ended December 29, 2019 (prior to the emergence of the COVID-19 pandemic), we:

- Consistently increased AUVs by 25.7%, from $1.3 million in fiscal 2015 to $1.6 million in fiscal 2019
- Consistently opened NROs with an average cash-on-cash return of 50.8%.



Our COVID-19 Response and How We Emerged as a Stronger Company

Our strong momentum in fiscal 2019 continued into January 2020 and February 2020 with same restaurant sales growth of 7.4% and 4.7%, respectively. However, as the COVID-19 pandemic emerged in March 2020 and its severity became apparent, our management team devised a strategy not only to prioritize the health and safety of our employees and customers in keeping with our “You First” culture, but also to accelerate planned strategic

initiatives that we understood would position us to be more nimble in capturing sales. The following are some of the actions we took that enabled us to persevere during the pandemic and emerge as a stronger company in 2021:

- Aligned with our sponsor, Advent International Corporation ("Advent"), to commit capital both to our people as well as to our continued new restaurant development and real estate pipeline;
- Began closing all dining rooms during the week of March 15, 2020 (regardless of state and local orders), transitioning to off-premises sales only and rapidly deploying our first phase of new hardware and software enhancements to enable this critical sales channel;
- Furloughed most of our employees, but provided relief payments to help with immediate needs for those hourly employees with more than three years of service, while committing to make managers and corporate employees "whole" upon return for any financial shortfall between the state and federal benefits they received and their base salaries;
- Paid both employer and employee portion of healthcare premiums for furloughed employees enrolled in our healthcare plans, covered 100% of out-of-pocket costs for insured employees and their families for medical visits related to the COVID-19 pandemic and secured telemedicine services for all employees;
- Temporarily suspended all operations at our company-owned restaurants on April 13, 2020 to prioritize the health and safety of our team members;
- Established the "You First Fund," which provides tax-free grants to in-need employees and which had distributed approximately $800,000 in such grants through June 2021;
- Deployed new safety protocols and procedures as well as an employee wellness screening tool with COVID-19 contact tracing. Our efforts were recognized in a Technomic survey in the third quarter of 2020 that rated First Watch as best in its peer group with regard to customer safety and sanitation; and
- Offered employees a payment in consideration for the time taken to receive their full schedule of immunization, once COVID-19 vaccines were available.

With respect to our operations, we rapidly addressed new consumer behaviors by accelerating previously planned initiatives to position ourselves for short-term recovery and long-term growth such as online ordering to enable third-party delivery services, the expansion of our carefully curated alcohol program and touchless payment technology:

- Developed and launched a new mobile app to allow customers to order takeout and delivery and to join our dining room waitlist remotely;
- Integrated technology into our waitlist management solution to gather customer data on consumer preferences;
- Accelerated the rollout of our alcohol program, which had proven to be an incremental occasion for consumers, increasing overall beverage incidence by 170 basis points;
- Maintained the entirety of our menu throughout the COVID-19 pandemic while also prioritizing culinary innovation through our seasonal menu program;
- Expanded our patio and outdoor service areas and reduced and distanced our freestanding tables;
- Proactively contacted our landlords to negotiate rent deferrals or abatements, postpone turnover dates for certain restaurants, secure waivers of alcohol sales restrictions and obtain dedicated curbside parking for off-premises order pick up; and
- Continued to invest in NROs and develop our future NRO pipeline, leading to a 7.4% increase in our company-owned restaurants from 299 in fiscal 2019 to 321 in fiscal 2020.

A total of approximately $4.8 million of costs were incurred in fiscal 2020 in connection with the COVID-19 pandemic, and were comprised of the following: (i) inventory obsolescence and spoilage of approximately $0.6 million, (ii) compensation paid to employees upon furlough and return from furlough of $1.4 million, (iii) $0.7 million for health insurance costs paid for furloughed employees, net of employee retention credits and (iv) supplies, such as personal protection equipment, of approximately $2.1 million.

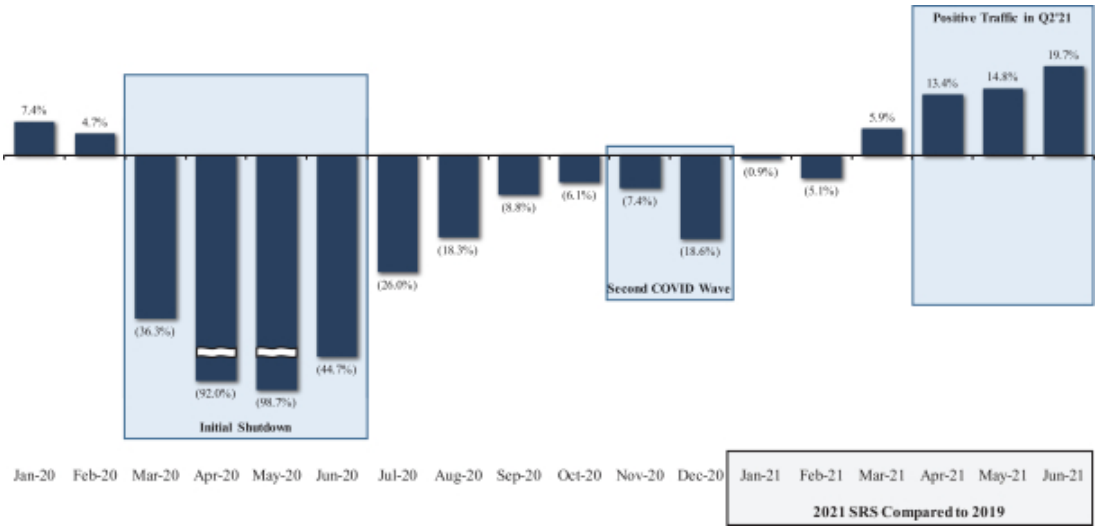
On May 18, 2020, in conjunction with municipal health and safety mandates, we began to reopen our company-owned restaurants in four phases, and substantially all our restaurants were open by the end of June 2020. Since reopening, our restaurants have steadily grown sales and transactions despite the seating capacity of restaurant dining rooms remaining constrained by state and local government mandates as well as our own internal standards taken to protect employees and customers. In Florida, for example, where approximately 30% of our company-owned restaurants are located, despite the state lifting indoor dining distancing restrictions on September 25, 2020, we maintained six-foot distances between tables through the first fiscal quarter ended March 28, 2021 (“first fiscal quarter of 2021”) for the safety of our customers and employees.

As a result of the new initiatives that we put in place, when our company-owned restaurants reopened, we were able to meet the new customer demand for off-premises dining while also serving the in-dining customer traffic as it continued to increase. Our off-premises sales channel had been a relatively small portion of our sales pre-pandemic; in the fourth fiscal quarter ended December 29, 2019 (“fourth fiscal quarter of 2019”) our average weekly off-premises sales were $1,897 per restaurant. In fiscal 2020, our off-premises sales benefited significantly from our technology investments and initiatives to reduce customer friction when ordering off-premises as well as changes in consumer behavior; this resulted in average weekly off-premises sales increasing to $8,082 per restaurant during the fourth fiscal quarter ended December 27, 2020 (“fourth fiscal quarter of 2020”). Moreover, as dine-in traffic improved in 2021, our off-premises business continued to thrive and achieved an average weekly sales of $ per restaurant in the second fiscal quarter of 2021. To ensure that our third-party delivery business was positioned for long-term success, we introduced a surcharge for third-party orders. We believe that off-premises sales will remain an incremental channel for us that serves an additional use occasion for our customers and that it will be an important part of growing average unit volumes to higher than pre-pandemic levels.

According to Nation’s Restaurant News, in 2019, First Watch was the fastest-growing full-service restaurant concept in the United States, based on year-over-year system-wide sales growth metrics. Despite the COVID-19 pandemic, we continued to build and open new restaurants in 2020 with 23 NROs in fiscal 2020 and continued to develop our pipeline for fiscal 2021 and the fiscal year ended December 25, 2022 (“fiscal 2022”) new restaurant growth. During the first fiscal quarter of 2021, our NROs have performed exceptionally well, even when compared to the strong performance of our existing restaurants, and generated annualized average sales of $1.7 million, relative to our existing restaurants that generated annualized average sales of $1.5 million.

By March 2021, we began to consistently report positive same-restaurant sales measured against pre-COVID results, including 5.9% and 13.4% increases in the five-week period ended March 28, 2021 and four-week period ended April 25, 2021 relative to the five-week period ended March 31, 2019 and four-week period ended April 28, 2019, respectively.

Monthly Same-Restaurant Sales Growth Since January 2020



Long-Term Consumer Trends in Our Favor

We believe that we are well-positioned to continue to benefit from the confluence of a number of long-term multi-generational consumer trends:

Increasing Morning Meal Occasions.

The morning meal (Breakfast and morning Snack) has been the only foodservice daypart with consistent year-over-year growth for the last several years, according to RKMA. The restaurant industry captured two additional breakfast visits per capita, from 2015 to 2018, and with 78% of breakfasts still being prepared at home during 2019 according to the NPD Group. With 102 billion breakfast occasions and 50 billion morning snack occasions in 2019, per a January 2020 NPD Breakfast Insights report, morning restaurant traffic provides a compelling long-term opportunity for future growth. We believe that the broad appeal of our menu and the quality of our ingredients gives us a competitive advantage over many alternatives that offer breakfast and lunch. We believe that migration from dense urban to suburban areas, where most of our restaurants are located, will result in increased traffic and brand awareness. Increased work-from-home routines have kept people in suburban areas for larger portions of the day, increasing First Watch exposure to an incremental customer base.

According to RKMA, almost two thirds of consumers consider a healthy menu an important factor in their restaurant choice and according to the NPD Group, 60% of consumers say they want more protein in their diet. The COVID-19 pandemic has progressed trends globally towards wellness with consumers becoming more focused than ever on living and eating healthier. Our freshly made food, with simple, high-quality, protein-rich ingredients, such as cage-free eggs and quinoa, aligns well with these consumer trends. According to Market Force data in January 2020, First Watch scored 36 and 23 points higher than the second place breakfast brand in categories of healthy choices and food quality, respectively.

Consumers Want "On-Demand" Dining.

Consumers want the ability to order what they want and when they want it without regard to traditional daypart conventions. Increasingly busy schedules, the rise of the "gig" economy, flexible job hours and growth of remote workers, trends magnified by the COVID-19 pandemic, are powering demand for convenient, fast and flexible Daytime Dining offerings from our all-day menu, for which traditional rigid breakfast and lunch dayparts were not designed. In the second fiscal quarter of 2021, our average weekly off-premises sales were $ per restaurant compared to $1,897 in the fourth fiscal quarter of 2019 and $8,082 in the fourth fiscal quarter of 2020.

We Are Disrupting a Massive Category

As consumer needs have evolved, so have we. Our "Urban Farm" positioning provides a creative, farm-fresh breakfast, brunch and lunch menu in a warm and rustic yet contemporary atmosphere – creating an energizing Daytime Dining experience that resonates with consumers. We enjoy broad appeal to a customer base that includes the morning traditionalists as well as a growing segment of younger, healthier and more affluent customers. These digital-centric consumers care about food and quality, are willing to pay more, and report higher advocacy for and share of visits to First Watch. There is no other concept with an offering similar to ours at a comparable scale. Our operating hours encompass breakfast, brunch and lunch, which represent 63% of all restaurant sales in the U.S., according to RKMA. Our business model and our scale position us for continued growth within this massive category.

Unrelenting Commitment to Fresh Ingredients and Culinary Innovation

Our creative, on-trend menu and seasonal offerings define the culinary voice of our brand and highlight our commitment to quality and freshness. We believe this commitment is a key differentiator between First Watch and larger restaurant concepts that have failed to evolve. When we say, "Yeah, It's Fresh," we mean it. While many established restaurant concepts are outsourcing a large part of the preparation of their food, we still do much of it in-house in each restaurant every day.

That commitment to quality and freshness is further evidenced throughout our award-winning menu with ingredients such as cage-free eggs, organic mixed greens and all-natural chicken, just to name a few. Our highly-curated menu of less than 60 entrée items – small relative to most in our industry – features a thoughtful balance of classic favorites prepared and presented in an elevated way using high-quality ingredients, along with innovative and interesting specialty dishes that take the consumer on a culinary exploration.

Our creativity and innovation extend beyond today's offerings and into our overall menu strategy. Successful platform introductions such as our Fresh Juice program and Shareables, which include menu items such as Million Dollar Bacon and Holey Donuts, were added in the past few years, adding incremental revenue opportunities while enhancing our culinary credibility. We have seen our Fresh Juice and Shareables platforms rise from 8.7% and 3.2% of customers purchasing in the fourth fiscal quarter ended December 30, 2018, respectively, to % and % in the second fiscal quarter of 2021 and our average gross per person average over that same period rose from $12.49 to $.

One Shift, One Menu, One Focus

We believe that our compelling business model, built around "One Shift, One Menu, One Focus" affords us competitive advantages. Our single-shift restaurant hours, by design, result in "No Night Shifts Ever." This helps make us an employer of choice in the foodservice industry, which we believe allows us to attract superior talent, retain employees longer and create a unifying organizational culture. 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 customer experience. Our singular emphasis on Daytime Dining gives us the clarity of purpose to relentlessly focus on delivering a superior experience.

"You First" Culture Elevates Employee and Customer Satisfaction

Our "You First" mission is palpable at every level of our organization. Our hiring, training and retention strategies empower our more than 9,000 employees, united by our culture, to deliver superior customer experiences. We invest heavily in our leaders by conducting 11 weeks of training for all managers, including a one-week F.A.R.M. (First Watch Academy of Restaurant Management) program traditionally held at our corporate headquarters ("Home Office") in Florida, where each of our managers-in-training is immersed in our culture, vision and mission. Our restaurant-level manager turnover was 29% during the last twelve months ending March 2020, which is meaningfully lower than our peer average of 41% as reported by Black Box.

During the COVID-19 pandemic, we continued to invest in our employee relationships through a high touch program of outreach, communication and, where possible, assistance. As a result of our proactive approach, 75% of the hourly employees who had been working for us for over three years and approximately 90% of general managers returned to work with us when our restaurants re-opened.

We have always believed our employees are our greatest asset, and the initiatives we had in place prior to the COVID-19 pandemic and the additional steps we subsequently took further enhanced our culture and elevated our employee, and ultimately customer, satisfaction. First Watch ranked first in Market Force's Composite Loyalty Index metric as of January 2020, evidencing the compelling level of satisfaction amongst our customers. We believe that the incredible culture at First Watch became even stronger as a result of the pandemic, evidenced by our overall score in the Glassdoor survey having increased relative to the pre-pandemic period. A five-year longitudinal study of employee surveys on Glassdoor published in June 2019 by William Blair ranked us #1 for work/life balance and for overall employee satisfaction in the restaurant industry.

Track Record of Resilience and Exceptional Same-Restaurant Traffic and Sales Growth

Our strong brand with growing awareness, broad consumer appeal and excellence in execution have created outstanding and consistent performance over time. Over the five-year fiscal period ended December 29, 2019, our same-restaurant sales growth was positive every year, averaging 6.8% annually, and our same-restaurant traffic growth was 1.5%. These positive metrics have continued into the second fiscal quarter of 2021 performance with same-restaurant sales growth of % and same-restaurant traffic growth of % compared to the same fiscal period in 2019.

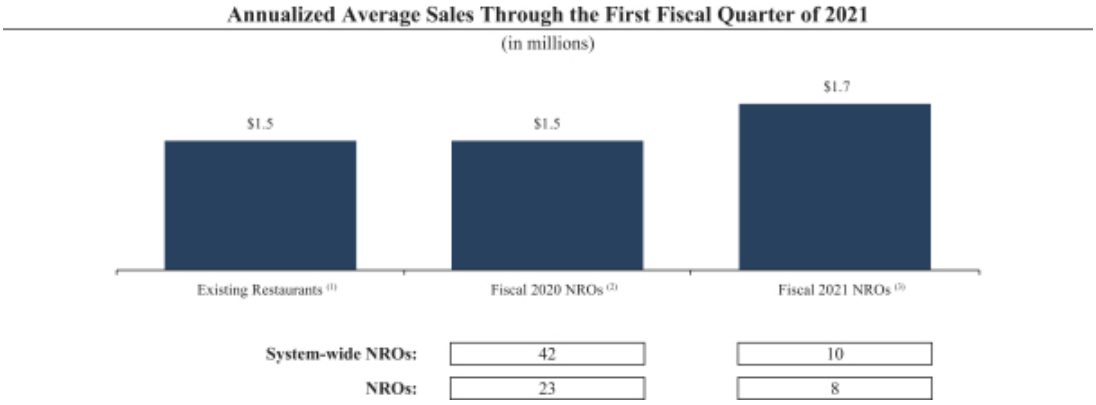
In addition to exemplary historical performance, our concept has proven to be highly adaptable and resilient during adverse market conditions. During the unprecedented COVID-19 restrictions, we temporarily closed all our company-owned restaurants and navigated significant capacity restrictions in the months following. In response, we rapidly enhanced our off-premises technological and operational capabilities to meet the change in consumer demand through those channels.

We have also seen rapid sales recovery as many geographies reduced on-premises dining restrictions that were imposed after the onset of the COVID-19 pandemic. For example, by March 2021, nearly all our restaurants had re-opened to full dining-room capacity and we began to consistently achieve highly positive same-restaurant sales, including 5.4% and 13.0% same-restaurant sales growth relative to March 2019 and April 2019, respectively.

Strong Restaurant Productivity and Proven Portability

The success of our brand is reflected in our restaurant-level performance and Cash-on-Cash Return. In fiscal 2019, prior to the pandemic, we generated an AUV of $1.6 million in a single shift (seven and a half hours daily), comparable to many restaurants open for several shifts or in some cases around the clock. We have demonstrated the portability of our model by successfully operating restaurants in 28 states. Restaurants in our top decile, by fiscal 2019 sales, span 9 different states and 14 different DMAs. DMAs are geographic areas in the United States in which local television viewing is measured by The Nielsen Company. Despite the challenges of the COVID-19 pandemic and its impact on our sales, we have seen a broad and rapid sales recovery and opened 42 and System-wide NROs in fiscal 2020 and during the twenty-six weeks ended June 27, 2021, respectively. Our NROs have displayed exemplary performance evidenced by the current momentum in our business. Our fiscal

2020 NROs have generated annualized average sales of $1.5 million and our NROs opened during the first fiscal quarter of 2021 have generated annualized average sales of $1.7 million.



(1) Represents annualized average sales of all company-owned restaurants opened through fiscal 2019.
(2) Represents annualized average sales of all company-owned restaurants opened during fiscal 2020.
(3) Represents annualized average sales of all company-owned restaurants opened during the first fiscal quarter of 2021.

Experienced, Passionate Leadership Team and Deep Talent Bench

Our team is led by passionate executives who have an extensive mix of experience in our brand and with other leading consumer facing businesses. Christopher A. Tomasso, our President, Chief Executive Officer and Director, has more than 24 years of industry experience and joined First Watch in 2006. Mr. Tomasso sets the strategic vision and brand positioning for the company, while enhancing its organizational culture. Mr. Tomasso was recognized with FSR Reader's Choice Award as one of two top C-Suite Executives in 2021. Mel Hope, our Chief Financial Officer and Treasurer, has more than 36 years of public accounting and industry experience including serving as Chief Financial Officer of large, successful public and private companies. 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 restaurant general managers have an average tenure at First Watch of five years. In addition, we have dozens of fully-trained, tested, high-performing managers positioned throughout our system who are poised to step into the general manager role as we execute our growth strategy and open new restaurants.

How We Will Continue to Grow Sales and Profits

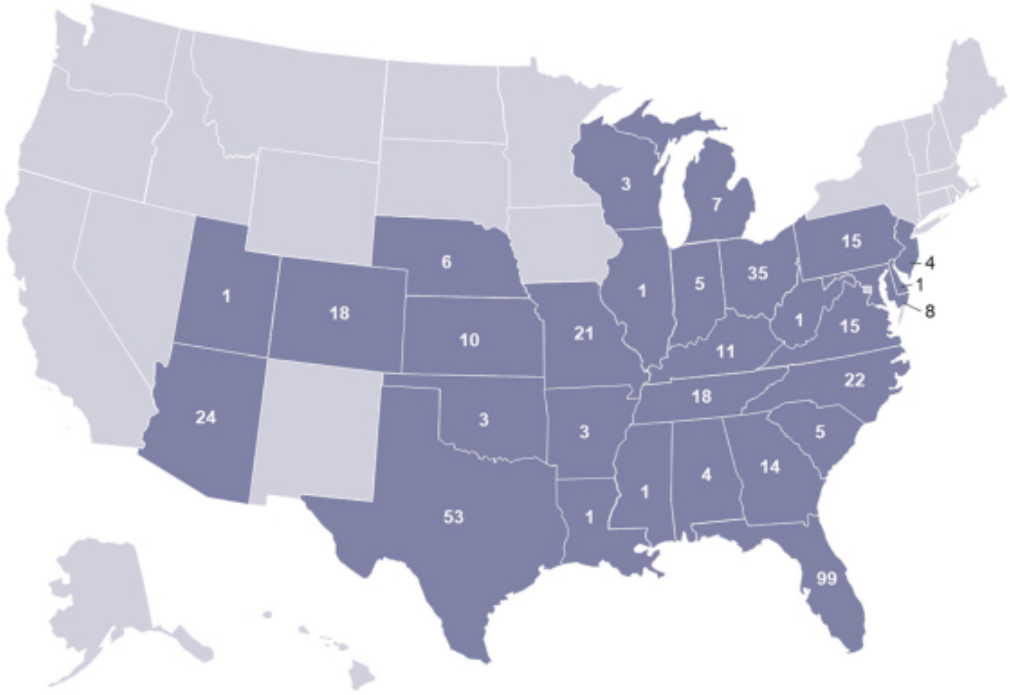
While we are proud of our success in having grown sales and restaurant level operating profit consistently for many years prior to the pandemic, our focus is on the future. We believe our continued growth will come from opening new restaurants in existing and new geographies and driving traffic and building sales at our existing restaurants as new customers discover First Watch and regulars come and enjoy us more frequently. While 2020 was a challenging year given the COVID-19 pandemic, the investment in our employees and operational capabilities have enabled us to emerge as an even stronger company with greater abilities to leverage multiple channels for growth. We are even more confident in our growth strategies based on the consumer reaction to our brand and strong resurgence we have seen throughout 2021 since reopening our restaurants and since capacity restrictions have been reduced.

Grow Our Brand Footprint by Consistently Opening New Restaurants

First Watch has grown from 277 restaurants in fiscal 2015 to restaurants as of June 27, 2021 while increasing annual AUV from $1.3 million to $ million and achieving positive same-restaurant sales

growth and traffic except for fiscal 2020. In Florida, our most mature market with the greatest number of company-owned restaurants, we have grown from 54 to 99 restaurants over the last six years, while generating average annual same-restaurant sales growth of 6.8% from fiscal 2015 to fiscal 2019. We believe we have significant potential to expand our presence within all the states in which we currently operate as well as new ones. We have a significant opportunity to grow density both in existing and new markets. Our deeply experienced restaurant development team in partnership with a third-party real estate analytics firm conducted an in-depth study that concludes we have the potential for more than 2,200 locations in the United States.

Restaurant Count by State as of December 27, 2020



Despite the challenges of the COVID-19 pandemic and the significant restaurant closures across the United States, First Watch made the strategic decision to remain committed to invest in growth and continued to open new restaurants. We opened 42 and System-wide NROs in fiscal 2020 and during the twenty-six weeks ended June 27, 2021, respectively, representing a growth rate of 11.4% and %, respectively, over the prior periods. Furthermore, those NROs have performed exceptionally well, evidencing our compelling business momentum and ability to successfully grow our footprint. Our NROs during the twenty-six weeks ended June 27, 2021, have generated annualized average sales of $ million relative to our existing restaurants' annualized average sales of $ million. Our pipeline for full fiscal year 2021 remains robust and we expect 33 System-wide NROs by the end of fiscal 2021.

We employ a comprehensive, data-driven real estate approval process to select and develop every new site. In selecting new locations, we combine rigorous data on specific market characteristics, demographics, and growth, with a human element that takes into account brand impact and opportunity of individual market and sites. Every new restaurant further drives brand awareness and creates meaningful marketing buzz when we open in new markets. We intend to leverage our rigorous real estate site selection process to open company-

owned restaurants over . While our existing franchisees are committed to developing restaurants in the future, we expect company-owned restaurants will be the primary growth driver of our footprint over the long term.

Drive Restaurant Traffic and Build Sales

We have a significant runway to continue to grow traffic and restaurant sales by executing against a defined set of strategies.

- ***Continue Menu Innovation. We continuously evolve our offering to keep our menu fresh and exciting yet operationally efficient. Our chef-led culinary innovation team maintains a keen awareness of emerging culinary trends and immerses themselves in the marketplace through frequent culinary inspiration tours using experiences to develop a robust pipeline of exciting new recipes and menu offerings. We intend to drive continued incremental customer spending through our five highly-anticipated seasonal menus and the introduction of new menu platforms similar to our introductions of Fresh Juices and Shareables. For fiscal 2019, 8.1% of customers purchased items from our seasonal menu, 10.8% purchased Fresh Juices and 4.3% purchased Shareables. For the twenty-six weeks ended June 27, 2021, % of customers purchased items from our seasonal menu, % purchased Fresh Juices and % purchased Shareables. We expect menu innovation to continue to provide incremental growth opportunities in the future.***
- ***Offer Alcohol as Only First Watch Can.*** The alcoholic beverage offerings at First Watch are unique and reflect our culinary innovation in combining fresh juices and ingredients with a variety of liquors. At the end of fiscal 2019, early tests showed that offering alcoholic beverages where practical throughout our system was a highly-incremental new sales growth platform, opening up new occasions for our consumers to enjoy dining out and allowing us to reach new demographics. During the COVID-19 pandemic, we accelerated this initiative to better position the First Watch brand upon recovery as we learned that customers joining us for breakfast or lunch were interested in making the meal more of a celebration at times. As of June 27, 2021, our alcohol menu is offered in restaurants with clear plans to continue the expansion to all restaurants where feasible. Since the rollout in fiscal 2020, the presence of alcohol on our menu has lifted overall dine-in beverage attachment by 170 basis points in restaurants where it is served, indicating the incrementality of the offering. Further, for the first fiscal quarter of 2021, alcohol accounted for 2.9% of sales at these restaurants and increased the average check by 1% as compared to our restaurants that do not offer alcohol. These incremental alcohol sales are highly profitable. More importantly, we remain confident in the long-term opportunity to innovate within this platform to further elevate the social occasion of breakfast, brunch and lunch. Similar to the establishment of our Fresh Juice and Shareables platforms, we remain optimistic that further consumer awareness and excitement (through new items and promotion) around alcohol will drive new, additional occasions and broaden our appeal to a new demographic seeking an experiential occasion over a meal.
- ***Convenience and Increased Accessibility through Our Off-Premises Offering.*** During the COVID-19 pandemic, we integrated technology into our business to enhance customer access and enable off-premises consumption. In fiscal 2019, off-premises sales accounted for $1,971 in average weekly sales. We have now built the foundation to optimize the off-premises opportunity through our digital channels (both through direct ordering as well as third-party delivery). These off-premises platforms, now available in all restaurants, contributed $ of average weekly sales during the twenty-six weeks ended June 27, 2021, an increase of % versus fiscal 2019. Even as our dining room sales recovered during the twenty-six weeks ended June 27, 2021, 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. We have seen encouraging results in 2021 NROs from innovations such as dedicated make lines and to-go

rooms, separate entrances and dedicated parking spots to enhance the experience of both our off-premise and dine-in customers.

- ***Increase Our Brand Awareness.*** We believe First Watch is still in the early stages of our life cycle, as consumers in our existing and new markets continue to discover the First Watch brand. Over 38 years, First Watch has grown primarily through word-of-mouth as our service, menu and environment created ardent fans as evident in our numerous local awards and customer satisfaction scores. In January 2020, First Watch was named "America's Favorite Restaurant Brand" by Market Force. This study evaluated restaurants across multiple sectors and based its ranking on customer recommendations and brand satisfaction. This strong customer affinity was also highlighted in a recent 2021 national study where First Watch ranked 10th in net promoter score among the country's 74 largest restaurant brands and comparable to the industry's most highly regarded names. Despite this, brand awareness remains low as indicated by a 2021 nationally represented survey where only 11% were aware of First Watch. The combination of both high customer satisfaction and opportunity for growing awareness highlights strong potential for the brand.

  As our development of new restaurants continues, we believe the increased penetration in new and existing markets will contribute to higher brand awareness. While we believe that organic growth of awareness contributes more to our local feel, we also recognize the future potential of strategically applying advertising dollars in appropriate channels to accelerate this opportunity. Our advertising costs represented approximately 1% of total revenues in fiscal 2019 and in fiscal 2020. We intend to grow our brand awareness primarily through increased investment in cost-efficient digital channels in order to further leverage our first party, owned, customer data to target and reach the right audiences that will lead to higher conversion and higher return on investment. We have successfully piloted these approaches to-date and remain confident that this approach provides further growth opportunity to build traffic and sales.

Deliver 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 customer, promotes trial by new consumers and ultimately encourages loyalty. We have received hundreds of awards from local and national media outlets that we believe matter to consumers – including being named one of TripAdvisor's Best Restaurant Chains in 2019. While off-premises dining during the COVID-19 pandemic has emerged as a sizeable use occasion for many customers cautious to eat outside their homes, we believe that our unwavering focus will remain on delivering an amazing dining experience in our restaurants to every customer in every visit. We aim to continue to leverage our "One Shift, One Menu, One Focus" model to stay distinguishably different from our competitors by executing on delivering a superior dining experience every day to further drive traffic and build sales.

Additional Platforms and Initiatives. We have seen the opportunity, over time, to selectively evolve our concept and offerings via the implementation of key strategies and initiatives. Future initiatives include:

- ***Weekday Lunch***: We believe that we have the opportunity to significantly increase market share by driving incremental customer visits during the weekday lunch daypart through the evolution of our menu with fresh, convenient and differentiated lunch-oriented offerings. In fiscal 2019, only 6.0% of our weekday customers purchased lunch entrées. As a result of the evolving consumer landscape driven by the COVID-19 pandemic, 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 an increasing work-from-home trend, presents First Watch with an incremental customer opportunity during the weekday business hours which we believe will further propel growth in our lunch daypart. With the evolution of a new optimized core menu, the presence of our off-premises channels and the opportunity to apply targeted marketing, we believe the weekday lunch occasion holds future opportunity to build sales and traffic.

- ***Customer Technology & Customer Data:*** As we fast-tracked the implementation of our off-premises platforms in fiscal 2020, we also took the opportunity to accelerate 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, frequency and customer lifetime value. Since the establishment of these systems, we have gathered 2.9 million unique customer profiles. The advancements in these foundational systems provide future opportunity for targeted communication and the development of more advanced customer relationship management systems aimed at growing customer frequency.
- ***Restaurant Technology Unlocking Throughput & Capacity:*** For 38 years, we grew organically from an intense focus on people and service, delivering a unique restaurant experience that has been difficult for competitors to duplicate at scale. The introduction of our off-premises platform laid a strong foundation for certain technologies that will now unlock further in-restaurant innovation, enabling greater peak hour throughput and capacity, thus the ability to serve more demand. In many of our restaurants, we experience more weekend demand than we are currently able to serve, indicated by extended wait times during peak hours. Through new technological tools to enable optimal seating configurations, lower table turn times and more efficient kitchen order routing, we believe that we have the opportunity to achieve higher peak hour sales. Most key among these opportunities is the installation of kitchen display screens, a core technology system in the industry, to our back-of-house to automate our order routing. We remain confident that the addition of this technology will unlock greater efficiency within our kitchens and raise our ability to serve more of our unfulfilled demand.

Our Sponsor

In August 2017, we entered into a merger transaction through which we were acquired by funds affiliated with or managed by Advent (the "Advent Acquisition"). Founded in 1984, Advent has invested in more than 375 private equity transactions in 42 countries and, as of March 31, 2021, had $74.6 billion in assets under management. Advent's current portfolio comprises investments across five sectors – Retail, Consumer & Leisure; Business and Financial Services; Healthcare; Industrial and Technology. The Advent team includes more than 240 investment professionals across Europe, North America, Latin America and Asia.

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

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. Our corporate website and the information contained on, or that can be accessed through, the website is not deemed to be incorporated by reference in, and is not considered part of, this prospectus. You should not rely on any such information in making your decision whether to purchase our common stock.

Risks Associated With Our Business

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

- continued adverse effects of the COVID-19 pandemic or other infectious disease on our financial condition, results of operations, and supply chain;
- our vulnerability to changes in consumer preferences and economic conditions;
- 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;
- our inability to prevent instances of food-borne illness in our restaurants;
- our inability to compete successfully with other breakfast and lunch restaurants;
- 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 controls 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; and
- the interests of Advent may differ from those of our public stockholders.

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

Implications of Being an Emerging Growth Company

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

- requirement to present only two years of audited financial statements and only two years of related Management’s Discussion and Analysis of Financial Condition and Results of Operations;

- exemption from the auditor attestation requirement on the effectiveness of our system of internal controls over financial reporting pursuant to the Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act");
- exemption from the adoption of new or revised financial accounting standards until they would apply to private companies;
- exemption from compliance with any new requirements adopted by the Public Company Accounting Oversight Board ("PCAOB") requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer;
- an exemption from the requirement to seek non-binding advisory votes on executive compensation and golden parachute arrangements; and
- reduced disclosure about executive compensation arrangements.

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

In addition, Section 107 of the JOBS Act also provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act of 1933 (the "Securities Act") for complying with new or revised accounting standards. An emerging growth company can, therefore, delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. However, we are choosing to "opt out" of that extended transition period and, as a result, we plan to comply with new and revised accounting standards on the relevant dates on which adoption of those standards is required for non-emerging growth companies. Section 107 of the JOBS Act provides that our decision to opt out of the extended transition period for complying with new or revised accounting standards is irrevocable.

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

THE OFFERING

Issuer	First Watch Restaurant Group, Inc.
Common stock offered by us	shares of common stock (shares if the underwriters exercise their option to purchase additional shares in full).
Common stock to be outstanding after this offering	shares of common stock (shares if the underwriters exercise their option to purchase additional shares in full).
Option to purchase additional shares of common stock	The underwriters have an option to purchase an additional shares of common stock from us. The underwriters can exercise this option at any time within 30 days from the date of this prospectus.
Use of proceeds	We estimate that the net proceeds from the sale of our common stock in this offering, after deducting the underwriting discount and estimated offering expenses payable by us, will be approximately $ million ($ million if the underwriters exercise their option to purchase additional shares in full) based on an assumed initial public offering price of $ per share (the midpoint of the price range set forth on the cover of this prospectus). We intend to use the net proceeds from this offering to repay borrowings outstanding under our Senior Credit Facilities (as defined herein). See "Use of Proceeds."
Dividend policy	We do not anticipate paying any dividends on our common stock for the foreseeable future; however, we may change this policy in the future. See "Dividend Policy."
Risk Factors	Investing in our common stock involves a high degree of risk. See the "Risk Factors" section of this prospectus beginning on page 26 for a discussion of factors you should carefully consider before investing in our common stock.
Listing	We intend to apply to have our common stock listed on Nasdaq under the symbol "FWRG."

Except as otherwise indicated, the number of shares of our common stock outstanding after this offering:

- gives effect to the automatic conversion of our preferred stock into shares of common stock immediately prior to and in connection with the consummation of this offering;
- excludes shares of our common stock issuable upon the exercise of outstanding stock options at a weighted average exercise price of $ per share;
- excludes an aggregate of shares of our common stock that will be available for future equity awards under our 2017 Omnibus Equity Incentive Plan (the "2017 Plan") and our First Watch Restaurant Group, Inc. 2021 Equity Incentive Plan (the "2021 Plan");

- gives effect to a for stock split of our common stock that will occur prior to the consummation of this offering;
- gives effect to our amended and restated certificate of incorporation and our amended and restated bylaws, which will be in effect prior to the consummation of this offering; and
- assumes no exercise of the underwriters' option to purchase additional shares.

Unless otherwise indicated, this prospectus assumes an initial public offering price of $ per share (the midpoint of the price range set forth on the cover of this prospectus).

SUMMARY HISTORICAL CONSOLIDATED FINANCIAL AND OTHER DATA

The following tables set forth our summary historical consolidated financial and other data for the periods as of the dates indicated. We derived the historical summary consolidated statements of operations data and consolidated statements of cash flows data for fiscal 2020 and fiscal 2019 and the consolidated balance sheet data as of December 27, 2020 from the audited consolidated financial statements and related notes thereto included elsewhere in this prospectus.

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

	Fiscal	
	2020	2019
	(in thousands, except share and per share data)	
Consolidated Statements of Operations Data:		
Revenues:		
Restaurant sales	$ 337,433	$ 429,309
Franchise revenues	4,955	7,064
Total revenues	342,388	436,373
Operating costs and expenses:		
Restaurant operating expenses (exclusive of depreciation and amortization shown below):		
Food and beverage costs	76,975	100,689
Labor and other related expenses	120,380	148,537
Other restaurant operating expenses	63,776	59,402
Occupancy expenses	51,375	46,151
General and administrative expenses	46,322	55,818
Depreciation and amortization	30,725	28,027
Impairments and loss on disposal of assets	315	33,596
Transaction (income) expenses, net	(258)	1,709
Total operating costs and expenses	389,610	473,929
Loss from operations	(47,222)	(37,556)
Interest expense	(22,815)	(20,080)
Other income (expense), net	483	(255)
Loss before income tax benefit	(69,554)	(57,891)
Income tax benefit	19,873	12,419
Net loss and total comprehensive loss	(49,681)	(45,472)
Less: Net loss attributable to non-controlling interest	—	(33)
Net loss and comprehensive loss attributable to First Watch Restaurant Group, Inc.	$ (49,681)	$ (45,439)
Net loss per common share attributable to First Watch Restaurant Group, Inc. – basic and diluted	$ (13.07)	$ (11.95)
Weighted average number of common shares outstanding – basic and diluted	3,802,481	3,802,481
Unaudited pro forma net loss per common share attributable to First Watch Restaurant Group, Inc. – basic and diluted(a)		
Unaudited pro forma weighted average common stock outstanding – basic and diluted(a)		

	Fiscal	
	2020	2019
	(in thousands, except share and per share data)	
Consolidated Statements of Cash Flows Data (in thousands)**:**		
Net cash (used in) provided by:		
Operating activities	$ (18,364)	$ 21,465
Investing activities	$ (26,974)	$ (82,389)
Financing activities	$ 73,314	$ 55,761
Other Data:		
Restaurant sales (in thousands)	$ 337,433	$ 429,309
System-wide sales (in thousands)	$ 426,303	$ 558,397
Same-restaurant sales growth	(29.0)%	5.6%
AUV (in millions)	$ 1.1	$ 1.6
System-wide restaurants at fiscal year end	409	368
Company-owned	321	299
Franchise operated	88	69
Adjusted EBITDA (in thousands)(b)	$ 8,223	$ 48,186
Adjusted EBITDA Margin(b)	2.4%	11.0%
Restaurant level operating profit (in thousands)(c)	$ 42,145	$ 84,601
Restaurant level operating profit margin(c)	12.5%	19.7%

	As of December 27, 2020	
	Actual	Pro Forma As Adjusted(d)
	(in thousands)	(unaudited)
Consolidated Balance Sheet Data:		
Cash and cash equivalents	$	
Total assets	$	
Total debt(e)	$	
Total liabilities	$	
Working capital(f)	$	
Total equity	$	

(a) Unaudited pro forma net loss per common share attributable to First Watch Restaurant Group, Inc. – basic and diluted for fiscal 2020 is computed by dividing the unaudited pro forma net loss of $ million by the unaudited pro forma weighted-average number of common shares outstanding – basic and diluted. For fiscal 2020, unaudited pro forma net loss gives effect to the reduction of $ million of interest expense resulting from the application of $ million of net proceeds to repay $ million in borrowings under our Senior Credit Facilities as if the offering had occurred on December 30, 2019, the first day of fiscal 2020, as set forth under “Use of Proceeds.” For fiscal 2020, unaudited pro forma weighted-average common shares outstanding – basic and diluted gives effect to (i) the conversion of all outstanding shares of preferred stock into common stock immediately prior to the completion of this offering and (ii) the issuance of shares of common stock, which is the number of shares that would be attributable to the proceeds used to repay $ million of the Senior Credit Facilities as described in “Use of Proceeds.” As we are in a net loss position, outstanding options would be antidilutive and therefore have been excluded from the computation of unaudited pro forma diluted net loss per common share attributable to First Watch Restaurant Group, Inc. This unaudited pro forma per common share information is presented for informational purposes only and does not purport to represent what our net loss

or net loss per common share would have actually been had the offering and use of proceeds occurred on December 30, 2019, or to project our net loss or net loss per common share for any future period.

The following table sets forth the computation of unaudited pro forma net loss per common share attributable to First Watch Restaurant Group, Inc. – basic and diluted after giving effect to the pro forma adjustments described above:

	Fiscal 2020 (in thousands, except share and per share data) (unaudited)
Numerator:	
Net loss attributable to First Watch Restaurant Group, Inc.	$
Minus: Reduced interest expense related to the repayment of certain Senior Credit Facilities	
Pro forma net loss attributable to First Watch Restaurant Group, Inc. – basic and diluted	
Denominator:	
Weighted average number of common shares outstanding – basic and diluted	
Pro forma adjustment to reflect the conversion of preferred stock to common stock upon the completion of the offering	
Pro forma adjustment to reflect the issuance of common stock in this offering attributable to the use of proceeds	
Pro forma weighted average number of common shares outstanding – basic and diluted	
Pro forma net loss per common share attributable to First Watch Restaurant Group, Inc. – basic and diluted	

(b) Adjusted EBITDA and Adjusted EBITDA Margin as presented in this prospectus are supplemental measures of our performance that are neither required by, nor presented in accordance with GAAP. Adjusted EBITDA and Adjusted EBITDA Margin are not measurements of our financial performance under GAAP and should not be considered as an alternative to net loss, income from operations, or any other performance measures derived in accordance with GAAP, or as alternatives to cash flow from operating activities as a measure of our liquidity. Adjusted EBITDA represents net 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 loss and comprehensive loss, the most directly comparable measure under GAAP, to Adjusted EBITDA. See “Prospectus Summary – Historical Consolidated Financial and Other Data.” Adjusted EBITDA Margin represents Adjusted EBITDA as a percentage of total revenues.

Management uses 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. The use of Adjusted EBITDA and Adjusted EBITDA Margin as performance measures permit a comparative assessment of our operating performance relative to our performance based on our GAAP results, while isolating the effects of some items that are either non-recurring in nature or vary from period to period without any correlation to our ongoing core operating performance.

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

Our presentation of Adjusted EBITDA and Adjusted EBITDA Margin should not be construed to imply that our future results will be unaffected by these items. Adjusted EBITDA and Adjusted EBITDA Margin have important limitations as analytical tools, and you should not consider them in isolation or as substitutes for analysis of our results as reported under GAAP. Some of these limitations are:

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

We compensate for these limitations by providing specific information regarding the GAAP amounts excluded from such non-GAAP financial measures. We further compensate for the limitations in our use of non-GAAP financial measures by presenting comparable GAAP measures more prominently. In addition, our Credit Agreement allows us to exclude those amounts when calculating Adjusted EBITDA under the Credit Agreement.

In evaluating Adjusted EBITDA and Adjusted EBITDA Margin, you should be aware that in the future we may incur expenses similar to those adjusted for in the reconciliation of Net loss and total comprehensive loss, the most directly comparable GAAP measure, to Adjusted EBITDA as follows:

	Fiscal	
	2020	2019
	(in thousands)	
Net loss and total comprehensive loss	$ (49,681)	$ (45,472)
Depreciation and amortization	30,725	28,027
Interest expense	22,815	20,080
Income tax benefit	(19,873)	(12,419)
EBITDA	(16,014)	(9,784)
Pre-opening expenses (1)	3,880	5,815
Deferred rent expense (2)	10,087	4,272
Initial public offering (“IPO”)-readiness and strategic transition costs (3)	4,247	10,012
COVID-19 – related charges (4)	4,749	—
Impairments and loss on disposal of assets (5)	315	33,596
Transaction (income) expenses, net (6)	(258)	1,709
Stock-based compensation (7)	750	1,160
Recruiting and relocation costs (8)	228	1,081
Severance costs (9)	239	325
Adjusted EBITDA	$ 8,223	$ 48,186
Total revenues	$342,388	$436,373
Net loss and comprehensive loss margin	(14.5%)	(10.4%)
Adjusted EBITDA margin	2.4%	11.0%

(1) Represents expenses directly incurred to open new restaurants, including pre-opening rent, manager salaries, recruiting expenses, employee payroll, training and marketing costs. These expenses are recorded in other restaurant operating expenses and occupancy expenses on the Consolidated Statements of Operations and Comprehensive Loss.

(2) Consists of the non-cash portion of straight-line rent expense primarily included in occupancy expenses and general and administrative expenses on the Consolidated Statements of Operations and Comprehensive Loss.

(3) Represents costs related to information technology support and external professional service costs incurred in connection with IPO-readiness efforts as well as the assessment and redesign of our systems and processes. These costs are recorded within general and administrative expenses on the Consolidated Statements of Operations and Comprehensive Loss.

(4) Consists of costs incurred in connection with the economic impact of the COVID-19 pandemic, which primarily includes inventory obsolescence and spoilage, compensation for employees upon furlough and return from furlough, health insurance costs paid for furloughed employees, net of employee retention credit and costs incurred to amend certain financial commitments. See Note 4, *COVID-19 Charges*, in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information.

(5) Includes impairments recognized on intangible assets and fixed assets as well as costs related to the disposal of assets due to retirements, replacements or certain restaurant closures.

(6) Primarily represents costs incurred in connection with the acquisition of certain restaurants, costs incurred in connection with the conversion of certain restaurants to company-owned restaurants operating under the First Watch trade name and costs related to restaurant closures.

(7) Represents non-cash, stock-based compensation expense which is recorded in general and administrative expenses on the Consolidated Statements of Operations and Comprehensive Loss.
(8) 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 Loss.
(9) Severance costs are recorded in general and administrative expenses on the Consolidated Statements of Operations and Comprehensive Loss.

(c) Restaurant level operating profit and restaurant level operating profit margin are non-GAAP supplemental measures of operating performance of our restaurants that are neither required by, nor presented in accordance with GAAP, and should not be considered as a substitute for analysis of our results as reported under GAAP. Restaurant level operating profit represents restaurant sales less restaurant operating expenses, which include food and beverage costs, labor and other related expenses, other restaurant operating expenses and occupancy expenses. In addition, restaurant level operating profit excludes corporate-level expenses, pre-opening expenses, deferred rent expense and items that we do not consider in our evaluation of ongoing core operating performance. Restaurant level operating profit and restaurant level operating profit margin are not indicative of our overall results, and because they exclude corporate-level expenses, do not accrue directly to the benefit of our stockholders. We will continue to incur such expenses in the future. Restaurant level operating profit margin represents restaurant level operating profit as a percentage of restaurant sales.

Restaurant level operating profit and restaurant level operating profit margin are important measures we use to evaluate the performance and profitability of each operating restaurant, individually and in the aggregate. Additionally, restaurant level operating profit and restaurant level operating profit margin or similar non-GAAP financial measures are frequently used by analysts, investors and other interested parties to evaluate companies in our industry. We believe that restaurant level operating profit and restaurant level operating profit margin, when used in conjunction with GAAP financial measures, provide useful information about our operating results, identify operational trends and allow for greater transparency with respect to key metrics used by us in our financial and operational decision making. We use restaurant level operating profit and restaurant level operating profit margin to make decisions regarding future spending and other operational decisions. Our calculations of restaurant level operating profit and restaurant level operating profit margin may not be comparable to similar measures reported by other companies, have limitations as analytical tools and should not be considered as a substitute for the analysis of our results as a whole as reported under GAAP.

A reconciliation of Loss from operations, the most directly comparable GAAP financial measure, to restaurant level operating profit is as follows:

	Fiscal	
	2020	2019
	(in thousands)	
Loss from operations	$ (47,222)	$ (37,556)
Less: Franchise revenues	(4,955)	(7,064)
Add:		
Pre-opening expenses (1)	3,880	5,815
Deferred rent expense (2)	10,029	4,256
General and administrative expenses	46,322	55,818
Depreciation and amortization	30,725	28,027
COVID-19 – related charges (3)	3,309	—
Impairments and loss on disposal of assets (4)	315	33,596
Transaction (income) expenses, net (5)	(258)	1,709
Restaurant level operating profit	$ 42,145	$ 84,601
Restaurant sales	$337,433	$429,309
Loss from operations margin	(14.0%)	(8.7%)
Restaurant level operating profit margin	12.5%	19.7%

(1) Represents expenses directly incurred to open new restaurants, including pre-opening rent, manager salaries, recruiting expenses, employee payroll, training and marketing costs. These expenses are recorded in other restaurant operating expenses and occupancy expenses on the Consolidated Statements of Operations and Comprehensive Loss.

(2) Consists of the non-cash portion of straight-line rent expense included in occupancy expenses on the Consolidated Statements of Operations and Comprehensive Loss.

(3) Consists of costs incurred in connection with the economic impact of the COVID-19 pandemic, which primarily includes inventory obsolescence and spoilage, compensation for employees upon furlough and return from furlough, and health insurance costs paid for furloughed employees, net of employee retention credit. See Note 4, *COVID-19 Charges*, in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information.

(4) Includes impairments recognized on intangible assets and fixed assets as well as costs related to the disposal of assets due to retirements, replacements or certain restaurant closures.

(5) In fiscal 2020, amount primarily represents the revaluation of the contingent consideration payable to previous stockholders for tax savings generated through use of federal and state loss carryforwards. See Note 14, *Income Taxes*, in the audited consolidated financial statements included elsewhere in this prospectus for additional information. In fiscal 2019, primarily represents costs incurred in connection with the acquisition of certain franchised restaurants, costs incurred in connection with the conversion of certain restaurants to company-owned restaurants operating under the First Watch trade name and costs related to restaurant closures.

(d) The unaudited pro forma as adjusted consolidated balance sheet data gives effect to (i) the automatic conversion of all outstanding shares of preferred stock into shares of our common stock, (ii) the filing and effectiveness of our restated certificate of incorporation in Delaware that will become effective immediately prior to the completion of this offering, (iii) the sale by us of shares of our common stock in this offering, assuming no exercise of the underwriters' option to purchase additional shares, at an assumed initial public offering price of $ per share (the midpoint of the estimated public offering price range set forth on the cover page of this prospectus), less estimated underwriting discounts and commissions and

estimated expenses, and (iv) the application of the net proceeds to be received by us from this offering as described in "Use of Proceeds."

(e) Total debt includes the current and long-term debt, excluding unamortized debt discount and deferred issuance costs. See Note 10, *Debt* in the notes to the audited consolidated financial statements included in this prospectus for additional information. Also, see "Description of Material Indebtedness."

(f) We define working capital as current assets less current liabilities.

RISK FACTORS

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

Risks Related to Our Business and Industry

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 throughout the United States and internationally has caused businesses, including ours, as well as federal, state and local governments to implement significant actions to attempt to reduce exposure to the COVID-19 pandemic and control its negative effects on public health and the U.S. economy. Such governmental measures remain ongoing and the ultimate duration and severity of the COVID-19 pandemic remain uncertain. Our operations have thus been impacted by the COVID-19 pandemic.

During 2020, individuals in many areas where we operate our restaurants were required to practice social distancing, restricted from gathering in groups and/or mandated to "stay home" except for "essential" purposes. In response to the COVID-19 pandemic and government restrictions, we temporarily closed our dining rooms and moved to exclusively off-premises sales by April 2020 to comply with government restrictions and, on April 13, 2020, temporarily suspended all operations at company-owned restaurants. The mobility restrictions, fear of contracting COVID-19 and the sharp increase in unemployment caused by the closure of businesses in response to the COVID-19 pandemic, have adversely affected and may continue to adversely affect our customer traffic, which in turn adversely impacts our business, liquidity, financial condition and results of operations. Even as the mobility restrictions were loosened or lifted, some customers remained reluctant to return to in-restaurant dining and the impact of lost wages due to COVID-19 related unemployment has dampened consumer spending. Our restaurant operations have been and could continue to be adversely affected by employees who are unable or unwilling to work, whether because of illness, quarantine, fear of contracting COVID-19 or caring for family members due to COVID-19 disruptions or illness. Restaurant closures, limited service options or modified hours of operation due to staffing shortages could materially adversely affect our business, liquidity, financial condition and results of operations. To protect the health and safety of our employees and customers, we have implemented a wide range of COVID-19 safety measures, including employee screening and safety distancing protocols. In addition, we deployed personal protection equipment and introduced COVID-19 tracing for all employees. Additionally, we increased spending on healthcare benefits, employee assistance measures and employee bonuses as a result of the COVID-19 pandemic. These measures have increased our operating costs and adversely affected our liquidity.

A total of approximately $4.8 million of costs were incurred in fiscal 2020 in connection with the COVID-19 pandemic, and were comprised of the following: (i) inventory obsolescence and spoilage of approximately $0.6 million, (ii) compensation paid to employees upon furlough and return from furlough of $1.4 million, (iii) $0.7 million for health insurance costs paid for furloughed employees, net of employee retention credits and (iv) supplies, such as personal protection equipment, of approximately $2.1 million.

We also modified our capital spending plans for opening new restaurants and remodeling existing restaurants due to the COVID-19 pandemic, in addition to negotiating extensively with our landlords primarily for rent abatements and rent deferrals and certain modified obligations under our leases. These changes have impacted and could continue to impact our ability to grow our business.

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, 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.

The further spread of COVID-19 or other infectious diseases, and the requirements or measures imposed or taken by federal, state and local governments and businesses to mitigate the spread of such diseases, could disrupt our business or impact our ability to carry out our business as usual, which could have a material adverse impact on our business, liquidity, financial condition and results of operations. Even in regions where we have reopened, our restaurants may be subject to modified hours and operations and/or reduced customer traffic. Moreover, certain of those regions may suffer a COVID-19 relapse after reopening resulting in closing those restaurants again. If any regions fail to fully contain the COVID-19 pandemic, or if additional regions suffer multiple COVID-19 relapses, any of those markets may not recover quickly or at all, which could have a material adverse effect on our business and results of operations. As a result, we may incur material impairment losses to our inventory, goodwill, intangibles and long-lived 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. Increased volatility or significant disruption of global financial markets due in part to the COVID-19 pandemic or other infectious diseases 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.

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. The COVID-19 pandemic has led to changes in consumer spending behaviors as customers choose to avoid public gathering places, which may continue to impact traffic in our restaurants for an extended period of time particularly if trends related to work from home continue. For example, 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. In addition to the COVID-19 pandemic, 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, 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. Further, a new presidential and legislative administration recently took office, and it is not yet known what changes the new administration will make to economic or tax policies and how those policies will impact the economy or consumer discretionary spending. 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.

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 opened 23 NROs in fiscal 2020 and plan to open company-owned restaurants over . Our franchisees opened 19 Franchise-owned NROs in fiscal 2020. We must identify target markets where we can enter or expand, and we may not be able to open our planned new restaurants within budget or on a timely basis, and our new restaurants may not perform as well as anticipated. Our 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 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.

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

As part of our long-term growth strategy, we may open restaurants in geographic markets in which we have little or no prior operating experience. Our system-wide restaurant base is 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 franchised 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 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 sales at these existing restaurants. Existing restaurants could also make it more difficult to build our and our franchisees' consumer base for a new restaurant in the same market. Our core business strategy does not entail opening new restaurants that we believe will materially affect sales at our or our franchisees' existing restaurants over the long term. However, due to brand recognition and logistical synergies, as part of our growth strategy, we also intend to open new restaurants in areas where we have existing restaurants. This 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. 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, fear of contracting COVID-19 or other infectious diseases and the sharp increase in unemployment caused by the closure of businesses in response to the COVID-19 pandemic, or other factors. A decline in traffic at these locations for a sustained period could have a material adverse effect on our business, financial condition and results of operations.

The COVID-19 pandemic and related government restrictions imposed by federal, state and local governments have and may continue to impact customer traffic at our restaurants, possibly for prolonged periods of time. We temporarily closed our dining rooms and moved to exclusively off-premises sales by April 2020 to comply with government restrictions and, on April 13, 2020, to help ensure the safety of our employees, temporarily suspended all operations at the company-owned restaurants. The COVID-19 pandemic has also adversely affected our ability to implement our business strategy, including our ability to build in both new and existing markets and increase brand awareness. These changes and any additional changes could continue to have a material adverse effect on our business, liquidity, financial condition and results of operations, particularly if these changes remain in place for a significant amount of time. If business interruptions caused by the COVID-19 pandemic last longer than we expect, we or our franchisees may need to seek additional sources of liquidity. There can be no guarantee that additional liquidity, whether through the credit markets or government programs, will be readily available or available on favorable terms to our franchisees or us.

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 the 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. Deliveries of supplies may be affected by adverse weather conditions, natural disasters, labor shortages, or financial or solvency issues of our distributors or suppliers, product recalls or other issues. Further, increases in fuel prices could result in increased distribution costs. In addition, a material adverse effect on our business, financial condition and results of operations could occur if any of our distributors, suppliers, vendors, or other contractors fail to meet our quality or safety standards or otherwise do not perform adequately, or if any one or more of them seeks to terminate its agreement or fails to perform as anticipated, or if there is any disruption in any of our distribution or supply relationships or operations for any reason.

Changes in the price or availability of certain food products, including as a result of the COVID-19 pandemic, could affect our profitability and reputation. While other commodities we purchase are subject to contract pricing and therefore have not been impacted by price inflation as a result of the COVID-19 pandemic thus far, as our contracts expire, we may not be able to successfully re-negotiate terms that protect us from price inflation in the future. International commodities we purchase are also subject to supply shortages or interruptions due to the COVID-19 pandemic.

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 the event of cost increases with respect to one or more of our raw ingredients, we may choose to temporarily suspend or permanently discontinue serving menu items rather than paying the increased cost for the ingredients. Any such changes to our available menu could negatively impact our restaurant traffic, business and 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 prices 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 franchised restaurants.

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 (i.e., Ebola, "mad cow disease," "SARS," "swine flu," Zika virus, avian influenza, hepatitis A, porcine epidemic diarrhea virus, norovirus or other virus), bacteria (i.e., salmonella, listeria or E.coli), parasites or other toxins infecting our food supply. 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, including in their adherence to additional sanitation protocols and guidelines as a result of the COVID-19 pandemic or other infectious diseases, and may not have visibility into their practices. New illnesses resistant to our current precautions may develop in the future, or diseases with long incubation periods could arise, that could give rise to claims or allegations on a retroactive basis. One or more instances of food-borne illness in one of our 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. Furthermore, due to the COVID-19 pandemic, we must comply with stricter health regulations and guidelines and increased public concern and expectations over food safety standards and controls. 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.

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 AUV 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 AUV 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. Additionally, all delivery from our restaurants is through third-party delivery companies. If these third-party delivery companies cease doing business with us, cannot make their scheduled deliveries, do not continue their relationship with us on favorable terms or fail to effectively compete with other third-party delivery providers in the sector, it may have a negative impact on sales or result in increased third-party delivery fees. If any third-party delivery provider we partner with experiences damage to their brand image, we may also see ramifications due to our partnership with them. As delivery, as well as the partnerships we have made in connection with delivery, is still a growing business for us, it may be difficult for us to anticipate its impact to our sales as well as the challenges we may face in the future.

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.

Additionally, our competitors with greater financial resources are able to spend significantly more on marketing and advertising and other initiatives than we are able to. Should our competitors increase spending on

marketing and advertising and other initiatives or our marketing expenditures decrease for any reason, or should our advertising, promotions, new menu items and restaurant designs and locations be less effective than our competitors', it could have a material adverse effect on our business, financial condition and results of operations.

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

As 22% of our restaurants were franchised as of December 27, 2020, our results of operations are dependent in part upon the operational and financial success of our franchisees. We receive royalties, franchise fees and contributions to a system fund used for advertising from our franchisees. We have limited control over how our franchisees' businesses are run, and our franchisees may not comply with our established operational standards and guidelines. 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, 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.

The interests of our franchisees may conflict with yours or ours in the future and we could face liability from our franchisees or related to our relationship with our franchisees.

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.

In addition, various state and federal laws govern our relationship with our franchisees. A franchisee and/or a government agency may bring legal action against us based on the franchisee/franchisor relationship that could result in the award of damages to franchisees and/or the imposition of fines or other penalties against us.

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% of our system-wide restaurants as of December 27, 2020. Our restaurants in Florida represented approximately 24% of our system-wide restaurants as of December 27, 2020. 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.

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

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

Our reputation and the quality of our brand are critical to our business and success in existing markets, and will be critical to our success as we enter into new markets. Any incident that erodes consumer loyalty for our brand could significantly reduce its value and damage our business. We may be adversely affected by negative publicity relating to food quality, the safety, sanitation and welfare of our restaurant facilities, 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 the COVID-19 pandemic or other infectious diseases attributed to one or more of our restaurants, or non-compliance with COVID-19 related 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 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 franchised restaurants. For example, we, or other restaurant companies generally, could come under criticism from animal rights and welfare activists for our business practices or those of our suppliers. Such criticisms could impair our brand, our restaurant sales, our hiring, our expansion plans, and the performance of our franchisees. If we changed our practices because of concerns about animal welfare, or in response to such criticisms, our costs might increase, or we may have to change our suppliers or our menu. The risk of negative publicity is particularly great with respect to our franchised 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, especially since the beginning of the COVID-19 pandemic, and new social media platforms are rapidly being developed, potentially making more traditional social media platforms obsolete. As a result, we need to continuously innovate and develop our social media strategies in order to maintain broad appeal with customers and brand relevance, particularly given the rise in digital orders by customers at home due to the COVID-19 pandemic. We also continue to invest in other digital marketing initiatives that allow us to reach our customers across multiple digital channels and build their awareness of, engagement with, and loyalty to our brand. These initiatives may not be successful, resulting in expenses incurred without the benefit of higher sales or increased brand recognition. Additionally, negative commentary regarding our restaurants, our food or our service may be posted on 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.

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

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

We contract with one distributor, which we refer to as our “broadline” distributor, to provide virtually all of our food distribution services in the United States. As of December 27, 2020, approximately 80% of certain food and beverage ingredients, including pork and eggs were processed through our broadline distributor for distribution and delivery to each of our restaurants.

As of December 27, 2020, we utilized 15 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 broadline 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 30% of our company-owned restaurants as of December 27, 2020, which collectively represented 32% of our restaurant sales for fiscal 2020. The other 14 distribution centers collectively supply the other 70% of our company-owned restaurants, which represented the remaining 68% of our sales.

As of December 27, 2020, we purchased 100% of our pork from two suppliers, 100% of our eggs from two suppliers and 80% of our avocados 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. We also purchased 100% of our coffee from one supplier. 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 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 the COVID-19 pandemic or other infectious diseases. If our suppliers' employees are unable to work or our suppliers' operations are disrupted due to the COVID-19 pandemic, 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.

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, including implementing a new credit card processing system in all of our company-owned locations in 2020, and we plan to work with our franchisees to have their restaurants upgrade to the same system. 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. Additionally, unforeseen problems with our point-of-sale system or our credit card processing system may affect our operational abilities and internal controls and we may incur additional costs in connection with such upgrades and expansion.

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. In the United States, various federal and state regulators, including governmental agencies like the Consumer Financial Protection Bureau and the Federal Trade Commission (the "FTC"), have adopted, or are considering adopting, laws and regulations concerning personal information and data security and have prioritized privacy and information security violations for enforcement actions.

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. For example, the California Consumer Privacy Act ("CCPA"), which went into effect on January 1, 2020, imposes new and enhanced data privacy obligations and creates new privacy rights for California residents, including the right to access and delete their personal information and to opt-out of certain sharing and sales of their personal information. The CCPA allows for significant civil penalties and statutory damages for violations and contains a private right of action for certain data breach incidents. Similarly, on March 2, 2021, the Virginia Consumer Data Protection Act ("CDPA") was signed into law. The CDPA becomes effective beginning January 1, 2023, and contains provisions that require businesses to conduct data protection assessments in certain circumstances and obtain opt-in consent from consumers to process certain sensitive personal information, among other requirements. Efforts are underway in numerous other states to pass data privacy laws that are similar to the CCPA and/or the CDPA, further complicating the legal landscape. In addition, laws in all 50 states require businesses to provide notice to consumers whose personal information has been accessed or acquired as a result of a data breach (and, in some cases, to regulators and/or the media). There is also the possibility that Congress could strengthen federal privacy laws and/or enact a new comprehensive federal privacy law that would apply to us, which may add additional complexity, variation in requirements, restrictions and potential legal risks, require additional investment of resources in compliance programs, impact strategies and the availability of previously useful data and could result in increased compliance costs or changes in business practices and policies. 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. Any such claims, proceedings or actions could hurt our reputation, brand and business, force us to incur significant expenses in defense of such proceedings or actions, distract our management, increase our costs of doing business, result in a loss of customers, suppliers or vendors and result in the imposition of monetary penalties. We may also be

contractually required to indemnify and hold harmless third parties from the costs or consequences of non-compliance with any laws, regulations or other legal obligations relating to privacy or consumer protection or any inadvertent or unauthorized use or disclosure of data that we store or handle as part of operating our business. Although we endeavor to comply with our public statements and documentation, we may at times fail to do so or be alleged to have failed to do so. The publication of our privacy policies and other statements that provide promises and assurances about data privacy and security can subject us to potential government or legal action if they are found to be deceptive, unfair or misrepresentative of our actual practices. Any concerns about our data privacy and security practices, even if unfounded, could damage the reputation of our businesses and discourage potential users from our products and services. Any of the foregoing could have an adverse effect on our business, financial condition and results of operations.

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

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; however, we are not required to remit any amounts relating to unredeemed gift cards to states as that obligation has been assumed by the third-party issuer of the gift cards. 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, we rely on third-party service providers 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 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 United States Patent and Trademark Office ("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. While we try to ensure that the quality of our brand and branded products is maintained by all our franchisees, we cannot be certain that these franchisees will not take actions that adversely affect the value of our intellectual property or reputation. 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. Our chief executive officer has been with us for more than 14 years and our executive officers have a combined total of 78 years of experience in the food service industry. The loss of the services of any of our executive officers could have a material adverse effect on our business, financial condition and results of

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

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

We believe that the "You First" culture of our employee workforce is a key factor to our success. Accordingly, 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 staffing complexities for us and other restaurant operators and, on April 13, 2020, to help ensure the safety of our employees, we temporarily suspended all operations at the company-owned restaurants. On May 18, 2020, in conjunction with municipal health and safety mandates, we began to reopen our company-owned restaurants in four phases, and substantially all our restaurants were open by the end of June 2020. We reopened all of our restaurants in a new environment, filled with increased complexity for our employees and managers, a decreased applicant pool for all positions, safety concerns, and ongoing staff call-outs and exclusions due to illness. The COVID-19 pandemic has also resulted in aggressive competition for talent, wage inflation and pressure to improve benefits and workplace conditions to remain competitive. Furthermore, due to the COVID-19 pandemic, we could experience a shortage of labor for restaurant positions as concern over exposure to COVID-19 and other factors could decrease the pool of available qualified talent for key functions. In addition, our existing wages and benefits programs, combined with the challenging conditions due to the COVID-19 pandemic and the highly competitive wage pressure resulting from the labor shortage, may be insufficient to attract and retain the best talent. Our failure to recruit and retain new 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.

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

Although we require all workers to provide us with government-specified documentation evidencing their employment eligibility, some of our employees may, without our knowledge, be unauthorized workers. We currently participate in the "E-Verify" program, an Internet-based, free program run by the U.S. government to verify employment eligibility, in states in which participation is required. However, use of the "E-Verify" program does not guarantee that we will properly identify all applicants who are ineligible for employment. Unauthorized workers are subject to deportation and may subject us to fines or penalties, and if any of our workers are found to be unauthorized, we could experience adverse publicity that may negatively impact our brand and may make it more difficult to hire and keep qualified employees. Termination of a significant number of employees who are unauthorized employees may disrupt our operations, cause temporary increases in our

labor costs as we train new employees and result in adverse publicity. We could also become subject to fines, penalties and other costs related to claims that we did not fully comply with all recordkeeping obligations of federal and state immigration compliance laws. Failure by our franchisees to comply with employment eligibility or immigration laws may also result in adverse publicity and reputational harm to our brand and could subject them to fines, penalties and other costs. These factors could materially adversely affect our business, financial condition and results of operations.

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

We believe that a critical component to our success has been our corporate culture. 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.

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, 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, consumers, suppliers, franchisees, stockholders or others through private actions, class actions, administrative proceedings, regulatory actions or

other litigation. Moreover, 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. A number of these lawsuits have resulted in the payment of substantial damages by the defendants. Similar lawsuits have been instituted from time to time alleging violations of various federal and state wage and hour laws regarding, among other things, employee meal deductions, overtime eligibility of managers and failure to pay for all hours worked. Regardless of whether any claims against us are valid or whether we are liable, claims may be expensive to defend and may divert time and money away from our operations and result in increases in our insurance premiums. In addition, they may generate negative publicity, which could reduce 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.

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.

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

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.

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

We are also subject in the ordinary course of business to employee claims against us based, among other things, on discrimination, harassment, wrongful termination, or violation of wage and labor laws. Such claims could also be asserted against us by employees of our franchisees. These claims may divert our financial and management resources that would otherwise be used to benefit our operations. The ongoing expense of any resulting lawsuits, and any substantial settlement payment or damage award against us, could have a material adverse effect on our business, financial condition and results of operations.

With the passage in 2010 of the U.S. Patient Protection and Affordable Care Act (the "ACA"), we are required to provide affordable coverage, as defined in the ACA, to all employees, or otherwise be subject to a payment per employee based on the affordability criteria in the ACA. Additionally, some states and localities have passed state and local laws mandating the provision of certain levels of health benefits by some employers. Increased health care and insurance costs could have a material adverse effect on our business, financial condition and results of operations. In addition, changes in federal or state workplace regulations could adversely affect our ability to meet our financial targets.

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. Due to the COVID-19 pandemic, on April 13, 2020, to help ensure the safety of our employees, we temporarily suspended all operations at the company-owned restaurants and negotiated extensively with our landlords primarily for rent abatements and rent deferrals and certain modified obligations under our leases, but we still may not be able to recover our investment in these properties.

In addition, as leases expire for restaurants that we will continue to operate, we may, at the end of the lease term and any renewal period for a restaurant, be unable to negotiate renewals, either on commercially acceptable terms or at all. As a result, we may close or relocate the restaurant, which could subject us to 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. We carry liquor liability coverage as part of our existing comprehensive general liability insurance. Recent litigation against restaurant chains has resulted in significant judgments and settlements under dram shop statutes. Because these cases often seek punitive damages, which may not be covered by insurance, such litigation could have a material effect on our business, financial condition and results of operations. Regardless of whether any claims against us are valid or whether we are liable, claims may be expensive to defend and may divert time and money away from operations and hurt our financial performance. A judgment significantly in excess of our insurance coverage or not covered by insurance could have a material adverse effect on our business, financial condition 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 the recently enacted comprehensive health care reform legislation discussed above, those relating to building and zoning requirements and those relating to the preparation and sale of food. Such laws and regulations are subject to change from time to time. The failure to comply with these laws and regulations could adversely affect our results of operations. Typically, licenses, permits and approvals under such laws and regulations must be renewed annually and may be revoked, suspended or denied renewal for cause at any time if governmental authorities determine that our conduct violates applicable regulations. Difficulties or failure to maintain or obtain the required licenses, permits and approvals could adversely affect our existing restaurants and delay or result in our decision to cancel the opening of new restaurants, which could have a material adverse effect on our business, financial condition and results of operations.

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

There is also a potential for increased regulation of certain food establishments in the United States, where compliance with a Hazard Analysis and Critical Control Points (“HACCP”) approach would be required. HACCP refers to a management system in which food safety is addressed through the analysis and control of potential hazards from production, procurement and handling, to manufacturing, distribution and consumption of the finished product. Many states have required restaurants to develop and implement HACCP Systems, and the United States government continues to expand the sectors of the food industry that must adopt and implement

HACCP programs. For example, the 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.

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

In addition, our franchising activities are subject to laws enacted by a number of states, rules and regulations promulgated by the FTC and certain rules and requirements regulating licensing activities in foreign countries. Failure to comply with new or existing licensing laws, rules and regulations in any jurisdiction or to obtain required government approvals could negatively affect our licensing sales and our relationships with our franchisees.

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

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 27, 2020, we had $345.2 million of goodwill and $137.5 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 quantitative annual impairment assessment of goodwill and indefinite-lived intangible assets in April 2020 as the effect of the COVID-19 pandemic was considered a triggering event indicating that the carrying value of goodwill and indefinite-lived intangible assets may not be recoverable. We also performed an annual impairment test for both goodwill and indefinite-lived intangible assets on the first day of the fourth quarter of fiscal 2020. We did not recognize any impairment losses in fiscal 2020. Following our strategic review of our restaurant operations and our assessment of The Egg & I tradename in the second quarter of fiscal 2019, we recognized a non-cash impairment charge of $29.0 million related to the indefinite-lived intangible asset and the remaining net book value of $0.3 million was amortized through the end of fiscal 2019. We performed a qualitative annual impairment test for both goodwill and indefinite-lived intangible assets on the first day of the fourth quarter of fiscal 2019 and we did not recognize any additional impairment losses in fiscal 2019 as a result of this assessment.

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. See Note 6, *Goodwill* and Note 7, *Intangible Assets, Net* in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information.

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 results of operations. We evaluated our long-lived assets at company-owned restaurants for impairment in April 2020 as the effect of the COVID-19 pandemic was considered a triggering event indicating that the carrying values of our property, fixtures and equipment and definite-lived intangible assets may not be recoverable and we did not recognize any impairment losses. Following our strategic review of our restaurant operations and our assessment of The Egg & I franchise rights in the second quarter of fiscal 2019, we recognized a non-cash impairment charge of $3.2 million related to the definite-lived intangible assets and accelerated the amortization of the remaining net book value through the end of fiscal 2019. The remaining net book value of the definite-lived intangible assets were amortized through the end of fiscal 2019. See Note 7, *Intangible Assets, Net* in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information.

Compliance with environmental laws or liabilities arising from environmental laws could increase our operating expenses and could have a material adverse effect on our business, financial condition and results of operations.

We are subject to federal, state and local laws, regulations and ordinances that:

- govern activities or operations that may have adverse environmental effects, such as discharges to air and water, as well as waste handling and disposal practices for solid and hazardous wastes; and
- impose liability for the costs of cleaning up, and damage resulting from, sites of past spills, disposals or other releases of hazardous materials.

In particular, under applicable environmental laws, we may be responsible for remediation of environmental conditions and may be subject to associated liabilities, including liabilities for clean-up costs and personal injury or property damage, relating to our restaurants and the land on which our restaurants are located, regardless of

whether such environmental conditions were created by us or by a prior owner or tenant. These environmental laws provide for significant fines and penalties for non-compliance and liabilities for remediation, sometimes without regard to whether the owner or operator of the property knew of, or was responsible for, the release or presence of hazardous toxic substances. Third parties may also make claims against owners or operators of properties for personal injuries and property damage associated with releases of, or actual or alleged exposure to, such hazardous or toxic substances at, on or from our restaurants. If we are found liable for the costs of remediating contamination at any of our properties, our operating expenses would likely increase and such finding could have a material adverse effect on our business, financial condition and results of operations. Some of our leases provide for indemnification of our landlords for environmental contamination, clean-up or owner liability. See "Business – Environmental Matters."

Further, environmental laws and regulations, and the administration, interpretation and enforcement thereof, are subject to change and may become more stringent in the future, which could have a material adverse effect on our business, financial condition and results of operations.

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.

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

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

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

Upon becoming a public company, we will be required to comply with Section 404 of the Sarbanes-Oxley Act ("Section 404"), which will require management to certify financial and other information in our quarterly

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

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 the issuance of our fiscal 2018 consolidated financial statements. 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.
- 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, including hiring additional personnel, designing and implementing formal procedures and controls supporting the Company's period-end financial reporting process, such as controls over the preparation and review of account reconciliations and disclosures in the consolidated financial statements and designing certain information technology general controls. We are in the process of implementing additional measures designed to enable us to meet the requirements of being a public company, improve our internal control over financial reporting and remediate the control deficiencies that led to the material weaknesses, including hiring additional information technology, finance and accounting personnel, evaluating our financial and information technology control environment and augmenting our internal controls with new accounting policies and procedures, and designing and implementing financial reporting controls, income tax controls, and information technology general controls.

While we believe that these measures will improve our internal control over financial reporting, the implementation of these measures is ongoing, and we cannot assure you that we will be successful in doing so or that these measures will significantly improve or remediate the material weaknesses described above. We cannot assure you that the measures we have taken to date, and are continuing to implement, will be sufficient to remediate the material weaknesses we have identified or avoid potential future material weaknesses. If the steps we take do not correct the material weaknesses in a timely manner, we will be unable to conclude that we maintain effective internal control over financial reporting. We also cannot assure you that there will not be any additional material weaknesses in our internal control over financial reporting in the future.

We are working to remediate the material weaknesses. At this time, we cannot provide an estimate of costs expected to be incurred in connection with implementing a remediation plan; however, these remediation measures will be time consuming and will place significant demands on our financial and operational resources.

We may not be able to remediate any material weaknesses prior to the deadline imposed by Section 404(a) of the Sarbanes-Oxley Act for management's assessment of internal control over financial reporting. The failure to achieve and maintain effective internal control over financial reporting could have a material adverse effect on our business, financial condition and results of operations. In the event that we are not able to successfully remediate the existing material weaknesses in our internal control over financial reporting or identify additional material weaknesses, or if our internal control over financial reporting is perceived as inadequate or it is perceived that we are unable to produce timely or accurate consolidated financial statements, investors may lose confidence in our results of operations, the price of our common stock could decline, we could become subject to investigations by the stock exchange on which our common stock is listed, the SEC or other regulatory agencies, which could require additional financial and management resources, or our common stock may not be able to remain listed on such exchange.

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. 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.

The total principal amount of debt outstanding under our Senior Credit Facilities, excluding finance lease liabilities, financing obligations and unamortized debt discount and deferred issuance costs as of December 27, 2020 was $288.0 million. Our indebtedness could have significant effects on our business, such as:

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

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

Pursuant to the Credit Agreement (as defined in “Description of Material Indebtedness”), we are required to maintain, on a consolidated basis, (a) a maximum ratio of consolidated total net debt to consolidated EBITDA (with certain adjustments as set forth in the Senior Credit Facilities), tested as of the last day of each fiscal quarter (the “Leverage Financial Covenant”) and (b) until the first date on or after June 27, 2021 on which we deliver a compliance certificate to the administrative agent demonstrating compliance with the Leverage Financial Covenant, a minimum liquidity, tested on the 15th day and last day of each calendar month. Our ability to borrow under our Senior Credit Facilities depends on our compliance with these financial covenants. Events beyond our control, including changes in general economic and business conditions, may affect our ability to satisfy the financial covenants. We cannot assure you that we will satisfy the financial covenants in the future, or that our lenders will waive any failure to satisfy 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 franchised 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 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.

The interest rates of loans under our Credit Agreement are priced using a spread over LIBOR.

LIBOR, the London interbank offered rate, is the basic rate of interest used in lending between banks on the London interbank market and is widely used as a reference for setting the interest rate on loans globally. We typically use LIBOR as a reference rate for the Senior Credit Facilities under our Credit Agreement such that the interest due to the applicable lenders with respect to a term loan or revolving loan under our Senior Credit Facilities is calculated using LIBOR plus an applicable spread above LIBOR. On July 27, 2017, the United Kingdom's Financial Conduct Authority (the "FCA"), which regulates LIBOR, announced that it intends to phase out LIBOR by the end of 2021. On March 5, 2021 the ICE Benchmark Administration, which administers LIBOR, and the FCA announced that all LIBOR settings will either cease to be provided by any administrator, or no longer be representative, immediately after December 31, 2021 for all 1-week and 2-month U.S. dollar LIBOR settings and, immediately after June 30, 2023, for the remaining U.S. dollar LIBOR settings. The Alternative Reference Rates Committee, a steering committee convened by the U.S. Federal Reserve Board and comprised of large U.S. financial institutions, recommended the Secured Overnight Financing Rate as an alternative to LIBOR. If LIBOR ceases to be available, we may seek to amend the Credit Agreement to replace LIBOR with a new standard to the extent one is established. At this time, due to a lack of consensus as to what rate or rates may become accepted alternatives to LIBOR, it is impossible to predict the effect of any such alternatives on our liquidity, interest expense, or the value of the Senior Credit Facilities.

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 will contain 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 Senior Credit Facilities described below, 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 experience managing a public company and our current resources may not be sufficient to fulfill our public company obligations.

Following the closing of this offering, we will be subject to various regulatory requirements, including those of the SEC and Nasdaq. These requirements include record keeping, financial reporting and corporate governance rules and regulations. Our management team does not have experience in managing a public company and, historically, has not had the resources typically found in a public company. Our internal infrastructure may not be adequate to support our increased reporting obligations and we may be unable to hire, train or retain necessary staff and may be reliant on engaging outside consultants or professionals to overcome our lack of experience or 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.

We are an emerging growth company, as defined in Section 2(a) of the Securities Act, as modified by the JOBS Act. As such, 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 that will be effective upon closing of this offering may make it more difficult for, or prevent a third party from, acquiring control of us without the approval of our Board. Among other things, these provisions:

- 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;
- establish advance notice requirements for nominations for election to our Board or for proposing matters that can be acted on by stockholders at stockholder meetings; and
- provide that a % supermajority vote will be required to amend or repeal provisions relating to, among other things, the classification of the Board, the filling of vacancies on the Board and the ability of stockholders to call special meetings of stockholders.

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

The foregoing factors, as well as the significant 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. See "Description of Capital Stock."

Our amended and restated certificate of incorporation will designate the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders and will designate the federal district courts of the United States 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 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 this Offering and 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.

Following the closing of this offering, Advent will indirectly beneficially own approximately of our outstanding common stock, or if the underwriters' option to purchase additional shares is fully exercised. As a result, Advent will beneficially own shares sufficient for majority votes over all matters requiring

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

This concentration of ownership may delay, deter or prevent acts that would be favored by our other stockholders. The interests of 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, including investors in this offering. 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. See “Principal Stockholders” and “Description of Capital Stock – Anti-takeover Provisions.”

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

Upon the listing of our common stock on Nasdaq in connection with this offering, we will be 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 of directors consist of “independent” directors under the listing standards of Nasdaq, (ii) a nominating/corporate governance committee composed entirely of independent directors and a written nominating/corporate governance committee charter meeting Nasdaq requirements and (iii) a compensation committee composed entirely of independent directors and a written compensation committee charter meeting the requirements of Nasdaq. Following this offering, we intend to use some or all these exemptions. As a result, we may not have a majority of independent directors, our nomination and corporate governance committee and compensation committee may not consist entirely of independent directors and such committees may not be subject to annual performance evaluations. Accordingly, you may not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of Nasdaq. See “Management.”

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 Senior Credit Facilities restrict 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. See “Dividend Policy.”

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

Our quarterly results of operations may fluctuate due principally to seasonal factors and the timing of holidays. Accordingly, results for any one quarter are not necessarily indicative of results to be expected for any other quarter or for any year and same-restaurant sales 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.

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

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

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

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

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

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

- variations in our quarterly or annual results of operations;
- changes in our earnings estimates (if provided) or differences between our actual results of operations and those expected by investors and analysts;
- restaurant closures or modified operating hours due to the COVID-19 pandemic;
- reduced customer traffic due to illness, quarantine or government or self-imposed restrictions placed on our restaurants' operations;
- changes in consumer spending behaviors (e.g. continued practice of social distancing, decrease in consumer confidence in general macroeconomic conditions and a decrease in consumer discretionary spending);
- the contents of published research reports about us or our industry or the failure of securities analysts to cover our common stock;
- additions or departures of key management personnel;
- any increased indebtedness we may incur in the future;

- announcements by us or others and developments affecting us;
- actions by institutional stockholders;
- litigation and governmental investigations;
- legislative or regulatory changes;
- judicial pronouncements interpreting laws and regulations;
- changes in government programs;
- changes in market valuations of similar companies;
- speculation or reports by the press or investment community with respect to us or our industry in general;
- announcements by us or our competitors of significant contracts, acquisitions, dispositions, strategic relationships, joint ventures or capital commitments; and
- general market, political and economic conditions, including local conditions in the markets in which we operate.

These broad market and industry factors may decrease the market price of our common stock, regardless of our actual financial performance. The stock market in general has from time to time experienced extreme price and volume fluctuations, including recently. In addition, in the past, following periods of volatility in the overall market and decreases in the market price of a company's securities, securities class action litigation has often been instituted against these companies. This litigation, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources, which could have a material adverse effect on our business, financial condition and results of operations.

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

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

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

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

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

The market price of our common stock may decline significantly when the restrictions on resale by our existing stockholders lapse. 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 any equity plans, acquisitions or otherwise will dilute all other stockholdings.

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

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

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

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 as defined in Section 2(a) of the Securities Act, as modified by the JOBS Act. For example, these rules and regulations could make it more difficult and more costly for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or to incur substantial costs to maintain the same or similar coverage. These rules and regulations could also make it more difficult for us to attract and retain qualified persons to serve on our Board or our board committees or as executive officers. Our management and other personnel will devote a substantial amount of time to these compliance initiatives. As a result, management’s attention may be diverted from other business concerns, which could harm our business and results of operations. We will need to hire more employees in the future to comply with these requirements, which will increase our costs and expenses.

Our management team and other personnel devote a substantial amount of time to new compliance initiatives and we may not successfully or efficiently manage our transition to a public company. To comply with the requirements of being a public company, including the Sarbanes-Oxley Act, we will need to undertake various actions, such as implementing new internal controls and procedures and hiring accounting or internal audit staff or outsourcing certain functions to third parties, which could have a material adverse effect on our business, financial condition and results of operations.

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.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

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

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

- continued adverse effects of the COVID-19 pandemic or other infectious disease on our financial condition, results of operations, and supply chain;
- our vulnerability to changes in consumer preferences and economic conditions;
- 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;
- our inability to prevent instances of food-borne illness in our restaurants;
- our inability to compete successfully with other breakfast and lunch restaurants;
- 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 controls 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; and
- the interests of Advent may differ from those of our public stockholders.

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

USE OF PROCEEDS

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

We intend to use the net proceeds from this offering to repay borrowings outstanding under our Senior Credit Facilities. Our Senior Credit Facilities are comprised of our Initial Term Loan Facility, our Initial Delayed Draw Term Facility, our First Amendment Delayed Draw Term Facility, our Second Amendment Delayed Draw Term Facility and our Revolving Facility. Loans under the Senior Credit Facilities mature on August 21, 2023. As of December 27, 2020, our Initial Term Loan Facility bore interest at a rate of 8.0%, our Initial Delayed Draw Term Facility bore interest at a rate of 8.0%, our First Amendment Delayed Draw Term Facility bore interest at a rate of 8.0% and our Second Amendment Delayed Draw Term Facility bore interest at a rate of 8.0%. See “Description of Material Indebtedness.”

Assuming no exercise of the underwriters’ option to purchase additional shares, a $1.00 increase (decrease) in the assumed initial public offering price of $ per share (the midpoint of the price range set forth on the cover of this prospectus) would increase (decrease) the net proceeds to us from this offering by $ million, assuming the number of shares offered by us, as set forth on the cover of this prospectus, remains the same and after deducting underwriting discounts and commissions and estimated expenses payable by us.

DIVIDEND POLICY

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.

Our ability to pay dividends is currently restricted by the terms of our Senior Credit Facilities and may be further restricted by any future indebtedness we incur.

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:

- restrictions in our debt instruments, including our Senior Credit Facilities;
- general economic business conditions;
- our earnings, financial condition, and results of operations;
- our capital requirements;
- our prospects;
- legal restrictions; and
- such other factors as our Board may deem relevant.

See “Risk Factors – Risks Related to this Offering and Ownership of Our Common Stock – We do not anticipate paying any dividends on our common stock in the foreseeable future,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations – Results of Operations – Liquidity and Capital Resources,” “Description of Material Indebtedness,” and “Description of Capital Stock.”

CAPITALIZATION

The following table sets forth our cash and cash equivalents and our capitalization as of :

- on an actual basis;
- on a pro-forma basis to give effect to (i) the automatic conversion of all outstanding shares of preferred stock into shares of our common stock and (ii) the filing and effectiveness of our restated certificate of incorporation in Delaware that will become effective immediately prior to the completion of this offering; and
- on a pro forma as adjusted basis to give further effect to the sale of shares of our common stock in this offering, assuming no exercise of the underwriters' option to purchase additional shares, at an assumed public offering price of $ per share, which is the midpoint of the estimated public offering price range set forth on the cover of this prospectus, less estimated underwriting discounts and commissions and estimated expenses, and the application of the net proceeds received by us from this offering as described under "Use of Proceeds."

This table should be read in conjunction with "Use of Proceeds," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Description of Capital Stock" and the audited consolidated financial statements and notes thereto appearing elsewhere in this prospectus.

	As of		
	Actual	Pro Forma	Pro Forma As Adjusted
	(in thousands, except share and per share data)		
Cash and cash equivalents	$	$	$
Debt:			
Total debt(1)	$	$	$
Equity:			
Preferred stock, $0.01 per value per share, shares authorized, actual, shares authorized, pro forma and pro forma as adjusted, shares issued and outstanding, actual, and no shares issued and outstanding, pro forma and pro forma as adjusted			
Common stock, $0.01 par value per share, shares authorized, actual, shares authorized pro forma and pro forma as adjusted and shares issued and outstanding, actual, shares issued and outstanding, pro forma, and shares issued and outstanding, pro forma as adjusted			
Additional paid-in capital			
Accumulated deficit			
Total equity	$	$	$
Total capitalization	$	$	$

(1) Total debt includes the current and long-term debt, excluding unamortized debt discount and deferred issuance costs. See Note 10, *Debt* in the notes to the audited consolidated financial statements included in this prospectus for additional information. Also, see "Description of Material Indebtedness."

DILUTION

If you invest in our common stock, your interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock upon the consummation of this offering. Dilution results from the fact that the per share offering price of our common stock is in excess of the book value per share attributable to new investors.

As of , our historical net tangible book value (deficit) was $ million, or $ per share of common stock. Our historical net tangible book value per share represents the amount of our total tangible assets reduced by the amount of our total liabilities and divided by the total number of shares of our common stock outstanding as of , .

As of , our pro forma net tangible book value as of was $, or $ per share of common stock. Our pro forma net tangible book value per share represents the amount of our total tangible assets reduced by the amount of our total liabilities and divided by the total number of shares of our common stock outstanding as of , after giving effect to the automatic conversion of all outstanding shares of our preferred stock into shares of our common stock and the filing and effectiveness of our restated certificate of incorporation that will become effective immediately prior to the completion of this offering.

After giving effect to (i) the pro forma adjustments set forth above, (ii) the sale of shares of common stock in this offering at the assumed initial public offering price of $ per share (the midpoint of the price range set forth on the cover of this prospectus after deducting estimated underwriting discounts and commissions and estimated offering expenses) and (iii) the application of the net proceeds from this offering, our pro forma as adjusted net tangible book value as of would have been $ million, or $ per share. This represents an immediate increase in pro forma as adjusted net tangible book value of $ per share to our existing investors and an immediate dilution in pro forma as adjusted net tangible book value of $ per share to new investors.

The following table illustrates this dilution on a per share of common stock basis:

Assumed initial public offering price per share		$
Historical net tangible book value (deficit) per share	$	
Pro forma net tangible book value per share as of before giving effect to this offering		
Increase in pro forma net tangible book value per share attributable to new investors in this offering		
Pro forma as adjusted net tangible book value per share after this offering		
Dilution in pro forma as adjusted net tangible book value per share to new investors in this offering		$

The following table summarizes, on an as adjusted basis as of , after giving effect to this offering, the total number of shares of common stock purchased from us, the total cash consideration paid to us, or to be paid, and the average price per share paid, or to be paid, by new investors purchasing shares in this offering, at an assumed initial public offering price of $ per share, which is the midpoint of the range set forth on the cover of this prospectus, before deducting the estimated underwriting discounts and commissions:

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders		%	$	%	$
New investors					
Total	$	100.0%	$	100.0%	$

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) our pro forma as adjusted net tangible book value by $ million, the pro forma as adjusted net tangible book value per share after this offering by $ and the dilution per share to new investors by $ assuming the number of shares offered by us, as set forth on the cover of this prospectus, remains the same, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters were to fully exercise their option to purchase additional shares of our common stock, the percentage of shares of our common stock held by existing investors would be %, and the percentage of shares of our common stock held by new investors would be %.

The above discussion and tables are based on the number of shares and options to purchase shares outstanding as of . In addition, we may choose to raise additional capital due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. To the extent that additional capital is raised through the sale of equity or convertible debt securities, the issuance of such securities could result in further dilution to our stockholders.

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

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

We use a 52- or 53-week fiscal year ending on the last Sunday of each calendar year. All references to fiscal 2020 and fiscal 2019 reflect the results of the 52-week fiscal year ended December 27, 2020 and the 52-week fiscal year ended December 29, 2019, respectively. Our fiscal quarters are comprised of 13 weeks each, except for fiscal years consisting of 53 weeks for which the fourth quarter will consist of 14 weeks, and end on the 13th Sunday of each quarter (14th Sunday of the fourth quarter, when applicable).

Overview

First Watch is a high-growth daytime restaurant concept serving made-to-order breakfast, brunch and lunch using fresh ingredients, based on year-over-year system-wide sales growth metrics according to Nation's Restaurant News. The original First Watch opened in 1983 in Pacific Grove, California. Founder John Sullivan and his colleague Ken Pendery set out to create a place of their own based upon their shared vision of what a neighborhood cafe should be. Long before "farm to table" became a culinary mantra, First Watch incorporated fresh, quality ingredients into elevated executions of classic dishes. In addition, the new concept was established as a "daytime café" with limited hours of 7:00 a.m. until 2:30 p.m., which allowed for specialization in breakfast, brunch and lunch. Over the course of the next several decades. First Watch's passion for people, culture and service drove expansion through acquisition and new restaurant development across 29 states as of December 27, 2020.

Growth Strategies and Outlook

We believe our continued growth will come from: (i) opening new restaurants in existing and new geographies and (ii) driving traffic and building sales at our restaurants.

Grow Our Brand Footprint by Consistently Opening New Restaurants

Opening new company-owned restaurants in new and existing markets is central to our growth strategy.

Drive Restaurant Traffic and Build Sales

We intend to grow same-restaurant sales by continuing to offer innovative menu items, increase awareness of our brand, deliver excellent customer service and launch relevant sales platforms and initiatives.

Continue Menu Innovation: The ongoing evolution of our menu keeps First Watch relevant for our customers. The development of award-winning menu items and the training and experience of our staff enable us to replicate complex preparations across all our restaurants.

Offer Alcohol as Only First Watch Can: We recently extended our successful fresh juice program with innovative, craft alcohol cocktails in many of our restaurants which provides a new platform for growth.

Convenience and Increased Accessibility through Our Off-Premises Offering: In fiscal 2020, we integrated new technology and processes which enable our restaurants to better meet our customers' demand for convenient, off-premises dining through take-out and delivery.

Increase Our Brand Awareness: The continued evolution of our marketing and advertising strategy to focus on building our brand awareness principally through digital marketing that emphasizes connection with First Watch customers.

Deliver an Excellent On-Premise Dining Experience: We will continue to prioritize service and delivering a memorable dining experience in our restaurants to every customer and in every visit.

Additional Platforms and Initiatives: We believe we can expand our appeal and market share of weekday lunch occasions with evolved menu offerings and promotional support. In addition, we will add tools to capture, interpret and communicate actionable data to improve our abilities to understand customer behaviors and to efficiently serve customer needs.

Changes in general economic conditions can affect our traffic and sales. Our results of operations are impacted by prices of a broad range of ingredients used in our menu, labor costs, costs of occupancy and other restaurant industry expenses. Our results are also impacted by the timing and pace of new restaurant openings. Results for any one quarter are not necessarily indicative of results to be expected for any other quarter, and same-restaurant sales growth for any future period may decrease.

Recent Trends

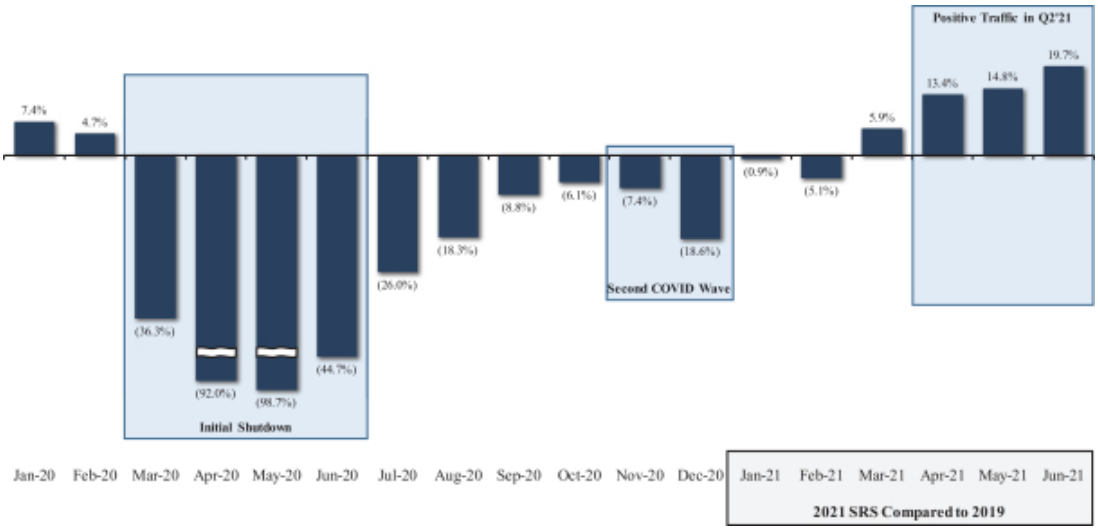
Our streak of 28 consecutive quarters of positive same-restaurant sales growth from fiscal 2013 to fiscal 2019 ended in the first fiscal quarter of 2020, with the World Health Organization's declaration of COVID-19 as a global pandemic and recommendation of containment and mitigation measures worldwide. As the severity of the COVID-19 pandemic grew increasingly acute, customer behaviors shifted rapidly, and municipalities mandated public dining room occupancy restrictions.

At a cost of $4.7 million in fiscal 2020, management implemented a series of measures primarily to (i) protect the health and safety of our employees and customers, (ii) provide aid to employees whose financial means were diminished as result of dining closures and furloughs and (iii) amend certain financial commitments.

With respect to our restaurant operations, during the week of March 15, 2020, we began closing our dining rooms and deployed new hardware and software to enable integrated off-premises capability for the first time across all company-owned restaurants. On April 13, 2020, prioritizing the safety of our employees and their families, we suspended all operations in our company-owned restaurants. During the period of suspended operations, we developed and provided for new safety protocols and procedures as well as an employee wellness screening tool with COVID-19 contact tracing. We also rapidly addressed new consumer behaviors by accelerating previously planned initiatives to position ourselves for short-term recovery and long-term growth such as online ordering to enable third-party delivery services, the expansion of our carefully curated alcohol program and touchless payment technology. We also expanded our patio and outdoor service areas while reducing and distancing in our in-dining room seating.

On May 18, 2020, in conjunction with municipal health and safety mandates we began reopening our company-owned restaurants in four phases. Our new tools and training allowed our restaurant staff to meet the customer demand for off-premises dining and as a result, we generally saw our average weekly sales grow after reopening.

Monthly Same-Restaurant Sales Growth Since January 2020



During the balance of 2020, we continued to invest in and open new restaurants, even as management worked with its landlords to modify leases and rent payments. During fiscal 2020, we opened 23 NROs of which 10 restaurants were opened in the last two quarters of fiscal 2020.

Financial highlights for fiscal 2020 as compared to fiscal 2019 were severely impacted by the COVID-19 pandemic and are as follows:

- Reduction in same-restaurant sales growth from 5.6% in fiscal 2019 to (29.0)% in fiscal 2020.
- Total restaurant sales declined 21.4% from $429.3 million in fiscal 2019 to $337.4 million in fiscal 2020.
- Loss from operations was $47.2 million in fiscal 2020, as compared to $37.6 million in fiscal 2019. Restaurant level operating profit and restaurant level operating profit margin were $42.1 million and 12.5%, respectively in fiscal 2020 as compared to $84.6 million and 19.7% respectively, in fiscal 2019.
- Net loss and comprehensive loss attributable to First Watch Restaurant Group was $49.7 million in fiscal 2020 as compared to $45.4 million in fiscal 2019. Adjusted EBITDA and Adjusted EBITDA Margin were $8.2 million and 2.4%, respectively in fiscal 2020 as compared to $48.2 million and 11.0% in fiscal 2019.

The volume of off-premises sales, which includes both third-party delivery and take-out sales, increased as a result of customers' growing preference for at-home dining due to the COVID-19 pandemic. In fiscal 2020, total off-premises sales were 23.8% as compared to 6.7% in fiscal 2019. We continued to see the trend of average weekly off-premises sales of approximately $8,000 in the first fiscal quarter of 2021, which were consistent with average weekly off-premises sales during the fourth fiscal quarter of 2020, but we cannot predict the extent to which our restaurant sales will be comprised of off-premises sales in future periods, including after the end of the COVID-19 pandemic. Furthermore, although we continue to incur third-party delivery fees in connection with off-premises sales, we have increased our third-party delivery menu prices to compensate for such fees resulting in a relatively neutral margin on off-premises sales as compared to in-restaurant dining sales.

Key Performance Indicators

To evaluate the performance of our business, we utilize a variety of financial and performance measures. These key measures include cash-on-cash return, restaurant sales, same-restaurant sales growth, same-restaurant

traffic growth, new restaurant development, AUV, Adjusted EBITDA, Adjusted EBITDA Margin, restaurant level operating profit and restaurant level operating profit margin.

Cash-on-Cash Return

Cash-on-Cash Return is defined as restaurant level operating profit (excluding gift card breakage) in the third year of operation (months 25-36 of operation) for our company-owned restaurants divided by their cash build-out expenses, net of landlord incentives.

NROs

NROs are the number of new company-owned First Watch restaurants commencing operations during the period. Management reviews the number of new restaurants to assess net new restaurant growth and company-owned restaurant sales.

Same-Restaurant Sales Growth

Same-restaurant sales growth is the percentage change in year-over-year restaurant sales (excluding gift card breakage) for the Comparable Restaurant Base. For fiscal 2020 and fiscal 2019, there were 212 restaurants and 168 restaurants in our Comparable Restaurant Base, respectively.

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

Same-restaurant traffic growth is the percentage change in traffic counts as compared to the same period in the prior year using the Comparable Restaurant Base. For fiscal 2020 and fiscal 2019, there were 212 restaurants and 168 restaurants in our Comparable Restaurant Base, respectively. 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.

New Restaurant Development

New restaurant development is central to growing our footprint and executing our growth strategy. New restaurant development has historically included both new restaurant openings and conversion of acquired restaurants.

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

We intend to open more than company-owned restaurants over , which is expected to be the primary driver of our expected restaurant sales growth, but which may impact operating profit margins in the interim, as our restaurant level operating profit margins are generally lower through the first 12 months of operation.

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

AUV

AUV is 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.

Adjusted EBITDA and Adjusted EBITDA Margin

Adjusted EBITDA represents net loss before depreciation and amortization, interest expense and income taxes, and items that we do not consider in our evaluation of ongoing core operating performance as identified in the reconciliation of Net loss and total comprehensive loss, the most directly comparable GAAP measure, to Adjusted EBITDA, included in "Prospectus Summary – Summary Historical Consolidated Financial and Other Data." Adjusted EBITDA Margin represents Adjusted EBITDA as a percentage of total revenues. We use Adjusted EBITDA and Adjusted EBITDA Margin (i) 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 believe that Adjusted EBITDA and Adjusted EBITDA Margin are important measures of operating performance because they eliminate the impact of expenses that do not relate to our core operating performance. Adjusted EBITDA and Adjusted EBITDA Margin have important limitations as analytical tools and should not be considered in isolation as substitutes for analysis of our results as reported under GAAP. Such non-GAAP measures may not provide a complete understanding of the results of operations of the Company as a whole and should be reviewed in conjunction with its GAAP financial results.

Restaurant Level Operating Profit and Restaurant Level Operating Profit Margin

Restaurant level operating profit margin represents restaurant level operating profit as a percentage of restaurant sales. Restaurant level operating profit and restaurant level operating profit margin are not required by, nor presented in accordance with GAAP. Rather, restaurant level operating profit and restaurant level operating profit margin are supplemental measures of operating performance of our restaurants and our calculations thereof may not be comparable to similar measures reported by other companies. We believe that restaurant level operating profit and restaurant level operating profit margin are important measures to evaluate the performance and profitability of each restaurant, individually and in the aggregate. Restaurant level operating profit and restaurant level operating profit margin are not indicative of our overall results, and because they exclude corporate-level expenses, do not accrue directly to the benefit of our stockholders. Restaurant level operating profit and restaurant level operating profit margin have limitations as analytical tools and should not be considered as a substitute for analysis of our results as reported under GAAP. Such non-GAAP measures may not provide a complete understanding of the results of operations of the Company as a whole and should be reviewed in conjunction with its GAAP financial results.

Revenues and Expenses

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.

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 franchised restaurants.

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.

Labor and Other Related Expenses

Labor and other related expenses 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 performance of our company-owned restaurants and increased competition for qualified staff.

Other Restaurant Operating Expenses

Other restaurant operating expenses consist of marketing and advertising expenses, utilities and other operating 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, third party delivery services fees and certain pre-opening expenses for new company-owned restaurants.

Pre-opening expenses primarily consist of manager salaries, recruiting expenses, employee payroll and training costs. Pre-opening expenses are recognized in the period in which the expense was incurred, and can fluctuate from period to period, based on the number and timing of new restaurant openings. Additionally, new restaurant openings in new geographic market areas may initially experience higher pre-opening expenses than our established geographic market areas where we have greater economies of scale and incur lower travel costs for our training team.

Occupancy Expenses

Occupancy expenses primarily consist of rent, property insurance, common area expenses and property taxes. Rent expense also includes pre-opening rent expense recognized during the period between the date of possession of the restaurant facility and the restaurant opening date.

General and Administrative Expenses

General and administrative expenses primarily consist of costs associated with our Home Office 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 expense. General and administrative expenses are impacted by changes in our employee count and costs related to strategic and growth initiatives. In preparation for and after the consummation of this offering, we have incurred and we expect to incur in the future significant additional legal, accounting and other expenses associated with being a public company, including costs associated with our compliance with the Sarbanes-Oxley Act.

Certain employees, officers and non-employee directors have been granted performance-based stock options, for which we have not recognized any compensation expense to date, as the performance condition has not been deemed probable of being achieved. Certain of these awards may convert, if certain market conditions are met at the time of the offering, from performance-based options to service-based options that would vest

ratably over a three-year period. If these market conditions are met, we will begin to recognize compensation expense ratably over the three year period commencing on the date of the offering.

As of December 27, 2020, the amount of stock-based compensation expense not yet recognized on non-vested time-based awards was approximately $0.8 million and will be recognized over a weighted-average period of approximately two years. As of December 27, 2020, the amount of stock-based compensation expense not yet recognized on non-vested performance-based awards was approximately $4.5 million. Following consummation of this offering, if certain performance-based options to purchase shares of our common stock would have vested based on certain multiples of invested capital, then those options will convert to time-based based awards and would vest over a period of three years from the date of the offering. All other performance-based options that would not have converted into time-based options upon the consummation of the offering would be forfeited.

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 Advent Acquisition as well as reacquired rights from our acquisitions of franchised restaurants.

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.

Transaction (Income) Expenses, Net

Transaction (income) expenses, net primarily include (i) costs incurred in connection with the acquisition of franchised restaurants, (ii) costs incurred in connection with the conversion of certain restaurants to company-owned restaurants operating under the First Watch trade name, (iii) costs related to restaurant closures and (iv) revaluations of contingent consideration.

Interest Expense

Interest expense primarily consists of interest and fees on our Senior Credit Facilities and the amortization expense for debt discount and deferred issuance costs. We expect to pay down a portion of our outstanding debt using the proceeds of this offering. Additionally, the amount of proceeds used to pay down our outstanding debt may result in a decrease of the interest rate on our Senior Credit Facilities (see Note 10, *Debt* in the audited consolidated financial statements included elsewhere in this prospectus for additional information). We expect that these changes will reduce our annual interest expense by $ million following this offering. See “Use of Proceeds” and “Description of Material Indebtedness.”

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.

Income Tax Benefit

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

Results of Operations

The following table summarizes our results of operations and the percentages of certain items in relation to total revenues or restaurant sales for fiscal 2020 and fiscal 2019:

	Fiscal			
	2020		2019	
	(in thousands)			
Revenues:				
Restaurant sales	$337,433	98.6%	$429,309	98.4%
Franchise revenues	4,955	1.4%	7,064	1.6%
Total revenues	342,388	100.0%	436,373	100.0%
Operating costs and expenses:				
Restaurant operating expenses:(1)(exclusive of depreciation and amortization shown below)				
Food and beverage costs	76,975	22.8%	100,689	23.5%
Labor and other related expenses	120,380	35.7%	148,537	34.6%
Other restaurant operating expenses	63,776	18.9%	59,402	13.8%
Occupancy expenses	51,375	15.2%	46,151	10.8%
General and administrative expenses	46,322	13.5%	55,818	12.8%
Depreciation and amortization	30,725	9.0%	28,027	6.4%
Impairments and loss on disposal of assets	315	0.1%	33,596	7.7%
Transaction (income) expenses, net	(258)	(0.1)%	1,709	0.4%
Total operating costs and expenses	389,610	113.8%	473,929	108.6%
Loss from operations	$ (47,222)	(13.8)%	$ (37,556)	(8.6)%
Interest expense	(22,815)	(6.7)%	(20,080)	(4.6)%
Other income (expense), net	483	0.1%	(255)	(0.1)%
Loss before income tax benefit	(69,554)	(20.3)%	(57,891)	(13.3)%
Income tax benefit	19,873	5.8%	12,419	2.8%
Net loss and total comprehensive loss	(49,681)	(14.5)%	(45,472)	(10.4)%
Less: Net loss attributable to non-controlling interest	—	— %	(33)	n/m(2)
Net loss and comprehensive loss attributable to First Watch Restaurant Group, Inc.	$ (49,681)	(14.5)%	$ (45,439)	(10.4)%

(1) As a percentage of restaurant sales.
(2) Not meaningful.

Selected Operating Data

	Fiscal	
	2020	2019
System-wide sales (in thousands)	$ 426,303	$ 558,397
Same-restaurant sales growth	(29.0)%	5.6%
Same-restaurant traffic growth	(33.9)%	1.6%
AUV (in millions)	$ 1.1	$ 1.6
System-wide restaurants	409	368
Company-owned	321	299
Franchise operated	88	69
Adjusted EBITDA (in thousands)(1)	$ 8,223	$ 48,186
Adjusted EBITDA margin(1)	2.4%	11.0%
Restaurant level operating profit (in thousands)(2)	$ 42,145	$ 84,601
Restaurant level operating profit margin(2)	12.5%	19.7%

(1) For a discussion of Adjusted EBITDA and Adjusted EBITDA Margin and a reconciliation from Net loss and total comprehensive loss, the most comparable GAAP measure to Adjusted EBITDA, see "Prospectus Summary – Summary Historical Consolidated Financial and Other Data."

(2) For a discussion of restaurant level operating profit and restaurant level operating profit margin and a reconciliation from Loss from operations, the most comparable GAAP measure to restaurant level operating profit, see "Prospectus Summary – Summary Historical Consolidated Financial and Other Data."

Restaurant Sales

	Fiscal			
	2020	2019	Change	
	(in thousands)			
Restaurant sales:				
In-restaurant dining sales	$ 257,029	$ 400,345	$ (143,316)	(35.8)%
Third-party delivery sales	38,524	2,648	35,876	n/m(1)
Take-out sales	41,880	26,316	15,564	59.1%
Total Restaurant sales	$ 337,433	$ 429,309	$ (91,876)	(21.4)%

(1) Not meaningful.

Our restaurant dining sales in 2020 were negatively impacted by government mandated restrictions, customer caution and our decision to protect employees and customers from the spread of the COVID-19 pandemic by temporarily closing our restaurants. Our closures took effect on April 13, 2020, with reopenings occurring throughout May and June of 2020. Upon reopening our restaurants, the volume of third-party delivery sales and take-out sales increased as a result of customers' growing preference for at-home dining. The decline in total restaurant sales was partially offset by $15.5 million in sales recognized in 23 new company-owned restaurants as well as menu price increases.

Franchise Revenues

	Fiscal			
	2020	2019	Change	
	(in thousands)			
Franchise revenues:				
Royalty and system fund contributions	$ 4,615	$ 6,628	$(2,013)	(30.4)%
Initial fees	340	436	(96)	(22.0)%
Total Franchise revenues	$ 4,955	$ 7,064	$(2,109)	(29.9)%

The decrease in franchise revenues during fiscal 2020 as compared to fiscal 2019 was primarily due to the COVID-19 pandemic and dining room restrictions imposed pursuant to state and local goverment mandates, partially offset by the opening of 19 Franchise-owned NROs.

Food and Beverage Costs

	Fiscal			
	2020	2019	Change	
	(in thousands)			
Food and beverage costs	$76,975	$100,689	$(23,714)	(23.6)%
As a percentage of restaurant sales	22.8%	23.5%	(0.7)%	

Food and beverage costs decreased in fiscal 2020 as compared to fiscal 2019 primarily due to the decline in same-restaurant sales of (29.0%) and traffic of (33.9%) as a result of the COVID-19 pandemic, partially offset by

(i) $3.8 million of costs incurred from the 23 new company-owned restaurants in fiscal 2020 and (ii) inventory obsolescence and spoilage due to the COVID-19 pandemic of approximately $0.6 million.

As a percentage of sales, food and beverage costs decreased from 23.5% in fiscal 2019 to 22.8% in fiscal 2020 primarily due to the impact of menu price increases, including a surcharge on third-party delivery sales.

Labor and Other Related Expenses

	Fiscal			
	2020	2019	Change	
	(in thousands)			
Labor and other related expenses	$120,380	$148,537	$(28,157)	(19.0)%
As a percentage of restaurant sales	35.7%	34.6%	1.1%	

The decrease in labor and other related expenses in fiscal 2020 as compared to fiscal 2019 was primarily due to (i) the reduction in labor hours as a result of lower same-restaurant sales and traffic due to the COVID-19 pandemic, partially offset by (ii) $5.8 million of costs incurred from the 23 new company-owned restaurants in fiscal 2020, (iii) compensation paid to employees upon furlough and return from furlough of $1.1 million and (iv) $0.7 million for health insurance costs paid for furloughed employees, net of employee retention credits.

As a percentage of restaurant sales, the increase in labor and related expenses of 35.7% for fiscal 2020 as compared to 34.6% for fiscal 2019 was primarily due to (i) sales deleveraging related to the impact of the COVID-19 pandemic and (ii) increases in wage rates, partially offset by (iii) the reduction of labor hours.

Other Restaurant Operating Expenses

	Fiscal			
	2020	2019	Change	
	(in thousands)			
Other restaurant operating expenses	$63,776	$59,402	$4,374	7.4%

The increase in other restaurant operating expenses for fiscal 2020 as compared to fiscal 2019 was primarily due to (i) third-party delivery services fees as a result of the expansion of our off-premises sales of approximately $8.7 million and (ii) an increase in supplies, such as personal protection equipment, in response to the COVID-19 pandemic of approximately $2.1 million, partially offset by (iii) the reduction in pre-opening expenses recorded in other restaurant opening expenses of $1.9 million due to the curtailment of new restaurant construction as a result of the COVID-19 pandemic, (iv) reduced advertising, marketing, utilities, and repairs and maintenance totaling approximately $2.8 million and (v) reduced credit card fees of approximately $2.5 million due to reduced restaurant sales as a result of the COVID-19 pandemic.

Occupancy Expenses

	Fiscal			
	2020	2019	Change	
	(in thousands)			
Occupancy expenses	$51,375	$46,151	$5,224	11.3%

The increase in occupancy expenses for fiscal 2020 as compared to fiscal 2019 was primarily due to the opening of 23 new company-owned restaurants as well as new company-owned restaurants opened during fiscal 2019 that had a full year of expense in fiscal 2020. Pre-opening rent expense recorded within occupancy expenses was $1.9 million and $2.0 million for fiscal 2020 and fiscal 2019, respectively.

General and Administrative Expenses

	Fiscal			
	2020	2019	Change	
	(in thousands)			
General and administrative expenses	$46,322	$55,818	$(9,496)	(17.0)%

The decrease in general and administrative expenses in fiscal 2020 as compared to fiscal 2019 was principally the result of (i) $6.0 million of consulting, accounting and other expenses incurred in connection with our public-company readiness and other strategic efforts incurred in fiscal 2019, (ii) a $4.4 million decline in discretionary costs including recruiting, travel and bonuses and (iii) a $0.6 million pre-litigation settlement recognized in fiscal 2019. These reduced expenses from fiscal 2019 were partially offset in fiscal 2020 by (i) the $2.0 million write-off of deferred offering costs as a result of halting our public registration of equity, (ii) $1.1 million of costs incurred in connection with the COVID-19 pandemic and (iii) compensation totaling $0.4 million paid to corporate employees upon furlough and return from furlough.

Depreciation and Amortization

	Fiscal			
	2020	2019	Change	
	(in thousands)			
Depreciation and amortization	$30,725	$28,027	$2,698	9.6%

The increase in depreciation and amortization for fiscal 2020 as compared to fiscal 2019 was primarily due to (i) incremental depreciation expense related to new company-owned restaurant openings, partially offset by (ii) the reduction in amortization expense of $0.7 million related to The Egg and I tradename and franchise rights resulting from the impairment recognized in fiscal 2019 (See Note 7, *Intangible Assets, Net* in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information).

Impairments and Loss on Disposal of Assets

	Fiscal			
	2020	2019	Change	
	(in thousands)			
Impairments and loss on disposal of assets	$315	$33,596	$(33,281)	n/m(1)

(1) Not meaningful.

The decrease in impairments and loss on disposal of assets in fiscal 2020 as compared to fiscal 2019 primarily related to the impairment of The Egg & I tradename and franchise rights totaling $32.2 million resulting from the Company's strategic review of its operations in fiscal 2019. The remaining net book value for The Egg & I trade name and franchise rights, respectively, were amortized through the end of fiscal 2019. For additional information, see Note 7, *Intangible Assets, Net* in the audited consolidated financial statements included elsewhere in this prospectus for additional information.

Transaction (Income) Expenses, Net

	Fiscal			
	2020	2019	Change	
	(in thousands)			
Transaction (income) expenses, net	$(258)	$1,709	$(1,967)	n/m(1)

(1) Not meaningful.

In fiscal 2020, transaction income, net primarily related to the revaluation of the contingent consideration payable to previous stockholders for tax savings generated through use of federal and state loss carryforwards. See Note 14, Income Taxes, in the audited consolidated financial statements included elsewhere in this prospectus for additional information.

In fiscal 2019, transaction expenses, net primarily related to (i) costs incurred in connection with acquisitions of franchised restaurants, (ii) costs incurred associated with conversions of restaurants to the First Watch trade name and (iii) lease termination and other related costs for closures of restaurants operating under The Egg & I trade name, partially offset by (iv) the gain, net of closure costs, recognized for terminating the lease for one restaurant facility.

Loss from Operations

	Fiscal			
	2020	2019	Change	
	(in thousands)			
Loss from operations	$(47,222)	$(37,556)	$(9,666)	n/m(1)

(1) Not meaningful.

The increase in loss from operations in fiscal 2020 as compared to fiscal 2019 was primarily due to lower restaurant sales, traffic and additional costs as a result of the COVID-19 pandemic, including incremental delivery-related costs and compensation and benefits paid for furloughed employees (net of tax credits). These losses were partially offset by reduced food and beverage costs, labor expenses, IPO-readiness expenses and impairment expenses.

Interest Expense

	Fiscal			
	2020	2019	Change	
	(in thousands)			
Interest expense	$22,815	$20,080	$2,735	13.6%

The increase in interest expense in fiscal 2020 as compared to fiscal 2019 was primarily due to $1.6 million of additional interest incurred pursuant to the fourth amendment of our credit agreement. See Note 10, *Debt*, in the audited consolidated financial statements included elsewhere in this prospectus for additional information.

Other Income (Expense), Net

	Fiscal			
	2020	2019	Change	
	(in thousands)			
Other income (expense), net	$483	$(255)	$738	n/m(1)

(1) Not meaningful.

In fiscal 2020, other income, net primarily related to the receipt of an insurance claim related to one restaurant facility. In fiscal 2019, other expense, net primarily related to (i) $0.6 million of costs incurred in connection with the two amendments of our Senior Credit Facilities (See Note 10, *Debt*, in the audited consolidated financial statements included elsewhere in this prospectus for additional information), partially offset by (ii) $0.2 million of gains on settlements of pre-existing agreements recognized in connection with acquisitions of franchised restaurants.

Income Tax Benefit

	Fiscal			
	2020	2019	Change	
	(in thousands)			
Income tax benefit	$19,873	$12,419	$7,454	60.0%

The effective income tax rates for fiscal 2020 and fiscal 2019 were (28.6)% and (21.5)%, respectively. The change in the effective income tax rate in fiscal 2020 as compared to fiscal 2019 was primarily due to the change in the valuation allowance for federal and state deferred tax assets and the benefit of tax credits for FICA taxes on certain employees' tips.

The Company has a blended federal and state statutory rate of approximately 25.0%. The effective income tax rate for fiscal 2020 and fiscal 2019 was different from the blended federal and state statutory rate primarily due to the change in the valuation allowance and the benefit of the tax credits for FICA taxes on certain employee tips.

Liquidity and Capital Resources

Liquidity

Our primary sources of liquidity are cash flow from operations, cash and cash equivalents, credit capacity under our Senior Credit Facilities, and proceeds from equity offerings, including this offering. As of December 27, 2020, we had cash and cash equivalents of $38.8 million and availability under our Senior Credit Facilities of $21.1 million.

As of December 27, 2020, we had $288.0 million in outstanding borrowings under our Senior Credit Facilities, which excludes unamortized debt issuance costs and deferred issuance costs. See "Description of Material Indebtedness." After giving effect to the application of the estimated net proceeds from this offering, our total indebtedness will be $ million. See "Use of Proceeds." 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 requirements for working capital are not significant because our customers pay for their food and beverage purchases in cash or on debit or credit cards at the time of the sale and we are able to sell many of our inventory items before payment is due to the supplier of such items.

During fiscal 2020, the temporary closure of our dining rooms and the limitations on seating capacity due to the COVID-19 pandemic resulted in significantly reduced traffic in our restaurants which has negatively impacted our operating cash flows. In response, we took immediate steps to preserve liquidity by curtailing elective project spending, deferring rent payments and furloughing employees. In addition, we focused our capital spending on our most advanced and promising new restaurant development projects. Together with our lenders, we entered into two amendments to our Credit Agreement on April 27, 2020 and on August 14, 2020, the principal effects of which incorporated paid-in-kind interest to be added to the outstanding amounts drawn and suspended debt covenant compliance from April 1, 2020 through March 28, 2021. See Note 10, *Debt* in the notes to the audited consolidated financial statements included elsewhere in this prospectus for additional information.

In conjunction with the August 14, 2020 amendment to our Credit Agreement, we issued preferred shares to our owners in exchange for proceeds of $40.0 million, of which a portion was subsequently used to repay the outstanding balance of $10.5 million on the revolving credit facility.

We estimate that our capital expenditures will total approximately $30.0 million to $35.0 million in fiscal 2021, which we plan to fund primarily with cash generated from our operating activities as well as with borrowings under our Senior Credit Facilities.

We believe that our cash flow from operations, availability under our Senior Credit Facilities and available cash and cash equivalents will be sufficient to meet our liquidity needs for at least the next 12 months. We anticipate that to the extent that we require additional liquidity, it will be funded through additional indebtedness, the issuance of equity, or a combination thereof. 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. Although we have no specific current plans to do so, if we decide to pursue one or more significant acquisitions, we may incur additional debt or sell additional equity to finance such acquisitions, which would result in additional expenses or dilution.

Senior Credit Facilities and Unused Borrowing Capacity

Our Senior Credit Facilities mature on August 21, 2023. We have pledged substantially all our assets under our Senior Credit Facilities. For our Senior Credit Facilities excluding the Revolving Facility, principal payments at a rate of 0.25% of the original principal amounts are due quarterly with the remainder of principal (including paid-in-kind interest) and unpaid interest due at maturity, and have a commitment fee payable quarterly in arrears at 1% per annum, applicable to unused commitments. Our Revolving Facility includes a commitment fee at a rate of 0.50% per annum of the initial revolving credit commitment. The Senior Credit Facilities contain covenants that provide for, among other things, maintenance of certain ratios and restrictions on additional indebtedness. We were in compliance with the covenants as of December 27, 2020 and December 29, 2019.

The following table summarizes our unused borrowing capacity as of December 27, 2020 and December 29, 2019:

	December 27, 2020	December 29, 2019
	(in thousands)	
Undrawn revolving credit facility	$ 19,620	$ 2,620
Undrawn initial delayed draw term facility	—	15,000
Undrawn second amendment delayed draw term facility	1,500	40,000
Total unused borrowing capacity	$ 21,120	$ 57,620

Summary of Cash Flows

The following table presents a summary of our cash (used in) provided by operating, investing and financing activities for fiscal 2020 and fiscal 2019:

	Fiscal	
	2020	2019
	(in thousands)	
Cash (used in) provided by operating activities	$(18,364)	$ 21,465
Cash used in investing activities	(26,974)	(82,389)
Cash provided by financing activities	73,314	55,761
Net increase (decrease) in cash and cash equivalents	$ 27,976	$ (5,163)

Cash from operating activities decreased during fiscal 2020 as compared to fiscal 2019 primarily due to impacts of the COVID-19 pandemic which reduced in-restaurant dining room traffic and sales of gift cards. Further decreases to cash from operating activities were the result of compensation paid to furloughed employees and the Company's funding of the employee portion of health insurance premiums on behalf of furloughed participants. These uses of cash from operating activities are partially offset by employee retention credits of $0.9 million and the deferral of payroll tax payments totaling $6.7 million provided for under the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") as well as rent deferrals and abatements.

The decrease in cash used in investing activities during fiscal 2020 as compared to fiscal 2019 was primarily due to lower capital expenditures and cash outflows related to acquisitions.

The increase in cash provided by financing activities during fiscal 2020 as compared to fiscal 2019 was primarily due to proceeds from the issuance of preferred shares, partially offset by lower net borrowings on the Senior Credit Facilities.

Contractual Obligations

The following table sets forth certain contractual obligations, debt obligations and commitments as of December 27, 2020:

	Total	Less than 1 year	1-3 years	4-5 years	More than 5 years
			(in thousands)		
Long-term debt(1)	$290,761	$ 3,609	$286,323	$ 819	$ 10
Operating lease obligations(2)	$695,858	$ 41,695	$ 80,327	$82,530	$ 491,306
Purchase obligations(3)	$ 2,500	$ 2,500	$ —	$ —	$ —
Interest(4)	$ 63,213	$ 19,297	$ 43,865	$ 51	$ —

(1) Amount includes Senior Credit Facilities and finance lease liabilities. Amount is not reduced by unamortized debt discount and deferred issuance costs and finance lease interest expense.
(2) Amounts represent undiscounted future minimum rental commitments under non-cancelable operating leases and includes option renewal periods only to the extent it is reasonably certain that the extension options will be exercised.
(3) Purchase obligations include agreements to purchase goods or services that are enforceable, legally binding and specify all significant terms, including fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction.
(4) Projected future interest payments on long-term debt are based on interest rates in effect as of December 27, 2020 and assume only scheduled principal payments.

The above table excludes short-term, exclusive contracts we enter into with certain vendors, primarily of inventory, restaurant-level service contracts, advertising and technology, to supply us with food, beverages and paper goods, obligating us to purchase specified quantities, products and/or services at fixed prices. These commitments are cancellable and there are no material financial penalties associated with these agreements in the event of early termination. We also enter into purchase commitments related to construction, marketing and other service-related arrangements that occur in the normal course of business. Such commitments are excluded from the above table, as they are typically short-term in nature.

In addition, other unrecorded obligations that have been excluded from the contractual obligations table include contingent rent payments, property taxes, insurance payments and common area maintenance costs.

Off-Balance Sheet Arrangements

Except for certain letters of credit entered into as security under the terms of several of our leases and the unrecorded contractual obligations set forth above, we did not have any off-balance sheet arrangements as of December 27, 2020 and December 29, 2019.

Critical Accounting 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 prospectus, which have been prepared in accordance with GAAP. The preparation of these financial statements and related notes requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses. Certain of our accounting policies require the application of significant judgment by management in selecting the appropriate assumptions for calculating financial estimates. By their nature, these judgments are subject to an inherent degree of uncertainty. These judgments are based on our historical experience, terms of existing contracts, our evaluation of trends in the industry, information available from other outside sources, as

appropriate. We evaluate our estimates and judgments on an on-going basis. Our actual results may differ from these estimates. Judgments and uncertainties affecting the application of those policies may result in materially different amounts being reported under different conditions or using different assumptions. The accounting policies that we believe to be the most critical to an understanding of our financial condition and results of operations and that require the most complex and subjective management judgments are discussed below.

Goodwill and Indefinite-Lived Intangibles

Goodwill and indefinite-lived intangibles, which include our registered trade names, trademarks, domains and liquor licenses, 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. If we determine that it is more likely than not that the carrying value of our reporting unit exceeds the fair value, a quantitative analysis is performed. We estimate the fair value of our reporting unit using the best information available, including market information (also referred to as the market capitalization or 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 the reporting unit's projection of estimated operating results and cash flows 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.

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 trademarks exceed the estimated fair value.

The effect of the COVID-19 pandemic was considered an indicator of impairment in April 2020 indicating that the carrying value of goodwill and indefinite-lived intangible assets may not be recoverable. We performed a quantitative impairment assessment in April 2020 and determined there was no impairment loss to be recognized. The fair value of the reporting unit exceeded its carrying value by 9% while all other indefinite lived intangible assets significantly exceeded their carrying value, which we define as being greater than 20%. We also performed our annual impairment test of goodwill and indefinite-lived intangibles as of the first day of the fourth quarter of fiscal 2020 and determined there was no impairment loss to be recognized. The fair value of the reporting unit in the annual impairment test in fiscal 2020 exceeded its carrying value by 8% (the decrease from 9% in April 2020 was primarily due to a change in the weighted average cost of capital) and the fair value of all other indefinite-lived intangible assets significantly exceeded their carrying values. We performed a qualitative annual impairment assessment for goodwill and indefinite-lived assets as of the first day of the fourth quarter of fiscal 2019 and determined there was no indication of impairment. See Note 6, *Goodwill* and Note 7, *Intangible Assets, Net* in the notes to the audited consolidated financial statements included in this prospectus for additional information.

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 judgement is used to determine the expected useful lives of long-lived assets and the estimated future cash flows, including projected sales growth and operating margins. 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 also reviewed for impairment whenever events or change in circumstances indicate that the carrying amount of an asset 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. Any adverse change in these factors could have a significant impact on the recoverability of these assets and the resulting impairment charge could have a material impact on 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.

Long-lived assets and definite-lived intangible assets were evaluated for impairment in April 2020 as the effect of the COVID-19 pandemic was considered a triggering event indicating that the carrying amounts of our long-lived assets and definite-lived intangibles may not be recoverable. We performed a quantitative impairment assessment and we did not record any impairment charges during fiscal 2020. See Note 7, *Intangible Assets, Net* and Note 8 – *Property, Fixtures and Equipment, Net* in the notes to the audited consolidated financial statements included in this prospectus for additional information.

Leases

We lease our restaurant facilities and corporate offices, as well as certain restaurant equipment under various non-cancelable agreements. We evaluate our leases at contract inception to determine whether we have the right to control use of the identified asset for a period of time in exchange for consideration. If we determine that we have the right to obtain substantially all the economic benefit from use of the identified asset and the right to direct the use of the identified asset, we recognize a right-of-use asset and lease liability. At contract inception, we also evaluate our leases to estimate their expected term which includes reasonably certain renewal options, and their classification as either operating leases or finance leases. Lease liabilities represent the present value of lease payments not yet paid. Operating lease assets represent our right to use an underlying asset and are based upon the operating lease liabilities adjusted for prepayments, accrued lease payments or lease incentives. 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 an implicit rate. 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 these assumptions and management judgments may produce materially different amounts in the recognition of the right-of-use assets and lease liabilities.

In fiscal 2020, we renegotiated numerous lease agreements that primarily resulted in rent abatements or rent deferrals due to the effects of the COVID-19 pandemic. See Note 2, *Summary of Significant Accounting Policies*

in the notes to the audited consolidated financial statements included in this prospectus for additional information as to our accounting for these lease modifications in connection with the lease accounting guidance issued by the FASB in April 2020.

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 income, 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 recognized 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 future taxable profits 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.

We assess liabilities for uncertain tax positions and recognize a liability when a position taken or expected to be taken in a tax return is more likely than not, or more than a 50% likelihood, to be sustained upon examination by tax authorities based on its technical merits. A recognized tax position is then measured at the largest amount of benefit that is more likely than not of being realized upon ultimate settlement. We determined that there were no material uncertain tax positions which were required to be recorded or disclosed in the financial statements for fiscal 2020 and fiscal 2019.

Interest and penalties, when incurred, are recognized in other income (expense), net on the consolidated statements of operations and comprehensive loss.

Fair Value of Common Stock and Stock-Based Compensation

Stock-based compensation expense is measured based on the award's grant date fair value. Stock-based compensation expense related to time-based stock options is recognized as stock-based compensation expense on an accelerated recognition method over the requisite service period. The fair value of performance-based stock option awards is recognized as stock-based compensation expense when the condition is deemed probable of being achieved. We account for forfeitures as they occur.

During the periods presented, our common stock was not publicly traded. As there has been no public market, the estimated fair value has been determined with input from management, considering as one of the factors the most recently available third-party valuations of common stock and an assessment of additional objective and subjective factors that were relevant at the date of the grant. We estimate the fair value of our common stock using a combination of the income approach (discounted cash flows of internal projected future cash flows) and the market approach (comparing comparable publicly-traded peer group in the restaurant industry), which are equally weighted.

We estimate the fair value of stock options using the Black-Scholes valuation model. Calculating the fair value of stock- based awards requires certain assumptions and judgments. We based our volatility assumption of 41.2% and 34.1% for fiscal 2020 and fiscal 2019, respectively, on the historical volatility of the selected peer group and we based our expected term of 4.5 years for both fiscal 2020 and fiscal 2019 using the historical

information of the selected peer group. 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.

Once a public trading market for our common stock has been established in connection with the closing of this offering, the fair value of our common stock will be determined based on the quoted market price of our common stock.

Gift Card Revenue Recognition

We sell gift cards to customers in our restaurants, through our website and through select third parties. A liability is initially established for the value of the gift card when sold. We recognize revenue from gift cards when the card is redeemed by the customer. There is uncertainty when calculating gift card breakage, the amount of gift cards which will not be redeemed, because management is required to make assumptions and to apply judgment regarding the effects of future events. We recognize gift card breakage revenue using estimates based on historical redemption patterns. If actual redemptions vary from the estimated breakage, gift card breakage revenue may differ from the amount recorded. We periodically update our estimates used for breakage and apply that rate to gift card redemptions.

Self-Insurance Reserves

We retain large deductibles or self-insured retentions for employee group health claims nationally, a portion of our general liability insurance and our employee workers' compensation programs. We maintain coverage with a third- party insurer to limit our total exposure for these programs. The accrued liabilities associated with our self-insured programs are based on our estimate of the ultimate costs to settle known claims, as well as claims incurred but not yet reported to us ("IBNR") as of the balance sheet date. Our estimated liabilities are based on information provided by our insurance broker and insurer, combined with our judgment regarding a number of assumptions and factors, including the frequency and severity of claims, claims development history, case jurisdiction, applicable legislation and our claims settlement practices. Significant judgment is required to estimate IBNR amounts, as parties have yet to assert such claims. If actual claims trends, including the severity or frequency of claims, differ from our estimates, our financial results could be impacted.

Business Combinations

We account for acquisitions using the purchase method of accounting. Accordingly, assets acquired and liabilities assumed are recorded at their estimated fair values at the acquisition date. Our purchase price allocation methodology contains uncertainties because it requires us to make certain assumptions and to apply judgment to estimate the fair value of acquired assets and liabilities, including, but not limited to, property and equipment, intangible assets, and goodwill. The excess of purchase price over fair value of net assets acquired, including the amount assigned to identifiable intangible assets, is recorded as goodwill. Given the time it takes to obtain pertinent information to finalize our purchase price allocation, it may be several quarters before we are able to finalize those initial fair value estimates. Accordingly, it is not uncommon for the initial estimates to be subsequently revised. The results of operations of acquired businesses are included in the consolidated financial statements from the acquisition date.

Qualitative and Quantitative Disclosure About Market Risk

Commodity and Food Price Risks

Our profitability is dependent on, among other things, our ability to anticipate and react to changes in the costs of key operating resources, including food and beverage, energy and other commodities. We have been able to partially offset cost increases resulting from a number of factors, including market conditions, shortages or

interruptions in supply due to weather or other conditions beyond our control, governmental regulations and inflation, by increasing our menu prices, as well as making other operational adjustments that increase productivity. However, substantial increases in costs and expenses could impact our results of operations to the extent that such increases cannot be offset by menu price increases.

Interest Rate Risk

Our Senior Credit Facilities incur interest at a floating rate. We seek to manage exposure to adverse interest rate changes through our normal operating and financing activities. As of December 27, 2020, we had $288.0 million in outstanding borrowings under our Senior Credit Facilities, excluding unamortized debt discount and deferred issuance costs. Based on the amount outstanding under our Senior Credit Facilities as of December 27, 2020, a change of one hundred basis points in the applicable interest rate would cause an increase or decrease in interest expense of approximately $2.9 million on an annual basis.

Effects of Inflation

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

Additionally, wages paid in our restaurants are impacted by changes in federal and state hourly minimum wage rates. Accordingly, changes in the federal and state hourly minimum wage rates directly affect our labor costs. Wages and benefits are also affected by supply and demand forces in specific regions. The restaurant industry and we typically attempt to offset the effect of inflation, at least in part, through periodic menu price increases and various cost reduction programs.

A portion of the leases for our company-owned restaurants provide for contingent rent obligations based on a percentage of sales. As a result, an increase in occupancy and related expenses will offset a proportionate share of any menu price increases at our company-owned restaurants.

Recently Issued Accounting Pronouncements

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

Jumpstart Our Business Startups Act of 2012

The JOBS Act permits us, as an emerging growth company, to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We are choosing to “opt out” of this provision and, as a result, we will comply with new or revised accounting standards as required when they are adopted. This decision to opt out of the extended transition period under the JOBS Act is irrevocable.

BUSINESS

We Are First Watch

We are First Watch – an award-winning high-growth daytime restaurant concept serving made-to-order breakfast, brunch and lunch using fresh ingredients, based on year-over-year system-wide sales growth metrics according to Nation's Restaurant News. Since our founding in 1983, we have built our brand on our commitment to operational excellence, our "You First" culture and our culinary mission centered around a fresh, innovative menu that is always evolving. These foundational brand pillars have established First Watch as a leader in Daytime Dining – a fast growing restaurant segment that has emerged and differentiated itself from other legacy segments by operating exclusively during daytime hours with a progressive on-trend chef-driven menu, with such leadership demonstrated by our dramatic growth in number of locations over the past 15 years, as discussed in Market Force's annual consumer study. Our one shift, from 7:00 a.m. to 2:30 p.m., and one main menu enable us to optimize restaurant operations and attract and retain employees who are passionate about hospitality and drawn to our "No Night Shifts Ever" approach. This differentiation has driven strong consumer demand and operating performance as evidenced by our 28 consecutive quarters of positive same-restaurant sales growth and positive annual same-restaurant traffic growth from fiscal 2013 to fiscal 2019, prior to the emergence of the COVID-19 pandemic. Our unique positioning, due to our one-shift and one-menu approach, coupled with our commitment to our employees and customers throughout the pandemic allowed us to reopen our restaurants with accelerating operating momentum in the second half of 2020 and into 2021, recording same restaurant sales growth of % in the second fiscal quarter of 2021 relative to the second fiscal quarter of 2019. Throughout the COVID-19 pandemic, we invested in supplemental compensation and expanded health and wellness benefits for our people while at the same time we accelerated strategic investments in our business and continued to expand our footprint, opening 23 and NROs in fiscal 2020 and during the twenty-six weeks ended June 27, 2021, respectively. In January 2020, the Company was recognized as "America's Favorite Restaurant Brand" in Market Force's annual consumer study and as one of three industry finalists for Black Box Intelligence's 2020 Best Practices award. As of June 27, 2021, we had restaurants across states, of our restaurants were company-owned and were operated by our franchisees.

Our Promise: Yeah, It's Fresh!

At First Watch, we take a creative approach to Daytime Dining led by a focus on freshness. Each item is made-to-order and prepared with care – you will not find 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, lunch and brunch, along with First Watch-specific specialties such as our protein-packed Quinoa Power Bowl®, Farmstand Breakfast Tacos, Avocado Toast, Morning Meditation (juiced in-house daily), our new Vodka Kale Tonic, Chickichangas and our famous Million Dollar Bacon. While our menu constantly evolves, our focus on – and commitment to – freshness never wavers.

Our Mission: You First

For more than 38 years, our management has cultivated an organizational culture built on our mission 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 give back in meaningful ways to the local communities in which we operate and also support national and international causes we care about, such as our Project Sunrise partnership that supports women-owned coffee farms in Colombia, which in turn empowers them to reinvest in their communities. Our "You First" mission, in addition to our quality of life advantage inherent in our single-shift operating model, has led us to be recognized as an employer of choice in our industry, according to a five-year longitudinal study of employee surveys on Glassdoor published in June 2019 by William Blair.

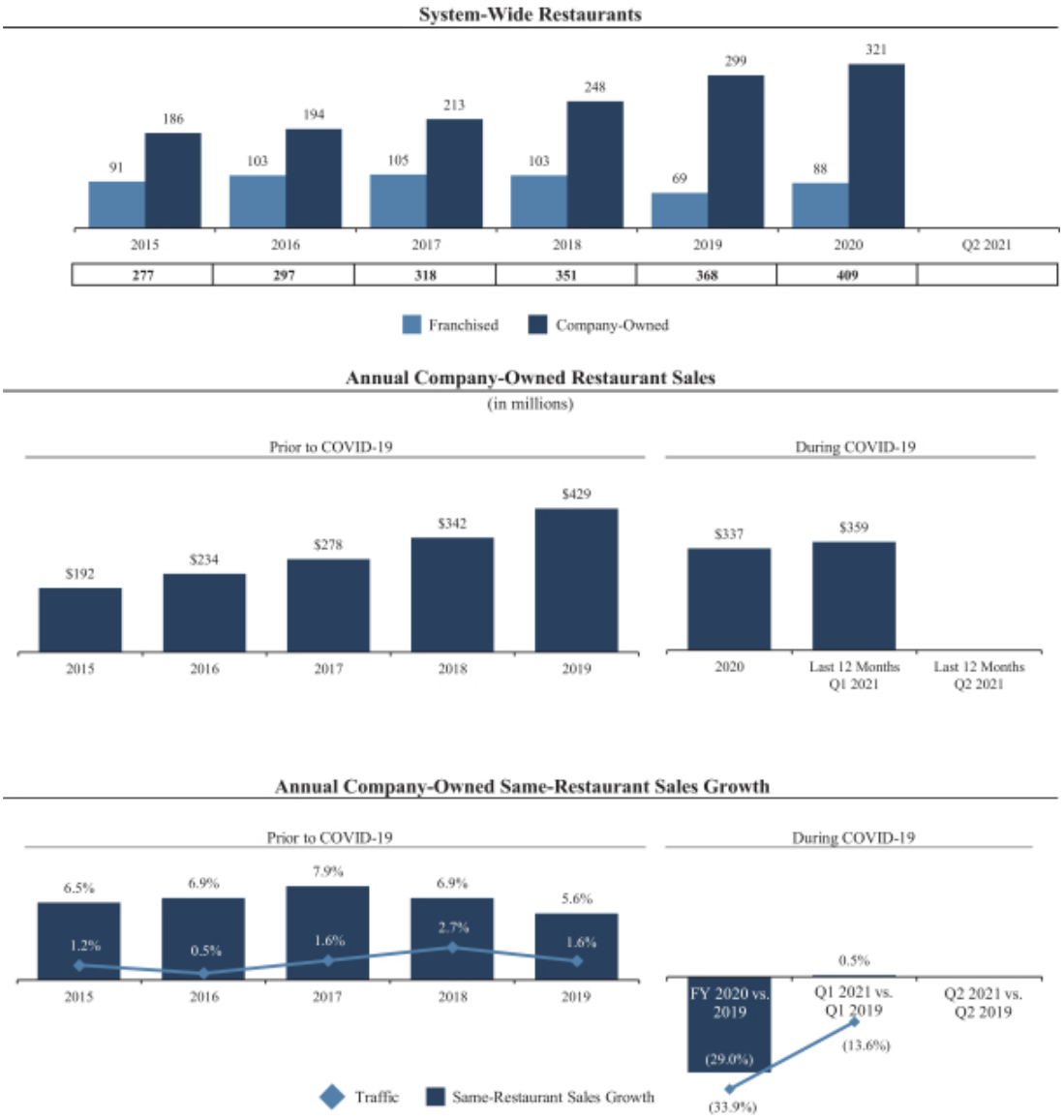
Proven Record of Sustained Growth

Our long track record of sales and unit growth, spanning almost four decades, demonstrates our broad brand appeal, compelling economic proposition and difficult-to-replicate business model. We have achieved consistent growth in total restaurants to as of June 27, 2021, from 277 restaurants in fiscal 2015. Over the six-year period ended December 29, 2019 (prior to the emergence of the COVID-19 pandemic), we:

- Consistently delivered same-restaurant sales growth, averaging 6.3% annually
- Consistently achieved positive annual same-restaurant traffic growth, averaging 1.4% annually

Over the five-year period ended December 29, 2019 (prior to the emergence of the COVID-19 pandemic), we:

- Consistently increased AUVs by 25.7%, from $1.3 million in fiscal 2015 to $1.6 million in fiscal 2019
- Consistently opened NROs with an average cash-on-cash return of 50.8%.



Our COVID-19 Response and How We Emerged as a Stronger Company

Our strong momentum in fiscal 2019 continued into January 2020 and February 2020 with same restaurant sales growth of 7.4% and 4.7%, respectively. However, as the COVID-19 pandemic emerged in March 2020 and its severity became apparent, our management team devised a strategy not only to prioritize the health and safety of our employees and customers in keeping with our "You First" culture, but also to accelerate planned strategic initiatives that we understood would position us to be more nimble in capturing sales. The following are some of the actions we took that enabled us to persevere during the pandemic and emerge as a stronger company in 2021:

- Aligned with our sponsor, Advent, to commit capital both to our people as well as to our continued new restaurant development and real estate pipeline;

- Began closing all dining rooms during the week of March 15, 2020 (regardless of state and local orders), transitioning to off-premises sales only and rapidly deploying our first phase of new hardware and software enhancements to enable this critical sales channel;
- Furloughed most of our employees, but provided relief payments to help with immediate needs for those hourly employees with more than three years of service, while committing to make managers and corporate employees “whole” upon return for any financial shortfall between the state and federal benefits they received and their base salaries;
- Paid both employer and employee portion of healthcare premiums for furloughed employees enrolled in our healthcare plans, covered 100% of out-of-pocket costs for insured employees and their families for medical visits related to the COVID-19 pandemic and secured telemedicine services for all employees;
- Temporarily suspended all operations at our company-owned restaurants on April 13, 2020 to prioritize the health and safety of our team members;
- Established the “You First Fund,” which provides tax-free grants to in-need employees and which had distributed approximately $800,000 in such grants through June 2021;
- Deployed new safety protocols and procedures as well as an employee wellness screening tool with COVID-19 contact tracing. Our efforts were recognized in a Technomic survey in the third quarter of 2020 that rated First Watch as best in its peer group with regard to customer safety and sanitation; and
- Offered employees a payment in consideration for the time taken to receive their full schedule of immunization, once COVID-19 vaccines were available.

With respect to our operations, we rapidly addressed new consumer behaviors by accelerating previously planned initiatives to position ourselves for short-term recovery and long-term growth such as online ordering to enable third-party delivery services, the expansion of our carefully curated alcohol program and touchless payment technology:

- Developed and launched a new mobile app to allow customers to order takeout and delivery and to join our dining room waitlist remotely;
- Integrated technology into our waitlist management solution to gather customer data on consumer preferences;
- Accelerated the rollout of our alcohol program, which had proven to be an incremental occasion for consumers, increasing overall beverage incidence by 170 basis points;
- Maintained the entirety of our menu throughout the COVID-19 pandemic while also prioritizing culinary innovation through our seasonal menu program;
- Expanded our patio and outdoor service areas and reduced and distanced our freestanding tables;
- Proactively contacted our landlords to negotiate rent deferrals or abatements, postpone turnover dates for certain restaurants, secure waivers of alcohol sales restrictions and obtain dedicated curbside parking for off-premises order pick up; and
- Continued to invest in NROs and develop our future NRO pipeline, leading to a 7.4% increase in our company-owned restaurants from 299 in fiscal 2019 to 321 in fiscal 2020.

A total of approximately $4.8 million of costs were incurred in fiscal 2020 in connection with the COVID-19 pandemic, and were comprised of the following: (i) inventory obsolescence and spoilage of approximately $0.6 million, (ii) compensation paid to employees upon furlough and return from furlough of $1.4 million, (iii) $0.7 million for health insurance costs paid for furloughed employees, net of employee retention credits and (iv) supplies, such as personal protection equipment, of approximately $2.1 million.

On May 18, 2020, in conjunction with municipal health and safety mandates, we began to reopen our company-owned restaurants in four phases, and substantially all our restaurants were open by the end of June

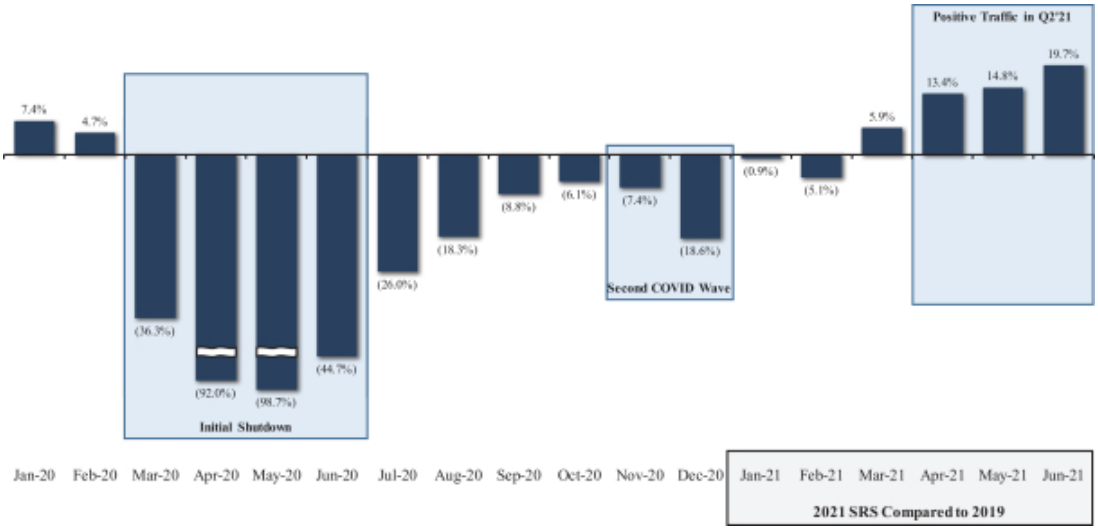
2020. Since reopening, our restaurants have steadily grown sales and transactions despite the seating capacity of restaurant dining rooms remaining constrained by state and local government mandates as well as our own internal standards taken to protect employees and customers. In Florida, for example, where approximately 30% of our company-owned restaurants are located, despite the state lifting indoor dining distancing restrictions on September 25, 2020, we maintained six-foot distances between tables through the first fiscal quarter ended March 28, 2021 for the safety of our customers and employees.

As a result of the new initiatives that we put in place, when our company-owned restaurants reopened, we were able to meet the new customer demand for off-premises dining while also serving the in-dining customer traffic as it continued to increase. Our off-premises sales channel had been a relatively small portion of our sales pre-pandemic; in the fourth fiscal quarter of 2019 our average weekly off-premises sales were $1,897 per restaurant. In fiscal 2020, our off-premises sales benefited significantly from our technology investments and initiatives to reduce customer friction when ordering off-premises as well as changes in consumer behavior; this resulted in average weekly off-premises sales increasing to $8,082 per restaurant during the fourth fiscal quarter of 2020. Moreover, as dine-in traffic improved in 2021, our off-premises business continued to thrive and achieved an average weekly sales of $ per restaurant in the second fiscal quarter of 2021. To ensure that our third-party delivery business was positioned for long-term success, we introduced a surcharge for third-party orders. We believe that off-premises sales will remain an incremental channel for us that serves an additional use occasion for our customers and that it will be an important part of growing average unit volumes to higher than pre-pandemic levels.

According to Nation's Restaurant News, in 2019, First Watch was the fastest-growing full-service restaurant concept in the United States, based on year-over-year system-wide sales growth metrics. Despite the COVID-19 pandemic, we continued to build and open new restaurants in 2020 with 23 NROs in fiscal 2020 and continued to develop our pipeline for fiscal 2021 and fiscal 2022 new restaurant growth. During the first fiscal quarter of 2021, our NROs have performed exceptionally well, even when compared to the strong performance of our existing restaurants, and generated annualized average sales of $1.7 million, relative to our existing restaurants that generated annualized average sales of $1.5 million.

By March 2021, we began to consistently report positive same-restaurant sales measured against pre-COVID results, including 5.9% and 13.4% increases in the five-week period ended March 28, 2021 and four-week period ended April 25, 2021 relative to the five-week period ended March 31, 2019 and four-week period ended April 28, 2019, respectively.

Monthly Same-Restaurant Sales Growth Since January 2020



Long-Term Consumer Trends in Our Favor

We believe that we are well-positioned to continue to benefit from the confluence of a number of long-term multi-generational consumer trends:

Increasing Morning Meal Occasions.

The morning meal (Breakfast and morning Snack) has been the only foodservice daypart with consistent year-over-year growth for the last several years, according to RKMA. The restaurant industry captured two additional breakfast visits per capita, from 2015 to 2018, and with 78% of breakfasts still being prepared at home during 2019 according to the NPD Group. With 102 billion breakfast occasions and 50 billion morning snack occasions in 2019, per a January 2020 NPD Breakfast Insights report, morning restaurant traffic provides a compelling long-term opportunity for future growth. We believe that the broad appeal of our menu and the quality of our ingredients gives us a competitive advantage over many alternatives that offer breakfast and lunch. We believe that migration from dense urban to suburban areas, where most of our restaurants are located, will result in increased traffic and brand awareness. Increased work-from-home routines have kept people in suburban areas for larger portions of the day, increasing First Watch exposure to an incremental customer base.

Demand for Fresh, Healthy Food.

According to RKMA, almost two thirds of consumers consider a healthy menu an important factor in their restaurant choice and according to the NPD Group, 60% of consumers say they want more protein in their diet. The COVID-19 pandemic has progressed trends globally towards wellness with consumers becoming more focused than ever on living and eating healthier. Our freshly made food, with simple, high-quality, protein-rich ingredients, such as cage-free eggs and quinoa, aligns well with these consumer trends. According to Market Force data in January 2020, First Watch scored 36 and 23 points higher than the second place breakfast brand in categories of healthy choices and food quality, respectively.

Consumers Want "On-Demand" Dining.

Consumers want the ability to order what they want and when they want it without regard to traditional daypart conventions. Increasingly busy schedules, the rise of the "gig" economy, flexible job hours and growth of remote workers, trends magnified by the COVID-19 pandemic, are powering demand for convenient, fast and flexible Daytime Dining offerings from our all-day menu, for which traditional rigid breakfast and lunch dayparts were not designed. In the second fiscal quarter of 2021, our average weekly off-premises sales were $ per restaurant compared to $1,897 in the fourth fiscal quarter of 2019 and $8,082 in the fourth fiscal quarter of 2020.

We Are Disrupting a Massive Category

As consumer needs have evolved, so have we. Our "Urban Farm" positioning provides a creative, farm-fresh breakfast, brunch and lunch menu in a warm and rustic yet contemporary atmosphere – creating an energizing Daytime Dining experience that resonates with consumers. We enjoy broad appeal to a customer base that includes the morning traditionalists as well as a growing segment of younger, healthier and more affluent customers. These digital-centric consumers care about food and quality, are willing to pay more, and report higher advocacy for and share of visits to First Watch. There is no other concept with an offering similar to ours at a comparable scale. Our operating hours encompass breakfast, brunch and lunch, which represent 63% of all restaurant sales in the U.S., according to RKMA. Our business model and our scale position us for continued growth within this massive category.

Unrelenting Commitment to Fresh Ingredients and Culinary Innovation

Our creative, on-trend menu and seasonal offerings define the culinary voice of our brand and highlight our commitment to quality and freshness. We believe this commitment is a key differentiator between First

Watch and larger restaurant concepts that have failed to evolve. When we say, “Yeah, It’s Fresh,” we mean it. While many established restaurant concepts are outsourcing a large part of the preparation of their food, we still do much of it in-house in each restaurant every day.

That commitment to quality and freshness is further evidenced throughout our award-winning menu with ingredients such as cage-free eggs, organic mixed greens and all-natural chicken, just to name a few. Our highly-curated menu of less than 60 entrée items – small relative to most in our industry – features a thoughtful balance of classic favorites prepared and presented in an elevated way using high-quality ingredients, along with innovative and interesting specialty dishes that take the consumer on a culinary exploration.

Our creativity and innovation extend beyond today’s offerings and into our overall menu strategy. Successful platform introductions such as our Fresh Juice program and Shareables, which include menu items such as Million Dollar Bacon and Holey Donuts, were added in the past few years, adding incremental revenue opportunities while enhancing our culinary credibility. We have seen our Fresh Juice and Shareables platforms rise from 8.7% and 3.2% of customers purchasing in the fourth fiscal quarter ended December 30, 2018, respectively, to % and % in the second fiscal quarter of 2021 and our average gross per person average over that same period rose from $12.49 to $.

One Shift, One Menu, One Focus

We believe that our compelling business model, built around “One Shift, One Menu, One Focus” affords us competitive advantages. Our single-shift restaurant hours, by design, result in “No Night Shifts Ever.” This helps make us an employer of choice in the foodservice industry, which we believe allows us to attract superior talent, retain employees longer and create a unifying organizational culture. 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 customer experience. Our singular emphasis on Daytime Dining gives us the clarity of purpose to relentlessly focus on delivering a superior experience.

“You First” Culture Elevates Employee and Customer Satisfaction

Our “You First” mission is palpable at every level of our organization. Our hiring, training and retention strategies empower our more than 9,000 employees, united by our culture, to deliver superior customer experiences. We invest heavily in our leaders by conducting 11 weeks of training for all managers, including a one-week F.A.R.M. (First Watch Academy of Restaurant Management) program traditionally held at our Home Office in Florida, where each of our managers-in-training is immersed in our culture, vision and mission. Our restaurant-level manager turnover was 29% during the last twelve months ending March 2020, which is meaningfully lower than our peer average of 41% as reported by Black Box.

During the COVID-19 pandemic, we continued to invest in our employee relationships through a high touch program of outreach, communication and, where possible, assistance. As a result of our proactive approach, 75% of the hourly employees who had been working for us for over three years and approximately 90% of general managers returned to work with us when our restaurants re-opened.

We have always believed our employees are our greatest asset, and the initiatives we had in place prior to the COVID-19 pandemic and the additional steps we subsequently took further enhanced our culture and elevated our employee, and ultimately customer, satisfaction. First Watch ranked first in Market Force’s Composite Loyalty Index metric as of January 2020, evidencing the compelling level of satisfaction amongst our customers. We believe that the incredible culture at First Watch became even stronger as a result of the pandemic, evidenced by our overall score in the Glassdoor survey having increased relative to the pre-pandemic period. A five-year longitudinal study of employee surveys on Glassdoor published in June 2019 by William Blair ranked us #1 for work/life balance and for overall employee satisfaction in the restaurant industry.

Track Record of Resilience and Exceptional Same-Restaurant Traffic and Sales Growth

Our strong brand with growing awareness, broad consumer appeal and excellence in execution have created outstanding and consistent performance over time. Over the five-year fiscal period ended December 29, 2019, our same-restaurant sales growth was positive every year, averaging 6.8% annually, and our same-restaurant traffic growth was 1.5%. These positive metrics have continued into the second fiscal quarter of 2021 performance with same-restaurant sales growth of % and same-restaurant traffic growth of % compared to the same fiscal period in 2019.

In addition to exemplary historical performance, our concept has proven to be highly adaptable and resilient during adverse market conditions. During the unprecedented COVID-19 restrictions, we temporarily closed all our company-owned restaurants and navigated significant capacity restrictions in the months following. In response, we rapidly enhanced our off-premises technological and operational capabilities to meet the change in consumer demand through those channels.

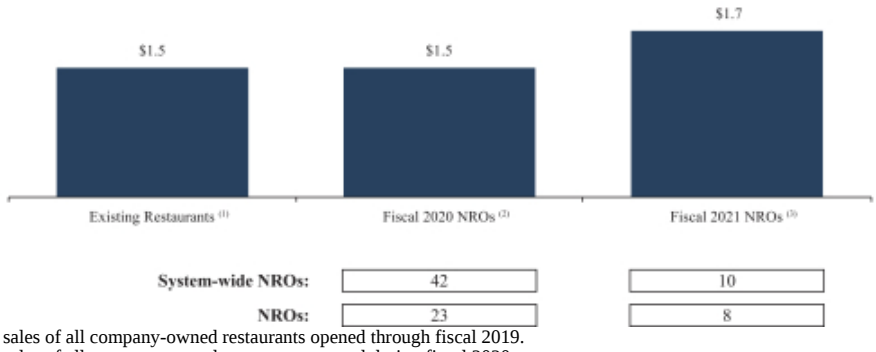
We have also seen rapid sales recovery as many geographies reduced on-premises dining restrictions that were imposed after the onset of the COVID-19 pandemic. For example, by March 2021, nearly all our restaurants had re-opened to full dining-room capacity and we began to consistently achieve highly positive same-restaurant sales, including 5.4% and 13.0% same-restaurant sales growth relative to March 2019 and April 2019, respectively.

Strong Restaurant Productivity and Proven Portability

The success of our brand is reflected in our restaurant-level performance and Cash-on-Cash Return. In fiscal 2019, prior to the pandemic, we generated an AUV of $1.6 million in a single shift (seven and a half hours daily), comparable to many restaurants open for several shifts or in some cases around the clock. We have demonstrated the portability of our model by successfully operating restaurants in 28 states. Restaurants in our top decile, by fiscal 2019 sales, span 9 different states and 14 different DMAs. DMAs are geographic areas in the United States in which local television viewing is measured by The Nielsen Company. Despite the challenges of the COVID-19 pandemic and its impact on our sales, we have seen a broad and rapid sales recovery and opened 42 and System-wide NROs in fiscal 2020 and during the twenty-six weeks ended June 27, 2021, respectively. Our NROs have displayed exemplary performance evidenced by the current momentum in our business. Our fiscal 2020 NROs have generated annualized average sales of $1.5 million and our NROs opened during the first fiscal quarter of 2021 have generated annualized average sales of $1.7 million.

Annualized Average Sales Through the First Fiscal Quarter of 2021

(in millions)



	Existing Restaurants (1)	Fiscal 2020 NROs (2)	Fiscal 2021 NROs (3)
System-wide NROs:		42	10
NROs:		23	8

(1) Represents annualized average sales of all company-owned restaurants opened through fiscal 2019.
(2) Represents annualized average sales of all company-owned restaurants opened during fiscal 2020.
(3) Represents annualized average sales of all company-owned restaurants opened during the first fiscal quarter of 2021.

Experienced, Passionate Leadership Team and Deep Talent Bench

Our team is led by passionate executives who have an extensive mix of experience in our brand and with other leading consumer facing businesses. Christopher A. Tomasso, our President, Chief Executive Officer and Director, has more than 24 years of industry experience and joined First Watch in 2006. Mr. Tomasso sets the strategic vision and brand positioning for the company, while enhancing its organizational culture. Mr. Tomasso was recognized with FSR Reader's Choice Award as one of two top C-Suite Executives in 2021. Mel Hope, our Chief Financial Officer and Treasurer, has more than 36 years of public accounting and industry experience including serving as Chief Financial Officer of large, successful public and private companies. 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 restaurant general managers have an average tenure at First Watch of five years. In addition, we have dozens of fully-trained, tested, high-performing managers positioned throughout our system who are poised to step into the general manager role as we execute our growth strategy and open new restaurants.

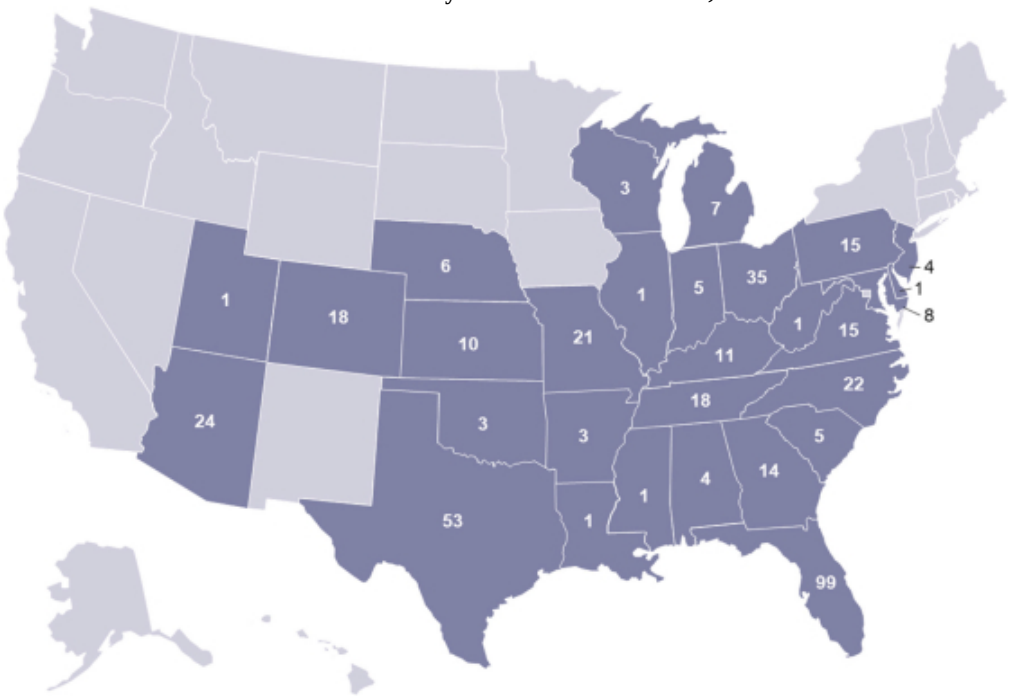
How We Will Continue to Grow Sales and Profits

While we are proud of our success in having grown sales and restaurant level operating profit consistently for many years prior to the pandemic, our focus is on the future. We believe our continued growth will come from opening new restaurants in existing and new geographies and driving traffic and building sales at our existing restaurants as new customers discover First Watch and regulars come and enjoy us more frequently. While 2020 was a challenging year given the COVID-19 pandemic, the investment in our employees and operational capabilities have enabled us to emerge as an even stronger company with greater abilities to leverage multiple channels for growth. We are even more confident in our growth strategies based on the consumer reaction to our brand and strong resurgence we have seen throughout 2021 since reopening our restaurants and since capacity restrictions have been reduced.

Grow Our Brand Footprint by Consistently Opening New Restaurants

First Watch has grown from 277 restaurants in fiscal 2015 to restaurants as of June 27, 2021 while increasing annual AUV from $1.3 million to $ million and achieving positive same-restaurant sales growth and traffic except for fiscal 2020. In Florida, our most mature market with the greatest number of company-owned restaurants, we have grown from 54 to 99 restaurants over the last six years, while generating average annual same-restaurant sales growth of 6.8% from fiscal 2015 to fiscal 2019. We believe we have significant potential to expand our presence within all the states in which we currently operate as well as new ones. We have a significant opportunity to grow density both in existing and new markets. Our deeply experienced restaurant development team in partnership with a third-party real estate analytics firm conducted an in-depth study that concludes we have the potential for more than 2,200 locations in the United States.

Restaurant Count by State as of December 27, 2020



Despite the challenges of the COVID-19 pandemic and the significant restaurant closures across the United States, First Watch made the strategic decision to remain committed to invest in growth and continued to open new restaurants. We opened 42 and System-wide NROs in fiscal 2020 and during the twenty-six weeks ended June 27, 2021, respectively, representing a growth rate of 11.4% and %, respectively, over the prior periods. Furthermore, those NROs have performed exceptionally well, evidencing our compelling business momentum and ability to successfully grow our footprint. Our NROs during the twenty-six weeks ended June 27, 2021, have generated annualized average sales of $ million relative to our existing restaurants' annualized average sales of $ million. Our pipeline for full fiscal year 2021 remains robust and we expect 33 System-wide NROs by the end of fiscal 2021.

We employ a comprehensive, data-driven real estate approval process to select and develop every new site. In selecting new locations, we combine rigorous data on specific market characteristics, demographics, and growth, with a human element that takes into account brand impact and opportunity of individual market and sites. Every new restaurant further drives brand awareness and creates meaningful marketing buzz when we open in new markets. We intend to leverage our rigorous real estate site selection process to open company-owned restaurants over . While our existing franchisees are committed to developing restaurants in the future, we expect company-owned restaurants will be the primary growth driver of our footprint over the long term.

Drive Restaurant Traffic and Build Sales

We have a significant runway to continue to grow traffic and restaurant sales by executing against a defined set of strategies.

- ***Continue Menu Innovation.*** We continuously evolve our offering to keep our menu fresh and exciting yet operationally efficient. Our chef-led culinary innovation team maintains a keen awareness of emerging culinary trends and immerses themselves in the marketplace through frequent culinary

inspiration tours using experiences to develop a robust pipeline of exciting new recipes and menu offerings. We intend to drive continued incremental customer spending through our five highly-anticipated seasonal menus and the introduction of new menu platforms similar to our introductions of Fresh Juices and Shareables. For fiscal 2019, 8.1% of customers purchased items from our seasonal menu, 10.8% purchased Fresh Juices and 4.3% purchased Shareables. For the twenty-six weeks ended June 27, 2021, % of customers purchased items from our seasonal menu, % purchased Fresh Juices and % purchased Shareables. We expect menu innovation to continue to provide incremental growth opportunities in the future.

- ***Offer Alcohol as Only First Watch Can.*** The alcoholic beverage offerings at First Watch are unique and reflect our culinary innovation in combining fresh juices and ingredients with a variety of liquors. At the end of fiscal 2019, early tests showed that offering alcoholic beverages where practical throughout our system was a highly-incremental new sales growth platform, opening up new occasions for our consumers to enjoy dining out and allowing us to reach new demographics. During the COVID-19 pandemic, we accelerated this initiative to better position the First Watch brand upon recovery as we learned that customers joining us for breakfast or lunch were interested in making the meal more of a celebration at times. As of June 27, 2021, our alcohol menu is offered in restaurants with clear plans to continue the expansion to all restaurants where feasible. Since the rollout in fiscal 2020, the presence of alcohol on our menu has lifted overall dine-in beverage attachment by 170 basis points in restaurants where it is served, indicating the incrementality of the offering. Further, for the first fiscal quarter of 2021, alcohol accounted for 2.9% of sales at these restaurants and increased the average check by 1% as compared to our restaurants that do not offer alcohol. These incremental alcohol sales are highly profitable. More importantly, we remain confident in the long-term opportunity to innovate within this platform to further elevate the social occasion of breakfast, brunch and lunch. Similar to the establishment of our Fresh Juice and Shareables platforms, we remain optimistic that further consumer awareness and excitement (through new items and promotion) around alcohol will drive new, additional occasions and broaden our appeal to a new demographic seeking an experiential occasion over a meal.
- ***Convenience and Increased Accessibility through Our Off-Premises Offering.*** During the COVID-19 pandemic, we integrated technology into our business to enhance customer access and enable off-premises consumption. In fiscal 2019, off-premises sales accounted for $1,971 in average weekly sales. We have now built the foundation to optimize the off-premises opportunity through our digital channels (both through direct ordering as well as third-party delivery). These off-premises platforms, now available in all restaurants, contributed $ of average weekly sales during the twenty-six weeks ended June 27, 2021, an increase of % versus fiscal 2019. Even as our dining room sales recovered during the twenty-six weeks ended June 27, 2021, 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. We have seen encouraging results in 2021 NROs from innovations such as 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.
- ***Increase Our Brand Awareness.*** We believe First Watch is still in the early stages of our life cycle, as consumers in our existing and new markets continue to discover the First Watch brand. Over 38 years, First Watch has grown primarily through word-of-mouth as our service, menu and environment created ardent fans as evident in our numerous local awards and customer satisfaction scores. In January 2020, First Watch was named “America’s Favorite Restaurant Brand” by Market Force. This study evaluated restaurants across multiple sectors and based its ranking on customer recommendations and brand satisfaction. This strong customer affinity was also highlighted in a recent 2021 national study where First Watch ranked 10th in net promoter score among the country’s 74 largest restaurant brands and comparable to the industry’s most highly regarded names. Despite this, brand awareness remains low as indicated by a 2021 nationally represented survey where only 11% were aware of First Watch. The combination of both high customer satisfaction and opportunity for growing awareness highlights strong potential for the brand.

  As our development of new restaurants continues, we believe the increased penetration in new and existing markets will contribute to higher brand awareness. While we believe that organic growth of awareness

contributes more to our local feel, we also recognize the future potential of strategically applying advertising dollars in appropriate channels to accelerate this opportunity. Our advertising costs represented approximately 1% of total revenues in fiscal 2019 and in fiscal 2020. We intend to grow our brand awareness primarily through increased investment in cost-efficient digital channels in order to further leverage our first party, owned, customer data to target and reach the right audiences that will lead to higher conversion and higher return on investment. We have successfully piloted these approaches to-date and remain confident that this approach provides further growth opportunity to build traffic and sales.

Deliver 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 customer, promotes trial by new consumers and ultimately encourages loyalty. We have received hundreds of awards from local and national media outlets that we believe matter to consumers – including being named one of TripAdvisor's Best Restaurant Chains in 2019. While off-premises dining during the COVID-19 pandemic has emerged as a sizeable use occasion for many customers cautious to eat outside their homes, we believe that our unwavering focus will remain on delivering an amazing dining experience in our restaurants to every customer in every visit. We aim to continue to leverage our "One Shift, One Menu, One Focus" model to stay distinguishably different from our competitors by executing on delivering a superior dining experience every day to further drive traffic and build sales.

Additional Platforms and Initiatives. We have seen the opportunity, over time, to selectively evolve our concept and offerings via the implementation of key strategies and initiatives. Future initiatives include:

- ***Weekday Lunch***: We believe that we have the opportunity to significantly increase market share by driving incremental customer visits during the weekday lunch daypart through the evolution of our menu with fresh, convenient and differentiated lunch-oriented offerings. In fiscal 2019, only 6.0% of our weekday customers purchased lunch entrées. As a result of the evolving consumer landscape driven by the COVID-19 pandemic, 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 an increasing work-from-home trend, presents First Watch with an incremental customer opportunity during the weekday business hours which we believe will further propel growth in our lunch daypart. With the evolution of a new optimized core menu, the presence of our off-premises channels and the opportunity to apply targeted marketing, we believe the weekday lunch occasion holds future opportunity to build sales and traffic.
- ***Customer Technology & Customer Data:*** As we fast-tracked the implementation of our off-premises platforms in fiscal 2020, we also took the opportunity to accelerate 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, frequency and customer lifetime value. Since the establishment of these systems, we have gathered 2.9 million unique customer profiles. The advancements in these foundational systems provide future opportunity for targeted communication and the development of more advanced customer relationship management systems aimed at growing customer frequency.
- ***Restaurant Technology Unlocking Throughput & Capacity:*** For 38 years, we grew organically from an intense focus on people and service, delivering a unique restaurant experience that has been difficult for competitors to duplicate at scale. The introduction of our off-premises platform laid a strong foundation for certain technologies that will now unlock further in-restaurant innovation, enabling greater peak hour throughput and capacity, thus the ability to serve more demand. In many of our restaurants, we experience more weekend demand than we are currently able to serve, indicated by extended wait times during peak hours. Through new technological tools to enable optimal seating configurations, lower table turn times and more efficient kitchen order routing, we believe that we have

the opportunity to achieve higher peak hour sales. Most key among these opportunities is the installation of kitchen display screens, a core technology system in the industry, to our back-of-house to automate our order routing. We remain confident that the addition of this technology will unlock greater efficiency within our kitchens and raise our ability to serve more of our unfulfilled demand.

Our Menu

We serve breakfast, brunch and lunch using fresh ingredients. Our limited menu of less than 60 entrée items is customizable to personal preference, including our “Healthier Side” options such as our Power Bowls, Salads and Egg-sclusives. Additionally, we offer a seasonal menu, which is rotated five times per year, and adds optionality to our customers. Each seasonal menu is tested in market one year prior to national rollout, allowing for testing of consumer acceptance and informing supply chain planning to optimize supply.

Properties

As of December 27, 2020, we had 321 company-owned restaurants and 88 franchised restaurants located in 29 states, including a large presence in Florida, Texas, Ohio, Arizona and Missouri. We lease all our company-owned restaurant facilities.

As of December 27, 2020, company-owned and franchised restaurants by jurisdiction were:

State	Company-Owned	Franchise operated	Total
Alabama	4	0	4
Arizona	24	0	24
Arkansas	0	3	3
Colorado	18	0	18
Delaware	1	0	1
Florida	95	4	99
Georgia	14	0	14
Illinois	1	0	1
Indiana	4	1	5
Kansas	10	0	10
Kentucky	2	9	11
Louisiana	0	1	1
Maryland	8	0	8
Michigan	7	0	7
Mississippi	0	1	1
Missouri	15	6	21
Nebraska	0	6	6
New Jersey	4	0	4
North Carolina	3	19	22
Ohio	35	0	35
Oklahoma	0	3	3
Pennsylvania	15	0	15
South Carolina	0	5	5
Tennessee	10	8	18
Texas	38	15	53
Utah	0	1	1
Virginia	13	2	15
West Virginia	0	1	1

State	Company-Owned	Franchise operated	Total
Wisconsin	0	3	3
TOTAL	321	88	409

New restaurant development has historically included both NROs and conversion of acquired restaurants. Average net build-out costs for our NROs are approximately $900,000. For our NROs, we have restaurant sales expectations of $1.8 million in the first year, $1.9 million in the second year and $2.0 million in the third year. In the third year, expected restaurant level operating profit margin for our NROs is approximately 19% and expected cash-on-cash returns are approximately 40%.

	Fiscal 2020			Fiscal 2019		
	Company-owned	Franchise operated	Total	Company-owned	Franchise operated	Total
Beginning of year	299	69	368	248	103	351
New restaurants	23	19	42	38	18(2)	56
Franchisee acquisitions	—	—	—	18	(18)	—
Relocations	—	—	—	(1)	(1)	(2)
Closures	(1)(1)	—	(1)	(4)	(33)	(37)(2)
End of year	321	88	409	299	69	368

(1) During fiscal 2020, we had one company-owned restaurant closure as our landlord bought out the lease for the First Watch location in Clayton, MO.

(2) All remaining restaurants that operated under The Egg & I trade name had either closed, disenfranchised or were strategically acquired by the Company and converted to restaurants operating under the First Watch trade name as of December 29, 2019.

Restaurant Design

Our typical restaurant reflects our “Urban Farm” branding in a rustic yet contemporary atmosphere. Our restaurants typically range from approximately 3,400 square feet to 4,000 square feet in size with indoor seating that accommodates approximately 120-140 customers, and many of our new and planned restaurants range from 4,000 square feet to 5,000 square feet. We have been building larger restaurants to address the consumer demand we have been experiencing. Additionally, many of our restaurants have patio seating, which accommodates additional customers, and we have been expanding our restaurants’ outdoor seating options. Many of our new and planned restaurants include patio seating as well as thoughtfully-designed bar/counter spaces and dedicated to-go areas. Our restaurants are characterized by distinctive exterior and interior design, color schemes, and layout, including custom designed decor and furnishings consistent with our brand imaging. We supplement our nationally consistent design with local decor elements such as paintings and other fixtures that are unique to each restaurant.

Site Selection Criteria and Approval Process

As of December 27, 2020, we operate restaurants successfully in 29 states and in a variety of commercial retail environments, of which we prefer free-standing or end cap sites in high-quality trade areas. Our track record of operating 409 existing restaurants system-wide as of December 27, 2020 furnishes us with significant insight for new site selection.

Our restaurant development team is staffed with experienced commercial real estate personnel who use site modeling analysis to identify and prioritize areas of unmet demand. Based upon these priorities, trade areas, traffic patterns, current and future commercial and residential development, competitive forces and sales transfer from existing restaurants are taken into consideration. The teams are then aided by commercial brokers with

whom they prospect for potential sites with targeted characteristics for visibility, co-tenancy, access and egress, parking and square footage.

On average, new company-owned restaurant sites are typically identified and evaluated at least 18 months prior to opening. Potential sites are modeled for financial performance based upon proposed lease terms and projected sales. The financial models, together with site and architectural renderings, trade area characteristics, competitive information and proposed lease terms are presented for approval or rejection by the Company's real estate committee comprised of senior leadership from real estate, operations, marketing, legal and finance teams.

Restaurant Management and Operations

Quality and Food Safety

We and our franchisees are focused on maintaining high food quality and food safety in each restaurant through the careful training and supervision of personnel and by following rigorous quality and cleanliness standards that have been established. Standards for 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 and Operations Leadership

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

Our kitchen staff begin food preparation prior to our 7:00 a.m. opening time. During a restaurant's 7:00 a.m. to 2:30 p.m. shift, our staff focus intensely on operational execution including, among other things, gracious service, order accuracy, food preparation and "instagrammable" plating.

Applicants for restaurant positions are pre-qualified for interview through their entry of certain information into our hiring portal. We are diligent in reviewing applicants, each of whom is interviewed by the general manager in advance of hiring. We seek to staff our restaurants with employees who are friendly, service oriented, eager to prepare high-quality food and a good fit for our "You First" culture. As of December 27, 2020, we had approximately 8,000 in-restaurant and regional operations personnel. We believe we employ a smaller span of control than most other restaurant concepts which we think is a contributing factor of our sustained results and track record of success.

Training

We have a legacy of operational excellence that ensures a memorable customer experience and allows us to reliably execute new and creative meal preparations. To continue that legacy, we established a training facility at our Home Office named the F.A.R.M. Our new managers-in-training have traditionally travelled to the F.A.R.M for a week-long immersion in the processes, culture and management tools we have developed. As a result of the COVID-19 pandemic, we have temporarily moved to a remote training format, but we plan to return to the F.A.R.M. In addition, managers in training also complete a comprehensive 11-week C.A.F.E. ("Customer and Food Expert") training program in the restaurants, alongside experienced managers. Hourly employees go through at least three days of initial on boarding training and shadowing. In the spirit of continuous development, there is also on-going in-restaurant training conducted for staff by General Managers and Directors of Operations

as well as award-winning on-line training that is developed by our training department and provided through our Virtual Learning Academy. Our commitment to training and leveraging our base of veteran general managers in new restaurants ensures that all restaurants benefit from a shared culture and deliver a consistently efficient and gracious customer experience.

Franchise Program

Our existing franchised restaurant base consists of successful, experienced multi-unit restaurant operators. As a result of attractive returns on company-owned restaurants, we curtailed our franchising program in 2017 and are not extending franchise agreements to new franchisees. As of December 27, 2020, we had 17 franchisees that operated 88 restaurants. Our existing franchisees hold 41 total new restaurant development obligations as of December 27, 2020 which are required to be filled over the next five years, of which opened during the twenty-six weeks ended June 27, 2021. Our typical agreements grant a franchisee the right to operate for 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%-3% 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.

Marketing and Advertising

We use a variety of marketing channels, including email communications, affiliate partnerships, social media interactions, digital marketing, direct mailers, public relations initiatives and local community sponsorships, promotions and partnerships, to drive brand awareness and traffic to our restaurants. We are active in the communities in which we operate, and partner with local organizations to create meaningful bonds. We focus our marketing efforts on building a connection with our customers. Additionally, we are focused 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.

We promote our brand through our “Yeah, It’s Fresh” slogan, which is now a registered trademark. The slogan aims to deliver our message that First Watch delivers a made-to-order menu prepared with quality, fresh ingredients.

Purchasing and Distribution

Maintaining high standards of quality in our restaurants depends in part on our ability to acquire fresh ingredients and other necessary supplies that meet our standards and specifications from reliable suppliers. We regularly inspect vendors to ensure that products purchased conform to our standards and that prices offered are competitive. Our quality assurance department requires a third-party supplier audit 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. We negotiate and contract directly with the suppliers of our food, and we contract with two distributors for delivery to our restaurants of the majority of all our food and produce. Most restaurants accept deliveries of produce at least three times per week. In the normal course of business, we evaluate bids from multiple suppliers for various products. Our most frequently used food items are bacon, coffee, eggs, avocados, potatoes and bread. We have a dedicated supply chain department to manage fluctuations in supply and prices that can significantly impact our restaurant service and profit performance.

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 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

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 (at scale) and view our primary competition as a network of independent restaurants in neighborhoods across the United States.

Environmental Matters

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

Regulation and Compliance

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

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

We are also subject to the Fair Labor Standards Act, the Immigration Reform and Control Act of 1986 and various federal and state laws governing such matters as minimum wages, exempt versus non-exempt, overtime, unemployment tax rates, workers' compensation rates, citizenship requirements and other working conditions. A significant portion of the hourly staff is paid at rates consistent with the applicable federal or state minimum wage and, accordingly, increases in the minimum wage and/or changes in exempt versus non-exempt status will increase labor costs. We are also subject to the ADA, which prohibits discrimination on the basis of disability in public accommodations and employment, which may require us to design or modify our restaurants to make reasonable accommodations for disabled persons.

As of June 27, 2021, our alcohol menu is offered in restaurants with clear plans to continue the expansion to all restaurants where feasible. Alcoholic beverage control regulations require each of our restaurants

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

Our franchising activities are subject to the rules and regulations of the FTC and various state laws regulating the offer and sale of franchises. Substantive state laws that regulate the franchisor-franchisee relationship exist in a substantial number of states, and bills have been introduced in Congress from time to time that would provide for federal regulation of the franchisor-franchisee relationship. The state laws often limit, among other things, the duration and scope of non- competition provisions, the ability of a licensor to terminate or refuse to renew a franchise agreement and the ability of a franchisor to designate sources of supply. We believe that our franchising procedures comply in all material respects with both the FTC franchise rule and all applicable state laws regulating franchising in those states in which we have offered franchises.

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

Management Information Systems

All our restaurants use computerized 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.

Employees

As of December 27, 2020, we had more than 8,000 employees, a majority of whom were restaurant employees. None of our employees are part of a collective bargaining agreement, and we believe our relationships with our employees are satisfactory.

Legal Proceedings

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

MANAGEMENT

Directors, Executive Officers and Key Employees

The following table sets forth the names and ages, as of December 27, 2020, of the individuals who will serve as our executive officers, key employees and members of our Board at the time of the offering.

Name	Age	Position
Christopher A. Tomasso	50	President, Chief Executive Officer and Director
Mel Hope	59	Chief Financial Officer and Treasurer
Jay Wolszczak	52	General Counsel and Secretary
Eric Hartman	49	Chief Development Officer
Laura Sorensen	48	Chief People Officer
Rob Conti	51	Senior Vice President, Technology
Matt Eisenacher	41	Senior Vice President, Brand Strategy and Innovation
Brian Fisher	53	Senior Vice President, Operations
Calum Middleton	41	Chief Strategy Officer
Rania Khouri	47	Senior Vice President, Accounting and Financial Reporting
Lilah Rippett	62	Senior Vice President, Supply Chain
Shane Schaibly	38	Senior Vice President, Culinary Strategy
John Zimmermann	58	Vice President, Quality Assurance and Food Safety
Kenneth L. Pendery, Jr.	67	Director and Chairman Emeritus
Ralph Alvarez	65	Director and Chairman of the Board
Julie M.B. Bradley	52	Director
Tricia Glynn	40	Director
William Kussell	62	Director
David Mussafer	57	Director
Michael White	33	Director
Lisa Price	59	Director

Christopher A. Tomasso

Mr. Tomasso has served as a director since December 2019, and has served as our President and Chief Executive Officer since August 2017 and December 2019, respectively. Mr. Tomasso has also served as director, president and chief executive officer of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since October 2017, December 2015 and June 2018, respectively. In addition, Mr. Tomasso served as chief marketing officer of First Watch Restaurants, Inc. from August 2006 to December 2015.

Mr. Tomasso's management, investment, marketing, and corporate strategy expertise make him well qualified to serve as a director.

Mel Hope

Mr. Hope has served as our Chief Financial Officer and Treasurer since December 2019. Mr. Hope has also served as chief financial officer, executive vice president and treasurer of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since July 2018. Prior to joining us, Mr. Hope served as managing director and chief operating officer of Genesis Real Estate Advisers, LLC from March 2016 to August 2018 and as managing director of Blue Plate Development and Consulting, LLC from May 2014 to February 2016.

Jay Wolszczak

Mr. Wolszczak has served as our General Counsel and Secretary since December 2019. Mr. Wolszczak has also served as chief legal officer, general counsel and secretary of First Watch Restaurants, Inc., a wholly-owned

subsidiary of the Company, since May 2018. Previously, Mr. Wolszczak served as general counsel of Hard Rock Café International (USA), Inc. from October 1997 to April 2018.

Eric Hartman

Mr. Hartman has served as Chief Development Officer of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since November 2016. In addition, Mr. Hartman founded the business SEVA Development Services LLC and served as its president from January 2014 to November 2016.

Laura Sorensen

Ms. Sorensen has served as Chief People Officer of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since August 2016. Prior to joining us, Ms. Sorensen served as chief people officer of Darden Restaurants from June 2010 to August 2016.

Rob Conti

Mr. Conti has served as Senior Vice President of Technology of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since March 2019. Prior to joining us, Mr. Conti served as the Florida manager of systems engineering of Cisco Systems, Inc. from February 2018 to March 2019 and as the chief technology officer of Holiday Retirement from August 2017 to February 2018. Prior to these positions, he served as vice president of information technology of Hard Rock Café International (USA), Inc. from June 1999 to August 2017.

Matt Eisenacher

Mr. Eisenacher has served as Senior Vice President of Brand Strategy and Innovation of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since April 2019. Prior to joining us, Mr. Eisenacher served as chief concept officer of the Piada Group from December 2013 to March 2019.

Brian Fisher

Mr. Fisher has served as Senior Vice President of Operations of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since January 2015, and as vice president of operations at First Watch Restaurants, Inc. from January 2012 to January 2015.

Calum Middleton

Mr. Middleton has served as Chief Strategy Officer of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since June 2021. Mr. Middleton also served as senior vice president of finance of First Watch Restaurants, Inc. from January 2019 to June 2021 and vice president of finance from February 2018 to January 2019 and director of financial planning & analysis of First Watch Restaurants, Inc. from March 2015 to February 2018. Prior to joining us, he served as senior vice president of financial planning and analysis and treasurer of Star2Star Communications, LLC from November 2012 to January 2015.

Rania Khouri

Ms. Khouri has served as Senior Vice President of Accounting and Financial Reporting of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since February 2021. Ms. Khouri has also served as vice president of financial reporting of First Watch Restaurants, Inc. from April 2019 to January 2021. Prior to joining us, she served as the controller and vice president of finance of Hard Rock Café International (USA), Inc. from August 2017 to May 2018. Prior to that, she served as the head of external reporting of Fiat Chrysler Automobiles N.V. from January 2015 to July 2017.

Lilah Rippett

Ms. Rippett has served as Senior Vice President of Supply Chain of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since June 2021. Ms. Rippet has also served as vice president of purchasing and distributions of First Watch Restaurants, Inc. from May 2021 to June 2021 and vice president of supply chain from January 2017 to May 2021. Prior to joining us, she served as the vice president of strategic integration of Benihana, Inc. from October 2014 to October 2016.

Shane Schaibly

Mr. Schaibly has served as Senior Vice President of Culinary Strategy of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since June 2021. Mr. Schaibly has also served as vice president of culinary strategy of the Company from January 2017 to June 2021 and was director of culinary operations of First Watch Restaurants, Inc. from February 2014 to December 2016.

John Zimmermann

Mr. Zimmermann has served as Vice President of Quality Assurance and Food Safety of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since March 2017. Prior to joining us, Mr. Zimmermann served as regional director of food safety of Sysco Corporation from November 2015 to March 2017. He also previously served as senior director of quality assurance and food safety of Sodexo, Inc. from May 1995 to March 2017.

Kenneth L. Pendery, Jr.

Mr. Pendery has served as a director since August 2017 and as Chairman Emeritus of our Board since December 2019. He has also served as a director and executive chairman of First Watch Restaurants, Inc., a wholly-owned subsidiary of the Company, since October 1994 and June 2018, respectively. In addition, Mr. Pendery previously served as chief executive officer of First Watch Restaurants, Inc. from May 1999 until June 2018 and has been a key leader of First Watch Restaurants, Inc. of over 35 years.

We believe that Mr. Pendery’s broad management, investment, and corporate strategy expertise make him well qualified to serve as a director.

Ralph Alvarez

Mr. Alvarez has served as a director and as chairman since December 2019. Mr. Alvarez has served as an operating partner of Advent since July 2017. Previously, Mr. Alvarez served as the executive chairman of Skylark Co., Ltd. from January 2013 to March 2018, as a director of Realogy Holdings Corp. from August 2013 until May 2018 and as a director of Dunkin’ Brands Group from May 2012 until December 2020, and currently serves as a director of Lowe’s Companies, Inc., and Eli Lilly & Company.

We believe Mr. Alvarez’s extensive management expertise and his leadership experience on several boards of directors across multiple industries make him well qualified to serve as a director.

Julie M.B. Bradley

Ms. Bradley has served as a director since January 2020. Previously, Ms. Bradley served as chief financial officer, chief analytics officer and treasurer of TripAdvisor, Inc. from 2011 to 2015. In addition, she served as a director of Constant Contact, Inc. from 2015 to 2016. Ms. Bradley has also served as a director of Wayfair Inc. since 2012, of Blue Apron Holdings, Inc. since 2015, of GoodRx Holdings, Inc. since August 2020 and of ContextLogic Inc. since October 2020. We believe Ms. Bradley’s extensive operational, management and leadership expertise in public companies make her well qualified to serve on our board.

Tricia Glynn

Ms. Glynn has served as a director since August 2017. Ms. Glynn has also served as a managing director of Advent since October 2016. Previously, she served as principal of Bain Capital Private Equity from August 2004 to July 2016. In addition, she has also served as a director of lululemon athletica inc. from August 2017 to June 2021 and of Burlington Stores, Inc. from August 2012 to June 2018.

We believe Ms. Glynn's extensive management, investment, and leadership expertise in public companies make her well qualified to serve as a director.

William Kussell

Mr. Kussell has served as a director since August 2017. He has served as an operating partner of Advent since February 2010. Previously, Mr. Kussell served as chairman of the board of directors of Bojangles', Inc. from August 2011 to January 2019, and as a director of Extended Stay America, Inc. from June 2010 until June 2016.

We believe Mr. Kussell's extensive management expertise and his leadership experience on boards of directors across multiple industries make him well qualified to serve as a director.

David Mussafer

Mr. Mussafer has served as a director since December 2019. He has served as a managing partner of Advent since 1990. He has served as a director of Advent since 1990 and of lululemon athletica inc. since September 2014. Previously, Mr. Mussafer served as a director of Vantiv, Inc. from June 2009 to June 2015, Five Below, Inc. from October 2010 to April 2016, Charlotte Russe Holding, Inc. from October 2009 to October 2017 and Serta Simmons Holdings from October 2012 to September 2020.

We believe Mr. Mussafer's extensive leadership expertise on the boards of several public companies across multiple industries make him well qualified to serve as a director.

Lisa Price

Ms. Price has served as a director since September 2020. She founded the business Carol's Daughter in January 1993 and has served as an executive of Carol's Daughter since its founding.

We believe Ms. Price's extensive management experience and leadership expertise make her well qualified to serve as a director.

Michael White

Mr. White has served as a director since April 2019. He has served as principal of Advent since January 2021. Previously, Mr. White served as vice president of Advent from January 2019 to January 2021 and vice president of TPG Capital from August 2016 to December 2018.

We believe Mr. White's extensive investment and management expertise make him well qualified to serve as a director.

Board of Directors

Our business and affairs are managed under the direction of our Board. Our amended and restated certificate of incorporation will provide that the total number of directors constituting our Board shall be at least one, or such larger number as may be fixed from time to time by resolution of at least a majority of directors then in office. Contemporaneously with this offering, our Board will be composed of directors.

Our amended and restated certificate of incorporation will provide that our Board will be divided into three classes, with one class being elected at each annual meeting of stockholders. Each director will serve a three-year term, with expiration staggered according to class. Class I will initially consist of directors, Class II will initially consist of directors and Class III will initially consist of directors. The Class I directors, whose terms will expire at the first annual meeting of our stockholders following the filing of our amended and restated certificate of incorporation, will be . The Class II directors, whose terms will expire at the second annual meeting of our stockholders following the filing of our amended and restated certificate of incorporation, will be . The Class III directors, whose terms will expire at the third annual meeting of our stockholders following the filing of our amended and restated certificate of incorporation, will be . See "Description of Capital Stock – Anti-takeover Provisions."

Director Independence and Controlled Company Exemption

Following the completion of this offering, Advent will continue to indirectly beneficially own more than 50% of the voting power of our common stock. As a result, we will be considered a "controlled company" within the meaning of Nasdaq rules. "Controlled companies" under those rules are companies of which more than 50% of the voting power is held by an individual, a group or another company. On this basis, we may avail ourselves of the "controlled company" exemption under the corporate governance rules of Nasdaq. Accordingly, we will not be required to have a majority of "independent directors" on our Board as defined under the rules of Nasdaq nor will we have a compensation committee and a corporate governance and nominating committee composed entirely of independent directors. The "controlled company" exemption does not modify the independence requirements for the audit committee, and we intend to comply with the requirements of the Sarbanes-Oxley Act and the listing requirements of Nasdaq, which require that our audit committee be composed of at least three members, one of whom will be independent upon the listing of our common stock, a majority of whom will be independent within 90 days of listing and each of whom will be independent within one year of listing. Our Board has affirmatively determined that are independent directors under the applicable rules of Nasdaq.

If at any time we cease to be a "controlled company" under the rules of Nasdaq, our Board will take all action necessary to comply with Nasdaq corporate governance rules, including appointing a majority of independent directors to the Board and establishing certain committees composed entirely of independent directors, subject to a permitted "phase-in" period.

Board Committees

Our Board has established an audit committee, compensation committee, and a nominating and corporate governance committee. Each committee operates under a charter that has been approved by our Board and will have the composition and responsibilities described below. Members serve on these committees until their resignations or until otherwise determined by our Board. The charter of each committee will be available on our website.

Audit Committee. The primary purposes of our audit committee are to produce the annual report of the audit committee required by the rules of the SEC and assist the Board's oversight of:

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

The audit committee is currently composed of , , and . Upon the consummation of this offering, and prior to the listing of our common stock, our audit committee will be

composed of , and . will serve as chair of the audit committee. qualifies as an "audit committee financial expert" as such term has been defined by the SEC in Item 407(d) of Regulation S-K. Our Board has affirmatively determined that and meet the definition of an "independent director" for the purposes of serving on the audit committee under applicable Nasdaq rules and Rule 10A-3 under the Exchange Act. We intend to comply with these independence requirements for all members of the audit committee within the time periods specified under such rules. The audit committee will be governed by a charter that complies with the rules of Nasdaq.

Nominating and Corporate Governance Committee. The primary purposes of our nominating and corporate governance committee are to recommend candidates for appointment to the Board and to review the corporate governance guidelines of the Company, including:

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

The nominating and corporate governance committee is currently composed of , , and . will serve as the chair of the nominating and corporate governance committee. We intend to avail ourselves of the "controlled company" exemption under the rules of Nasdaq, which exempts us from the requirement that we have a nominating and corporate governance committee composed entirely of independent directors. The nominating and corporate governance committee will be governed by a charter that complies with the rules of Nasdaq.

Compensation Committee. The primary purposes of our compensation committee are to produce the annual report of the compensation committee required by the rules of the SEC and to assist the Board in overseeing our employee compensation policies and practices, including:

- determining and approving the compensation of our Chief Executive Officer and determining, approving and recommending to the Board for its approval the compensation of our other executive officers;
- reviewing, approving, and recommending to the Board for its approval incentive compensation and equity compensation policies and programs.

The compensation committee is currently composed of , and . Upon the consummation of this offering, and prior to the listing of our common stock, our compensation committee will be composed of , , and . will serve as chair of the compensation committee. We intend to avail ourselves of the "controlled company" exemption under the rules of Nasdaq, which exempts us from the requirement that we have a compensation committee composed entirely of independent directors. The compensation committee will be governed by a charter that complies with the rules of Nasdaq.

Compensation Committee Interlocks and Insider Participation

The members of our compensation committee during 2020 were , and . During 2020, none of our executive officers served (i) as a member of the compensation committee or board of directors of another entity, one of whose executive officers served on our compensation committee, or (ii) as a member of the compensation committee of another entity, one of whose executive officers served on our Board.

Indemnification of Directors and Officers

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

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

Code of Ethics and Business Conduct

Prior to the completion of this offering, we will amend our code of business conduct and ethics that applies to all of our employees, officers, agents, consultants, representatives, affiliates, subsidiaries and anyone who is authorized to act on our behalf. A copy of the amended code will be available on our website located at www.firstwatch.com. We intend to satisfy the disclosure requirement regarding any amendments to or waivers from our code for our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, by posting such information on our Internet website promptly following the date of such amendment or waiver.

Corporate Governance Guidelines

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

EXECUTIVE COMPENSATION

The following tables and accompanying narrative disclosure set forth information about the compensation provided to certain of our executive officers during fiscal 2020. These executive officers, who consist of our principal executive officer and the two most highly compensated executive officers (other than our principal executive officer) who were serving as executive officers as of December 27, 2020, the end of our last completed fiscal year, were:

- Christopher A. Tomasso, President, Chief Executive Officer and Director
- Mel Hope, Chief Financial Officer
- Laura Sorensen, Chief People Officer

We refer to these individuals in this section as our "NEOs" or "named executive officers."

Summary Compensation Table

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

Name and Principal Position	Year	Salary ($)(1)	Bonus ($)(2)	Stock awards ($)	Option awards ($)	Nonequity incentive plan compensation ($)	Nonqualified deferred compensation earnings ($)	All other compensation ($)(3)	Total ($)
Christopher A. Tomasso, *President, Chief Executive Officer and Director*	2020	439,104	201,309	—	—	—	—	24,161	664,574
Mel Hope, *Chief Financial Officer*	2020	369,442	157,229	—	—	—	—	15,677	542,348
Laura Sorensen, *Chief People Officer*	2020	372,367	158,512	—	—	—	—	18,572	549,451

(1) Salary represents the amount earned in fiscal 2020, pursuant to the terms of each NEO's employment agreement, respectively. See "Employee Arrangements" below.
(2) Amount reflects the cash bonuses earned in fiscal 2020. See "Annual Cash Bonus" below.
(3) Amount consists of the following:

Name	Life insurance premiums ($)	401(k) employer match ($)	Long term disability benefit ($)	Health insurance premiums ($)	Fitness reimbursement ($)	Executive physical services ($)	Total ($)
Christopher A. Tomasso	5,902	4,513	1,361	7,885	—	4,500	24,161
Mel Hope	900	—	2,392	7,885	—	4,500	15,677
Laura Sorensen	900	3,907	1,310	7,885	70	4,500	18,572

Narrative Discussion of the Summary Compensation Table

In fiscal 2020, we compensated our NEOs through a combination of base salary and annual cash bonuses. Our NEOs are also eligible to receive certain benefits, which include a 401(k) plan with matching contributions, life insurance, executive physical services and group health insurance, including medical, dental and vision insurance.

We did not grant equity awards to our NEOs in 2020. Historically, we granted awards of stock options to our NEOs under the 2017 Plan upon hire and in certain other circumstances. A portion of these awards are subject to time-based vesting while a portion are subject to performance-based vesting, based upon Advent's receipt of aggregate cash amounts representing certain multiples of Advent's invested capital ("MOIC") and subject to the participant's continued employment or service on the applicable vesting date. In connection with this offering, stock options subject to time-based vesting will continue to vest in accordance with their terms and a number of stock options subject to performance-based vesting will convert into stock options subject to time-based vesting determined based on the number of such options that would vest if Advent were to sell for cash the shares of our common stock held by Advent at a per share price equal to the initial public offering price. Such converted options will be eligible to vest in equal installments on the first three anniversaries of the effective date of the offering. Stock options subject to performance-based vesting that fail to convert into time-based vesting options will be forfeited in connection with this offering.

Annual Cash Bonus

The corporate employee annual incentive cash bonus plan is based in part on an EBITDA performance component. Due to the impact of COVID-19 on the Company's business in fiscal 2020, it was determined that the previously established annual incentive cash bonus would no longer be effective to incentivize the Company's employees. A committee of the Board therefore authorized a discretionary cash bonus equal to 65% of the NEO's original bonus potential.

Employment Arrangements

We are currently party to employment agreements with Christopher A. Tomasso and Laura Sorensen and an offer letter with Mel Hope. The material provisions of the employment agreements and offer letter are described below.

Christopher A. Tomasso

We entered into an employment agreement with Christopher A. Tomasso (the "Tomasso Employment Agreement") in August 2017. The Tomasso Employment Agreement provides for a one-year term beginning on August 21, 2017, with automatic one-year renewals. The Tomasso Employment Agreement provides that Mr. Tomasso will receive an annualized base salary and is eligible to participate in the Company's annual cash bonus plan described above. Under the Tomasso Employment Agreement, our Board may, in its discretion, change the amount of Mr. Tomasso's annualized base salary to such greater amount as it may deem appropriate.

In addition to the above, Mr. Tomasso participates in the employee benefits programs offered by us to our similarly-situated employees.

Mr. Tomasso may terminate the agreement any time with 30 days' prior written notice, provided, however, we may accelerate Mr. Tomasso's last day of employment to any date within the 30 day notice period without converting the resignation into anything other than a voluntary resignation. We may terminate Mr. Tomasso's employment for death, "disability" or "cause," as defined in the Tomasso Employment Agreement, by written notice to Mr. Tomasso. Mr. Tomasso may resign with prior written notice for any reason.

If we terminate Mr. Tomasso's employment without "cause" or Mr. Tomasso terminates his employment for "good cause," then we must provide Mr. Tomasso with (i) the unpaid annual base salary due for the period prior to and through the date of termination, and following submission of proper expense reports by Mr. Tomasso, reimbursement for all expenses properly incurred under the terms of the Tomasso Employment Agreement (the "Accrued Obligations"); (ii) continued payment of Mr. Tomasso's annual base salary for a period of 12 months following the date of termination; (iii) accrued but unused vacation through the termination date; and (iv) a pro rata portion of Mr. Tomasso's annual bonus that Mr. Tomasso would have earned for the year in which his termination occurred. These payments (other than the Accrued Obligations) are subject to Mr. Tomasso's execution and non-revocation of a waiver and release of claims.

In the event that Mr. Tomasso's employment is terminated due to his death or disability, we must provide Mr. Tomasso's beneficiaries with (i) the Accrued Obligations; (ii) continued payment of Mr. Tomasso's annual base salary for a period of six months following the date of termination; (iii) accrued but unused vacation through the termination date payable on the next regular payroll date following the termination date; and (iv) a pro rata portion of Mr. Tomasso's annual bonus that Mr. Tomasso would have earned for the year in which his death or disability occurred.

For purposes of the Tomasso Employment Agreement, "good cause" means the occurrence of one or more of the following conditions, without Mr. Tomasso's consent: (i) a material reduction in Mr. Tomasso's annual base salary or annual bonus; (ii) any material diminution in Mr. Tomasso's responsibilities; or (iii) the relocation of our headquarters more than 20 miles from the existing location; provided that any such condition will only constitute good cause if Mr. Tomasso provides us with a prior written notice of his intent to resign for good cause and we have not remedied the alleged violations within 30 days of such notice.

For purposes of the Tomasso Employment Agreement, "cause" means (i) indictment for any crime involving moral turpitude, fraud or misrepresentation or Mr. Tomasso pleading guilty or nolo contendere to, any felony or crime involving moral turpitude that is damaging to our reputation; (ii) commission of any act which is a felony; (iii) gross misconduct or fraud involving the operations of the Company; (iv) misappropriation or embezzlement of funds or property of the Company; (v) willful conduct which is materially injurious to the reputation, business or business relationships of the Company; (vi) violation of any of the provisions of the Tomasso Employment Agreement or any material Company policy or work rule; (vii) failure to follow reasonable directions or instructions by our Board, or refusal or failure to substantially perform his duties and responsibilities under the Tomasso Employment Agreement to the reasonable satisfaction of the Board.

The Tomasso Employment Agreement includes perpetual confidentiality, non-compete and mutual non-disparagement provisions, as well as provisions relating to assignment of inventions.

Mel Hope

We entered into an offer letter with Mr. Hope in July 2018. Mr. Hope is eligible to participate in the Company's annual cash bonus plan described above. Mr. Hope is also eligible to participate in the executive health program that includes a concierge doctor. Additionally, Mr. Hope is eligible to receive cell phone reimbursement, fitness reimbursement and reimbursement for documented regular and customary professional licensing fees and expenses. If we terminate Mr. Hope's employment without "cause," or if Mr. Hope terminates his employment for "good reason," then we must provide Mr. Hope with continued payment of his base salary for a period of 12 months, consistent with Company practices. These severance payments are subject to Mr. Hope's execution and non-revocation of a waiver and release of claims.

For purposes of our arrangement with Mr. Hope, "cause" means (i) indictment for any crime involving moral turpitude, fraud or misrepresentation or Mr. Hope pleading guilty or nolo contendere to, any felony or crime involving moral turpitude that is damaging to our reputation; (ii) commission of any act which is a felony; (iii) gross misconduct or fraud involving the operations of the Company; (iv) misappropriation or embezzlement of funds or property of the Company; (v) willful conduct which is materially injurious to the reputation, business or business relationships of the Company; (vi) violation of any of the provisions of the letter agreement by which Mr. Hope accepted our offer of employment or any material Company policy or work rule; (vii) failure to follow reasonable directions or instructions by the Board, or refusal or failure to substantially perform his duties and responsibilities under the letter agreement by which Mr. Hope accepted our offer of employment to the reasonable satisfaction of the Board.

For the purposes of our arrangement with Mr. Hope, "good reason" means (i) any material diminution in his responsibilities, authorities or duties, or (ii) a relocation of more than 50 miles from his primary work location and primary residence.

Laura Sorensen

We entered into an employment agreement with Laura Sorensen (the "Sorensen Employment Agreement") in August 2017. The Sorensen Employment Agreement provides for a one-year term beginning on August 21, 2017, with automatic one-year renewals. The Sorensen Employment Agreement provides that Ms. Sorensen will receive an annualized base salary and is eligible to participate in the Company's annual cash bonus plan described above. Under the Sorensen Employment Agreement, our Board may, in its discretion, change the amount of Ms. Sorensen's annualized base salary to such greater amount as it may deem appropriate.

In addition to the above, Ms. Sorensen participates in the employee benefits programs offered by us to our similarly-situated employees.

Ms. Sorensen may terminate the agreement any time with 30 days' prior written notice, provided, however, we may accelerate Ms. Sorensen's last day of employment to any date within the 30 day notice period without converting the resignation into anything other than a voluntary resignation. We may terminate Ms. Sorensen's employment for death, "disability" or "cause," as defined in the Sorensen Employment Agreement, by written notice to Ms. Sorensen. Ms. Sorensen may resign with prior written notice for any reason.

If we terminate Ms. Sorensen's employment without "cause" or Ms. Sorensen terminates her employment for "good cause," then we must provide Ms. Sorensen with (i) the Accrued Obligations; (ii) continued payment of Ms. Sorensen's annual base salary for a period of 12 months following the date of termination; (iii) accrued but unused vacation through the termination date; and (iv) a pro rata portion of Ms. Sorensen's annual bonus that Ms. Sorensen would have earned for the year in which her termination occurred. These payments (other than the Accrued Obligations) are subject to Ms. Sorensen's execution and non-revocation of a waiver and release of claims.

In the event that Ms. Sorensen's employment is terminated due to her death or disability, we must provide Ms. Sorensen's beneficiaries with (i) the Accrued Obligations; (ii) continued payment of Ms. Sorensen's annual base salary for a period of six months following the date of termination; (iii) accrued but unused vacation through the termination date payable on the next regular payroll date following the termination date; and (iv) a pro rata portion of Ms. Sorensen's annual bonus that Ms. Sorensen would have earned for the year in which her death or disability occurred.

For purposes of the Sorensen Employment Agreement, "good cause" means the occurrence of one or more of the following conditions, without Ms. Sorensen's consent: (i) a material reduction in Ms. Sorensen's annual base salary or annual bonus; (ii) any material diminution in Ms. Sorensen's responsibilities; or (iii) the relocation of our headquarters more than 20 miles from the existing location; provided that any such condition will only constitute good cause if Ms. Sorensen provides us with a prior written notice of her intent to resign for good cause and we have not remedied the alleged violations within 30 days of such notice.

For purposes of the Sorensen Employment Agreement, "cause" means (i) indictment for any crime involving moral turpitude, fraud or misrepresentation or Ms. Sorensen pleading guilty or nolo contendere to, any felony or crime involving moral turpitude that is damaging to our reputation; (ii) commission of any act which is a felony; (iii) gross misconduct or fraud involving the operations of the Company; (iv) misappropriation or embezzlement of funds or property of the Company; (v) willful conduct which is materially injurious to the reputation, business or business relationships of the Company; (vi) violation of any of the provisions of the Sorensen Employment Agreement or any material Company policy or work rule; (vii) failure to follow reasonable directions or instructions by our Board, or refusal or failure to substantially perform her duties and responsibilities under the Sorensen Employment Agreement to the reasonable satisfaction of the Board.

The Sorensen Employment Agreement includes perpetual confidentiality, non-compete and mutual non-disparagement provisions, as well as provisions relating to assignment of inventions.

Outstanding Equity Awards at Fiscal Year-End

The following table sets forth certain information with respect to outstanding equity awards held by our named executive officers as of December 27, 2020.

	Option Awards					
Name	Option grant date	Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable	Equity incentive plan awards: Number of securities underlying unexercised unearned options (#)	Option exercise price ($)	Option expiration date
Christopher A. Tomasso	8/21/2017	31,500	21,000	52,500	100.00	8/21/2027
Mel Hope	7/30/2018	3,600	5,400	9,000	100.00	7/30/2028
	7/31/2019	700	2,800	3,500	160.00	7/31/2029
Laura Sorensen	8/21/2017	7,500	5,000	12,500	100.00	8/21/2027

The option awards represent the following: (i) 50% of the shares subject to each stock option grant are subject to the time-based vesting in equal installments on each of the first five anniversaries of the applicable grant date, subject to the participant's continued employment or service on the applicable vesting date and (ii) 50% of the shares subject to each stock option grant are subject to performance-based vesting, based upon Advent's receipt of aggregate cash amounts representing MOIC targets and subject to the participant's continued employment or service on the applicable vesting date.

As described above, in connection with this offering, a number of stock options subject to performance-based vesting will convert into stock options subject to time-based vesting determined based on the number of such options that would performance vest if Advent were to sell for cash the shares of our common stock held by Advent at a per share price equal to the initial public offering price. Such converted options will be eligible to vest in equal installments on the first three anniversaries of the effective date of this offering. Stock options subject to performance-based vesting that fail to convert into time-based vesting options will be forfeited in connection with this offering.

2017 Plan

The 2017 Plan provides for the grant of options, stock appreciation rights, restricted stock, and other stock option awards to our directors, and employees, as well as to directors, and employees of any of our subsidiaries or affiliates. The maximum number of shares available for issuance to participants pursuant to awards under the 2017 Plan is 518,520. The shares available for issuance under the 2017 Plan may consist, in whole or in part, of authorized and unissued shares or treasury shares. A total of 434,473 shares of our common stock are subject to outstanding option awards under the 2017 Plan as of December 27, 2020. After the completion of this offering, we do not intend to grant any further awards under the 2017 Plan.

2021 Plan

In connection with this offering, our Board expects to adopt, and our stockholders expect to approve, a new equity incentive plan (the 2021 Plan) prior to the completion of this offering.

Potential Payments Upon Termination or Change-In-Control

Our NEOs are entitled to receive severance payments upon termination of employment as provided above in "– Employment Arrangements." Upon a change in control, all stock options subject to time-based vesting will become fully vested and all stock options subject to performance-based vesting will vest to the extent the applicable MOIC targets are achieved.

Director Compensation

The following table sets forth information concerning the compensation of our directors (other than our CEO) for fiscal 2020. Compensation information for Mr. Tomasso is included in the "Summary Compensation Table" above. In fiscal 2020, our directors (other than Mr. Pendery and directors affiliated with Advent) received (1) an annual cash retainer of $75,000, payable in equal quarterly installments and (2) option awards. Other than as set forth in the table and described herein, during fiscal 2020, we did not pay any fees to, make any equity awards or non-equity awards to, or pay any other compensation to the non-employee members of our board of directors. We also reimburse each of our directors for all reasonable out-of-pocket expenses incurred in connection with attendance at board and committee meetings.

Name	Fees earned or paid in cash ($)(1)	Option awards ($)(2)(3)	All other compensation ($)(4)	Total ($)
Kenneth L. Pendery, Jr.	—	—	565,829	565,829
Ralph Alvarez	75,000	—	—	75,000
Julie M.B. Bradley	69,658	58,688	—	128,346
Tricia Glynn	—	—	—	—
William Kussell	75,000	—	—	75,000
David Mussafer	—	—	—	—
Michael White	—	—	—	—
Lisa Price	22,860	91,805	—	114,665

(1) For Mses. Bradley and Price, amount reflects pro-rated amounts since commencing services as a director in fiscal 2020.

(2) Amounts in this column represent the aggregate grant date fair value of stock options computed in accordance with FASB ASC Topic 718 granted to certain of our directors (other than our CEO) during fiscal 2020. For additional information regarding the calculation of this amount and related assumptions, see Note 17, *Stock-Based Compensation*, of the notes to our audited consolidated financial statements included elsewhere in this prospectus.

(3) As of December 27, 2020, our directors (other than our CEO) held the following outstanding option awards:

Name	Option awards outstanding as of December 27, 2020
Kenneth L. Pendery, Jr.	45,000
Ralph Alvarez	20,000
Julie M.B. Bradley	6,250
Tricia Glynn	—
William Kussell	10,000
David Mussafer	—
Michael White	—
Lisa Price	6,667

(4) For Mr. Pendery, amount includes salary ($379,536) and an annual bonus ($174,658) that Mr. Pendery received from the Company's wholly-owned subsidiary, First Watch Restaurant, Inc. as well as life insurance premiums ($900), long term disability benefits ($460), health insurance premiums ($5,775), and executive physical services ($4,500) that we paid in fiscal 2020 on his behalf.

PRINCIPAL STOCKHOLDERS

The following table shows information as of , 2021 regarding the beneficial ownership of our common stock as adjusted to give effect to this offering by:

- each person or group who is known by us to own beneficially more than 5% of our common stock;
- each member of our Board and each of our named executive officers ("NEOs"); and
- all members of our Board and our executive officers as a group.

Beneficial ownership of shares is determined under rules of the SEC and generally includes any shares over which a person exercises sole or shared voting or investment power. Except as noted by footnote, and subject to community property laws where applicable, we believe based on the information provided to us that the persons and entities named in the table below have sole voting and investment power with respect to all shares of our common stock shown as beneficially owned by them. Percentage of beneficial ownership is based on shares of common stock outstanding as of , 2021 and shares of common stock outstanding after giving effect to this offering, assuming no exercise of the underwriters' option to purchase additional shares, or shares of common stock, assuming the underwriters exercise their option to purchase additional shares in full. Shares of common stock subject to options currently exercisable or exercisable within 60 days of the date of this prospectus are deemed to be outstanding and beneficially owned by the person holding the options for the purposes of computing the percentage of beneficial ownership of that person and any group of which that person is a member, but are not deemed outstanding for the purpose of computing the percentage of beneficial ownership for any other person. Except as otherwise indicated, the persons named in the table below have sole voting and investment power with respect to all shares of capital stock held by them. Unless otherwise indicated, the address for each holder listed below is 8725 Pendery Place, Suite 201, Bradenton, FL 34201.

	Shares of common stock beneficially owned before this offering		Number of shares of common stock being offered	Shares of common stock beneficially owned after this offering (assuming no exercise of the option to purchase additional shares)		Shares of common stock beneficially owned after this offering assuming full exercise of the option to purchase additional shares	
Name and address of beneficial owner	Number of shares	Percentage of shares		Number of shares	Percentage of shares	Number of shares	Percentage of shares
5% stockholders:							
Funds managed by Advent International Corporation							
NEOs and directors:							
Christopher A. Tomasso							
Mel Hope							
Jay Wolszczak							
Eric Hartman							
Laura Sorensen							
Kenneth L. Pendery, Jr							
Ralph Alvarez							
Julie M.B. Bradley							
Tricia Glynn							
William Kussell							
David Mussafer							
Michael White							
Lisa Price							
All Board members and executive officers as a group (13 persons)							

* Represents beneficial ownership of less than 1% of our outstanding common stock.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Set forth below is a description of certain relationships and related person transactions between us or our subsidiaries and our directors, executive officers or holders of more than 5% of our voting securities.

Board Compensation

Prior to this offering, we paid certain of our directors $75,000 each in annual board fees for service on the board of directors of First Watch Restaurants, Inc. our wholly-owned subsidiary.

Following this offering, we expect to pay certain of our directors, the chair of the audit committee and the chair of our compensation committee.

Sale of Preferred Stock

On August 14, 2020, we entered into a subscription agreement with AI Fresh Holdings Limited Partnership ("Partnership"), pursuant to which Partnership subscribed for and received shares of our preferred stock (the "Subscription") with an aggregate value of $38.8 million. In order to finance the Subscription, Partnership entered into a subscription agreement with Advent, pursuant to which Advent subscribed for and received newly issued Preferred Units of Partnership with an aggregate value of $38.8 million. We amended our certificate of incorporation in connection with the Subscription to provide for, among other things, preferential payments to the holders of preferred stock in the event of a liquidation or a Deemed Liquidation Event (as defined therein). Additionally, Partnership amended the Limited Partnership Agreement to provide for certain preferential rights for the holders of Preferred Units, including to receive preferential payments upon the payment of distributions to partners.

On August 14, 2020, we entered into a convertible promissory note with Advent with an initial principal amount of $1.2 million (the "Promissory Note"). The Promissory Note has since been repaid and is no longer outstanding.

Employment Agreements

We have entered into employment agreements with Christopher A. Tomasso, our President, Chief Executive Officer and Director and Laura Sorensen, our Chief People Officer. See "Executive Compensation – Employment Arrangements."

Indemnification Agreements

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

Policies for Approval of Related Person Transactions

In connection with this offering, we will adopt a written policy relating to the approval of related person transactions. A "related person transaction" is a transaction or arrangement or series of transactions or arrangements in which we participate (whether or not we are a party) and a related person has a direct or indirect material interest in such transaction. Our audit committee will review and approve or ratify all relationships and related person transactions between us and (i) our directors, director nominees or executive officers, (ii) any 5% record or beneficial owner of our common stock or (iii) any immediate family member of any person specified in

(i) and (ii) above. The audit committee will review all related person transactions and, where the audit committee determines that such transactions are in our best interests, approve such transactions in advance of such transaction being given effect, or ratify such transactions, as applicable.

As set forth in the related person transaction policy, in the course of its review and approval or ratification of a related party transaction, the audit committee will, in its judgment, consider in light of the relevant facts and circumstances whether the transaction is, or is not inconsistent with, our best interests, including consideration of various factors enumerated in the policy.

Any member of the audit committee who is a related person with respect to a transaction under review will not be permitted to participate in the discussions or approval or ratification of the transaction. However, such member of the audit committee will provide all material information concerning the transaction to the audit committee. Our policy also includes certain exceptions for transactions that need not be reported and provides the audit committee with the discretion to pre-approve certain transactions.

DESCRIPTION OF MATERIAL INDEBTEDNESS

Senior Credit Facilities

On August 21, 2017, FWR Holding Corporation, a Delaware corporation and a wholly-owned indirect subsidiary of the Company (the "Borrower"), entered into a credit agreement (as amended pursuant to the First Amendment (as defined below), the Second Amendment (as defined below), the Third Amendment (as defined below) and the Fourth Amendment (as defined below), the "Credit Agreement"), among the Borrower, AI Fresh Parent, Inc., a Delaware corporation ("Holdings") and a wholly-owned direct subsidiary of the Company, Golub Capital Markets LLC, as administrative agent and collateral agent (the "Administrative Agent"), and the lenders from time to time party thereto, pursuant to which the lenders party thereto agreed to provide senior secured credit facilities, consisting of (i) an initial term loan facility in an original principal amount equal to $155.0 million (the "Initial Term Loan Facility" and the loans thereunder, the "Initial Term Loans"), (ii) a delayed draw term loan facility in an original principal amount equal to $50.0 million (as increased pursuant to the First Amendment and the Second Amendment, the "Initial DDTL Facility" and the loans thereunder, the "Initial Delayed Draw Term Loans") and (iii) a revolving credit facility in an original principal amount equal to $20.0 million (the "Revolving Facility" and the loans thereunder, the "Initial Revolving Loans"; the Revolving Facility, together with the Initial Term Loan Facility and the Initial DDTL Facility, collectively, the "Senior Credit Facilities"), including a letter of credit facility with a $5.0 million sublimit. On February 28, 2019, the Borrower entered into a first amendment to Credit Agreement (the "First Amendment"), pursuant to which the lenders party thereto agreed to add additional delayed draw term loan commitments in an original principal amount equal to $50.0 million (the "First Amendment DDTL Commitments"). On December 20, 2019, the Borrower entered into a second amendment to Credit Agreement (the "Second Amendment"), pursuant to which the lenders party thereto agreed to add additional delayed draw term loan commitments in an original principal amount equal to $40.0 million (the "Second Amendment DDTL Commitments"). On April 27, 2020, the Borrower entered into a third amendment and waiver to Credit Agreement (the "Third Amendment"), pursuant to which, among other things, the lenders party thereto agreed to waive an excess borrowing under the Initial DDTL Facility as a result of a miscalculation. On August 14, 2020, the Borrower entered into a fourth amendment to Credit Agreement (the "Fourth Amendment"), pursuant to which, among other things, the lenders party thereto agreed to suspend the Leverage Financial Covenant during the Covenant Suspension Period and the Borrower agreed to an increase in the interest rate applicable to the Initial Revolving Loans and the Term Loans, which increase shall be paid in kind.

The First Amendment DDTL Commitments are fully drawn as of December 27, 2020. A total of $1.5 million of the Second Amendment DDTL Commitments are available for borrowings until December 20, 2021.

Interest Rate and Fees

Borrowings under the Senior Credit Facilities bear interest, at the Borrower's option, at a rate per annum equal to either (a) (i) the greater of an adjusted London interbank offered rate (the "Adjusted Eurocurrency Rate") and 1.00% plus (ii) 5.50% per annum plus (iii) the applicable payment in kind ("PIK") rate set forth below or (b) (i) the alternate base rate ("ABR") plus (ii) 4.50% per annum plus (iii) the applicable PIK rate set forth below. ABR is a floating rate per annum equal to the highest of (i) the federal funds effective rate plus 0.50%, (ii) to the extent ascertainable, the London interbank offered rate for a 1-month interest period on such day plus 1.00%, (iii) the rate of interest last quoted by *The Wall Street Journal* as the "prime rate" in the U.S. and (iv) 1.00%.

The applicable PIK rate is calculated based upon the total net leverage ratio of the Borrower and its restricted subsidiaries on a consolidated basis, as set forth below.

Level	Total Net Leverage Ratio	PIK Rate
I	> 7.00:1.00	1.50%
II	£ 7.00:1.00 and > 6.00:1.00	0.75%
III	£ 6.00:1.00	0.25%

The following fees are required to be paid under the Senior Credit Facilities:

- a commitment fee to each revolving lender payable quarterly in arrears at a rate equal to 0.50% per annum applicable to such revolving lender's unused commitments under the Revolving Facility;
- a commitment fee to each delayed draw term loan lender payable quarterly in arrears at a rate equal to 1.00% per annum applicable to such delayed draw term loan lender's unused commitments under the Initial Delayed Draw Term Facility;
- a participation fee to each revolving lender payable quarterly in arrears at a rate equal to the applicable Adjusted Eurocurrency Rate margin for Initial Revolving Loans on the daily face amount of such revolving lender's letter of credit exposure;
- a customary fronting fee to each issuing bank payable quarterly in arrears on the daily face amount of such issuing bank's letter of credit exposure and such issuing bank's standard fees with respect to the issuance, amendment, renewal or extension of letters of credit or processing of drawings thereunder; and
- an annual administrative agency fee payable to the Administrative Agent.

Voluntary Prepayments

Subject to certain notice requirements, the Borrower may voluntarily prepay outstanding loans under the Senior Credit Facilities in whole or in part without premium or penalty other than customary "breakage" costs with respect to Adjusted Eurocurrency Rate loans.

Amortization; Mandatory Prepayments; Final Maturity

The Initial Term Loans and, once drawn, the Initial Delayed Draw Term Loans (collectively, the "Term Loans") amortize at an annual rate equal to approximately 1.00% per annum, payable in equal quarterly installments of 0.25% of the original principal amount of the Term Loans. The Initial Revolving Loans do not require amortization payments.

In addition, the Credit Agreement requires mandatory prepayments of the Term Loans with:

- 50% of excess cash flow (as such term is defined in the Credit Agreement) for each fiscal year, minus, at the Borrower's option, the amount of any voluntary prepayment of loans under the Senior Credit Facilities (in the case of any voluntary prepayment of Initial Revolving Loans, to the extent accompanied by a permanent reduction of the related commitment), subject to other exceptions and subject to stepdowns to (i) 25% if the total net leverage ratio is less than or equal to 4.25:1.00 and greater than 3.75:1.00 and (ii) 0% if the total net leverage ratio is less than or equal to 3.75:1.00;
- 100% of the net cash proceeds of certain asset sales and/or insurance/condemnation events above a threshold amount, subject to reinvestment rights and other exceptions; and
- 100% of the net cash proceeds of any issuance or incurrence of debt that is not permitted by the Credit Agreement.

Loans under the Senior Credit Facilities mature on August 21, 2023.

Guarantors

The obligations of the Borrower under the Credit Agreement are guaranteed by Holdings and each wholly-owned domestic subsidiary of the Borrower, subject to certain exceptions. Certain future-formed or acquired wholly owned domestic subsidiaries of the Borrower will also be required to guarantee the obligations under the Credit Agreement.

Security

The obligations of the Borrower under the Credit Agreement are secured by first-priority security interests in substantially all of the assets of the Borrower and the guarantors, subject to permitted liens and other exceptions.

Certain Covenants; Representations and Warranties

The Credit Agreement contains customary affirmative covenants (including reporting obligations) and negative covenants and requires the Borrower to make customary representations and warranties. The negative covenants, among other things and subject to certain exceptions, limit the ability of the Borrower and certain of its subsidiaries to:

- incur or guarantee additional indebtedness;
- create liens;
- pay dividends or make other distributions in respect of equity;
- make payments in respect of subordinated debt;
- enter into burdensome agreements with negative pledge clauses or restrictions on subsidiary distributions;
- make investments, including acquisitions, loans, and advances;
- make capital expenditures for new restaurant openings;
- repurchase franchised unit locations;
- consolidate, merge, liquidate, or dissolve;
- sell, transfer, or otherwise dispose of assets;
- engage in transactions with affiliates;
- materially alter the business conducted by the Borrower and certain of its subsidiaries; and
- amend or otherwise change the terms of the documentation governing certain restricted debt.

Financial Covenants

The Credit Agreement contains a maximum leverage financial covenant, which requires the Borrower to maintain a ratio of consolidated total net debt to consolidated EBITDA (with certain adjustments as set forth in the Credit Agreement) no greater than (i) for the fiscal quarter ending on June 27, 2021, 10.00:1.00, (ii) for the fiscal quarter ending on September 26, 2021, 8.25:1.00, (iii) for the fiscal quarter ending on December 26, 2021, 7.00:1.00, (iv) for the fiscal quarter ending on March 27, 2022, 6.50:1.00 and (v) for the fiscal quarter ending on June 26, 2022 and each fiscal quarter ending thereafter, 6.00:1.00, tested as of the last day of each fiscal quarter and determined on the basis of the four most recently ended fiscal quarters of the Borrower for which financial statements have been delivered pursuant to the Credit Agreement (except with respect to consolidated EBITDA for the four fiscal quarter periods ending June 27, 2021, September 26, 2021 and December 26, 2021, which will be determined by annualizing consolidated EBITDA (i.e., (a) consolidated EBITDA for the four fiscal quarter period ending June 27, 2021 shall equal consolidated EBITDA for the fiscal quarter ending June 27, 2021 multiplied by four, (b) consolidated EBITDA for the four fiscal quarter period ending September 26, 2021 shall equal consolidated EBITDA for the fiscal quarter ending June 27, 2021 plus consolidated EBITDA for the fiscal quarter ending September 26, 2021 multiplied by two, and (c) consolidated EBITDA for the four fiscal quarter period ending December 26, 2021 shall equal consolidated EBITDA for the fiscal quarter ending June 27, 2021 plus consolidated EBITDA for the fiscal quarter ending September 26, 2021 plus consolidated EBITDA for the fiscal quarter ending December 26, 2021 multiplied by 4/3)), subject to customary “equity cure” rights.

The Credit Agreement also contains a minimum liquidity covenant, which requires the Borrower to maintain liquidity (consisting of the unrestricted cash of the Borrower and its subsidiaries and the undrawn amount of commitments under the Initial Revolving Facility) of not less than $10.0 million, tested on the 15th and last calendar day of each calendar month, for the period commencing on August 14, 2020 and ending on the first date on or after June 27, 2021 on which a compliance certificate is delivered to the Administrative Agent demonstrating compliance with the reinstated Leverage Financial Covenant. The minimum liquidity covenant is also subject to customary “equity cure” rights.

Events of Default

The Credit Agreement contains customary events of default, subject in certain circumstances to specified grace periods, thresholds and exceptions, including, among others, payment defaults, cross-defaults to certain material indebtedness, covenant defaults, material inaccuracy of representations and warranties, bankruptcy events, material judgments, material defects with respect to guarantees and collateral and change of control. If an event of default occurs, the lenders would be entitled to take various actions, including acceleration of the loans and termination of the commitments under the Credit Agreement, foreclosure on collateral and all other remedial actions available to a secured creditor. Bankruptcy events and the failure to pay certain amounts owing under the Credit Agreement may result in an increased interest rate equal to 2.00% per annum plus, in the case of overdue principal or interest of any loan or unreimbursed letter of credit disbursement, the rate of interest otherwise applicable to the relevant loan or letter of credit disbursement or, in the case of any other amount, the rate applicable to Initial Revolving Loans that bear interest by reference to the ABR.

DESCRIPTION OF CAPITAL STOCK

The following is a description of (i) the material terms of our amended and restated certificate of incorporation and amended and restated bylaws as they will be in effect upon the consummation of this offering and (ii) certain applicable provisions of Delaware law. We refer you to our amended and restated certificate of incorporation and amended and restated bylaws, copies of which will be filed as exhibits to the registration statement of which this prospectus is a part.

Authorized Capitalization

Our authorized capital stock shall consist of shares of common stock, par value $0.01 per share and shares of preferred stock, par value $0.01 per share. Following the consummation of this offering, shares of common stock and no shares of preferred stock shall be issued and outstanding.

Common Stock

Holders of our common stock are entitled to the rights set forth below.

Voting Rights

At any meeting of stockholders at which directors are to be elected, directors will be elected by a plurality of the votes cast by the holders of shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Our stockholders will not have cumulative voting rights. Except as otherwise provided in our amended and restated certificate of incorporation, our bylaws or as required by law, all matters to be voted on by our stockholders other than matters relating to the election and removal of directors must be approved by a majority of the shares present in person or represented by proxy at the meeting and voting on the subject matter.

Dividend Rights

Holders of common stock will share equally in any dividend declared by our Board, subject to the rights of the holders of any outstanding preferred stock.

Liquidation Rights

In the event of any voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of our affairs, holders of our common stock would be entitled to share ratably in our assets that are legally available for distribution to stockholders after payment of liabilities. If we have any preferred stock outstanding at such time, holders of the preferred stock may be entitled to distribution and/or liquidation preferences. In either such case, we must pay the applicable distribution to the holders of our preferred stock before we may pay distributions to the holders of our common stock.

Registration Rights

Certain of our existing stockholders have certain registration rights with respect to our common stock pursuant to a stockholders agreement.

Other Rights

Our stockholders have no preemptive or other rights to subscribe for additional shares. There will be no redemption, conversion or sinking fund provisions applicable to our common stock. All holders of our common stock are entitled to share equally on a share-for-share basis in any assets available for distribution to common stockholders upon our liquidation, dissolution or winding up. All outstanding shares are, and all shares offered by this prospectus will be, when sold, validly issued, fully paid and non-assessable.

Preferred Stock

Our Board is authorized to provide for the issuance of preferred stock in one or more series and to fix the preferences, powers and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof, including the dividend rate, conversion rights, voting rights, redemption rights and liquidation preference and to fix the number of shares to be included in any such series without any further vote or action by our stockholders. Any preferred stock so issued may rank senior to our common stock with respect to the payment of dividends or amounts upon liquidation, dissolution or winding up, or both. In addition, any such shares of preferred stock may have class or series voting rights. The issuance of preferred stock may have the effect of delaying, deferring or preventing a change in control of our company without further action by the stockholders and may adversely affect the voting and other rights of the holders of our common stock. The Company issued 266,667 shares of preferred stock, par value $0.01 per share, to existing stockholders, including Advent, directors and executive officers, on August 14, 2020, and such shares will convert into shares of our common stock immediately prior to the completion of this offering.

Anti-takeover Provisions

Our amended and restated certificate of incorporation and amended and restated bylaws will contain provisions that delay, defer or discourage transactions involving an actual or potential change in control of us or change in our management. We expect that these provisions, which are summarized below, will discourage coercive takeover practices or inadequate takeover bids. These provisions will be designed to encourage persons seeking to acquire control of us to first negotiate with our Board, which we believe may result in an improvement of the terms of any such acquisition in favor of our stockholders. However, they will also give our Board the power to discourage transactions that some stockholders may favor, including transactions in which stockholders might otherwise receive a premium for their shares or transactions that our stockholders might otherwise deem to be in their best interests. Accordingly, these provisions could adversely affect the price of our common stock.

Classified Board of Directors

Our Board is divided into three classes, Class I, Class II and Class III, with members of each class serving staggered three-year terms. Our amended and restated certificate of incorporation will provide that the authorized number of directors may be changed only by resolution of the Board. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors. Our amended and restated certificate of incorporation and our amended and restated bylaws will also provide that a director may be removed by the affirmative vote of the holders of a majority of the voting power of our outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class, and only for cause so long as our Board is classified. Any vacancy on our Board, including a vacancy resulting from an enlargement of our Board, may be filled only by vote of a majority of our directors then in office. Our classified Board could have the effect of delaying or discouraging an acquisition of us or a change in our management. See “Risk Factors – Risks Related to Our Company and Organizational Structure – 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.”

Special Meetings of Stockholders and Advance Notice Requirements for Stockholder Meetings, Nominations and Proposals

Our amended and restated bylaws will provide that special meetings of the stockholders may be called only upon the request of a majority of our Board, the Chairperson of our Board or the Chief Executive Officer. Our amended and restated bylaws will prohibit the conduct of any business at an annual or special meeting other than as specified in the notice for such meeting or otherwise brought before the meeting by or at the direction of the Board or a duly authorized committee or authorized officer to whom the Board or committee delegated such authority. These provisions may have the effect of deferring, delaying or discouraging hostile takeovers or changes in control or management of our company.

Our amended and restated bylaws will establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of our Board or a committee of our Board. In order for any matter to be "properly brought" before a meeting, a stockholder will have to comply with the advance notice requirements of directors, which may be filled only by a vote of a majority of directors then in office, even though less than a quorum, and not by the stockholders. Our amended and restated bylaws will allow the presiding officer at a meeting of the stockholders to adopt rules and regulations for the conduct of meetings, which may have the effect of precluding the conduct of certain business at a meeting if the rules and regulations are not followed. These provisions may also defer, delay or discourage a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of our company.

No Stockholder Action by Written Consent

Our amended and restated certificate of incorporation and our amended and restated bylaws will provide that after the time that Advent collectively owns less than 50% of our then outstanding common stock, subject to the rights of any holders of preferred stock to act by written consent instead of a meeting, stockholder action may be taken only at an annual meeting or special meeting of stockholders and may not be taken by written consent instead of a meeting. Failure to satisfy any of the requirements for a stockholder meeting could delay, prevent or invalidate stockholder action.

Section 203 of the DGCL

Our amended and restated certificate of incorporation will provide that the provisions of Section 203 of the DGCL, which relate to business combinations with interested stockholders, do not apply to us. Section 203 of the DGCL prohibits a publicly held Delaware corporation from engaging in a business combination transaction with an interested stockholder (a stockholder who owns more than 15% of our common stock) for a period of three years after the interested stockholder became such unless the transaction fits within an applicable exemption, such as Board approval of the business combination or the transaction that resulted in such stockholder becoming an interested stockholder. These provisions will apply even if the business combination could be considered beneficial by some stockholders. Our amended and restated certificate of incorporation will contain provisions that have the same effect as Section 203 of the DGCL and will provide that Advent, their respective affiliates or successors, their transferees, and any group as to which such persons are party do not constitute interested stockholders for purposes of these provisions for so long as they collectively own, directly or indirectly, 10% or more of the voting power of our then outstanding shares of voting stock. Although we have elected to opt out of the statute's provisions, we could elect to be subject to Section 203 in the future.

Amendment to Bylaws and Certificate of Incorporation

Any amendment to our amended and restated certificate of incorporation must first be approved by a majority of our Board and (i) if required by law, thereafter be approved by a majority of the outstanding shares entitled to vote on the amendment or (ii) if related to provisions regarding the classification of the Board, the removal of directors, director vacancies, special meetings or the amendment of certain provisions of our amended and restated bylaws or amended and restated certificate of incorporation, thereafter be approved by at least % of the voting power of our then outstanding shares entitled to vote generally in the election of directors. For so long as Advent beneficially owns 10% or more of our then outstanding common stock entitled to vote generally in the election of directors, any amendment to provisions regarding Section 203 of the DGCL or corporate opportunities must also receive Advent's prior written consent. Our amended and restated bylaws may be amended (x) by the affirmative vote of a majority of the directors then in office, subject to any limitations set forth in the bylaws, without further stockholder action or (y) by the affirmative vote of at least % of the voting power of the then outstanding shares entitled to vote generally in the election of directors, voting together as a single class, without further action by our Board.

Renouncement of Corporate Opportunity

Our amended and restated certificate of incorporation will provide that, except as may be expressly agreed in writing between our company and Advent, we renounce any interest or expectancy in, or in being offered an opportunity to participate in, any business opportunity that may from time to time be presented to and that may be a business opportunity for Advent or any of its managers, officers, directors, agents stockholders, members, partners, affiliates, and subsidiaries (other than our company and its subsidiaries) ("Exempted Persons"), even if the opportunity is one that we might reasonably have pursued or had the ability or desire to pursue if granted the opportunity to do so. No such Exempted Persons will be liable to us for breach of any fiduciary or other duty, as a director or officer or otherwise, by reason of the fact that such person, acting in good faith, pursues or acquires any such business opportunity, directs any such business opportunity to another person or fails to present any such business opportunity, or information regarding any such business opportunity, to us. None of the Exempted Persons or their representatives has any duty to refrain from engaging directly or indirectly in the same or similar business activities or lines of business as us or any of our subsidiaries. In addition, for so long as Advent and its affiliates beneficially own at least 10% of our then outstanding common stock entitled to vote generally in the election of directors, any amendment, alteration, addition, repeal, revision of provisions related to the "Renouncement of Corporate Opportunity" or adoption of any provision inconsistent with such provisions shall require Advent's prior written consent.

Exclusive Forum

Our amended and restated certificate of incorporation will provide that, unless we consent in writing to an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for any (i) derivative action or proceeding brought on our behalf, (ii) action asserting a claim of breach of a fiduciary duty or other wrongdoing by any current or former director, officer, employee, agent or stockholder to us or our stockholders, (iii) action asserting a claim arising pursuant to any provision of the DGCL, our amended and restated certificate of incorporation or our amended and restated bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, or (iv) action asserting a claim governed by the internal affairs doctrine of the law of the State of Delaware. 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 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 of 1933, as amended, 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. In any case, stockholders will not be deemed to have waived our compliance with the federal securities laws and the rules and regulations thereunder. The enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that a court could find these types of provisions to be inapplicable or unenforceable. Our amended and restated certificate of incorporation will also provide that any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of and consented to this choice of forum provision. These exclusive forum provisions may have the effect of discouraging lawsuits against our directors and officers.

Listing

We intend to apply to have our common stock listed on Nasdaq under the symbol "FWRG."

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock. Future sales of our common stock in the public market, or the perception that sales may occur, could materially adversely affect the prevailing market price of our common stock at such time and our ability to raise equity capital in the future.

Sale of Restricted Securities

Upon consummation of this offering, we will have shares of our common stock outstanding (or shares, if the underwriters exercise their option to purchase additional shares in full). Of these shares, all shares sold in this offering will be freely tradable without further restriction or registration under the Securities Act, except that any shares purchased by our affiliates may generally only be sold in compliance with Rule 144, which is described below. Of the remaining outstanding shares, shares will be deemed "restricted securities" under the Securities Act.

Lock-Up Arrangements and Registration Rights

In connection with this offering, we, each of our directors, executive officers and certain other stockholders, will enter into lock-up agreements that restrict the sale of our securities for up to 180 days after the date of this prospectus, subject to certain exceptions or an extension in certain circumstances.

In addition, following the expiration of the lock-up period, we expect that certain stockholders will have the right, subject to certain conditions, to require us to register the sale of their shares of our common stock under federal securities laws. If these stockholders exercise this right, our other existing stockholders may require us to register their registrable securities.

Following the lock-up periods described above, all of the shares of our common stock that are restricted securities or are held by our affiliates as of the date of this prospectus will be eligible for sale in the public market in compliance with Rule 144 under the Securities Act.

Rule 144

The shares of our common stock sold in this offering will generally be freely transferable without restriction or further registration under the Securities Act, except that any shares of our common stock held by an "affiliate" of ours may not be resold publicly except in compliance with the registration requirements of the Securities Act or under an exemption under Rule 144 or otherwise. Rule 144 permits our common stock that has been acquired by a person who is an affiliate of ours, or has been an affiliate of ours within the past three months, to be sold into the market in an amount that does not exceed, during any three-month period, the greater of:

- one percent of the total number of shares of our common stock outstanding; or
- the average weekly reported trading volume of our common stock for the four calendar weeks prior to the sale.

Such sales are also subject to specific manner of sale provisions, a six-month holding period requirement, notice requirements and the availability of current public information about us.

Approximately shares of our common stock that are not subject to lock-up arrangements described above will be eligible for sale under Rule 144 immediately upon the closing Rule 144 also provides that a person who is not deemed to have been an affiliate of ours at any time during the three months preceding a sale, and who has for at least six months beneficially owned shares of our common stock that are restricted securities, will be entitled to freely sell such shares of our common stock subject only to the availability of current public information regarding us. A person who is not deemed to have been an affiliate of ours at any time during the

three months preceding a sale, and who has beneficially owned for at least one year shares of our common stock that are restricted securities, will be entitled to freely sell such shares of our common stock under Rule 144 without regard to the current public information requirements of Rule 144.

Rule 701

Rule 701 generally allows a stockholder who purchased shares of our capital stock pursuant to a written compensatory plan or contract and who is not deemed to have been an affiliate of our company during the immediately preceding 90 days to sell these shares in reliance upon Rule 144, but without being required to comply with the public information, holding period, volume limitation or notice provisions of Rule 144. Rule 701 also permits affiliates of our company to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. All holders of Rule 701 shares, however, are required to wait until 90 days after the date of this prospectus before selling those shares pursuant to Rule 701.

Additional Registration Statements

We intend to file a registration statement on Form S-8 under the Securities Act to register shares of our common stock to be issued or reserved for issuance under our equity incentive plans. Such registration statement is expected to be filed soon after the date of this prospectus and will automatically become effective upon filing with the SEC. Accordingly, shares registered under such registration statement will be available for sale in the open market, unless such shares are subject to vesting restrictions with us or the lock-up restrictions described above.

MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS FOR NON-U.S. HOLDERS

The following is a general discussion of the material U.S. federal income tax consequences to non-U.S. holders (as defined herein) of the purchase, ownership and disposition of our common stock. This discussion does not provide a complete analysis of all potential U.S. federal income tax considerations relating thereto. This description is based on the U.S. Internal Revenue Code of 1986, as amended (the "Code"), existing and proposed U.S. Treasury regulations promulgated thereunder, administrative pronouncements, judicial decisions, and interpretations of the foregoing, all as of the date hereof and all of which are subject to change, possibly with retroactive effect. This discussion is limited to non-U.S. holders (as defined herein) who hold shares of our common stock as capital assets within the meaning of Section 1221 of the Code (generally for investment). Moreover, this discussion is for general information only and does not address all of the tax consequences that may be relevant to you in light of your particular circumstances, nor does it discuss special tax provisions, which may apply to you if you are a holder who is subject to special treatment under U.S. federal income tax laws, such as certain financial institutions or financial services entities, insurance companies, tax-exempt entities or governmental organizations, tax-qualified retirement plans, "qualified foreign pension funds" (and entities all of the interests of which are held by qualified foreign pension funds), dealers in securities or currencies, persons who have elected to mark securities to market, entities that are treated as partnerships or other pass-through entities for U.S. federal income tax purposes (and partners or beneficial owners thereof), foreign branches, "controlled foreign corporations," "passive foreign investment companies," former U.S. citizens or long-term residents, holders that acquired our ordinary shares in a compensatory transaction, holders subject to special tax accounting rules as a result of any item of gross income with respect to our ordinary shares being taken into account in an applicable financial statement, corporations that accumulate earnings to avoid U.S. federal income tax, persons deemed to sell common stock under the constructive sale provisions of the Code, and persons that hold common stock as part of a straddle, hedge, conversion transaction, or other integrated investment. In addition, this discussion does not address estate or gift taxes, the alternative minimum tax, the Medicare tax on certain investment income or any state, local or foreign taxes or any U.S. federal tax laws other than U.S. federal income tax laws.

You are urged to consult with your own tax advisor concerning the U.S. federal income tax consequences of acquiring, owning and disposing of our common stock, as well as the application of any state, local, or foreign income and other tax laws or tax treaties.

As used in this section, a "non-U.S. holder" is a beneficial owner of our common stock that is not, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States,
- a corporation (or other entity taxable as a corporation for U.S. federal income tax purposes) that is created or organized in or under the laws of the United States, any state thereof or the District of Columbia,
- an estate the income of which is subject to U.S. federal income taxation regardless of its source, or
- a trust if (i) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (ii) it has a valid election in effect under applicable U.S. Treasury regulations to be treated as a domestic trust.

If a partnership or other entity treated as a pass-through entity for U.S. federal income tax purposes is a holder of our common stock, the tax treatment of a partner in the partnership or an owner of the other pass-through entity will depend upon the status of the partner or owner and the activities of the partnership or other pass-through entity. Any partnership or other pass-through entity, and any partner in such a partnership or owner of such a pass-through entity, holding shares of our common stock should consult its own tax advisor as to the particular U.S. federal income tax consequences applicable to it.

INVESTORS CONSIDERING THE PURCHASE OF OUR COMMON STOCK SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE APPLICATION OF U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AND THE CONSEQUENCES OF OTHER FEDERAL, STATE, LOCAL AND FOREIGN TAX LAWS, AND APPLICABLE TAX TREATIES.

Distributions on Common Stock

Although we do not currently anticipate doing so in the foreseeable future (as discussed in the section entitled "Dividend Policy"), if we do pay distributions on shares of our common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Distributions in excess of our current and accumulated earnings and profits will constitute a return of capital that is applied against and reduces, but not below zero, a non-U.S. holder's adjusted tax basis in shares of our common stock. Any remaining excess will be treated as gain realized on the sale or other disposition of our common stock. See "– Dispositions of Common Stock."

Any dividend paid to a non-U.S. holder on our common stock will generally be subject to U.S. federal withholding tax at a 30% rate, subject to the discussion below regarding effectively connected income. The withholding tax might not apply, however, or might apply at a reduced rate, under the terms of an applicable income tax treaty between the United States and the non-U.S. holder's country of residence. You should consult your own tax advisors regarding your entitlement to benefits under a relevant income tax treaty. Generally, in order for us or our paying agent to withhold tax at a lower treaty rate, a non-U.S. holder must certify its entitlement to treaty benefits. A non-U.S. holder generally can meet this certification requirement by providing a valid Internal Revenue Service ("IRS") Form W-8BEN or IRS Form W-8BEN-E (or other applicable form), as applicable, to us or our paying agent. If the non-U.S. holder holds the stock through a financial institution or other agent acting on the non-U.S. holder's behalf, the non-U.S. holder will be required to provide appropriate documentation to the agent. The non-U.S. holder's agent will then be required to provide certification to us or our paying agent, either directly or through other intermediaries. Even if our current or accumulated earnings and profits are less than the amount of the distribution, the applicable withholding agent may elect to treat the entire distribution as a dividend for U.S. federal tax purposes. A non-U.S. holder that does not timely furnish the required documentation, but that qualifies for a reduced treaty rate, generally may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS.

Dividends received by a non-U.S. holder that are effectively connected with a U.S. trade or business conducted by the non-U.S. holder and, if required by an applicable income tax treaty between the United States and the non-U.S. holder's country of residence, are attributable to a permanent establishment (or, in certain cases involving individual holders, a fixed base) maintained by the non-U.S. holder in the United States, are generally not subject to such withholding tax. To obtain this exemption, a non-U.S. holder must provide the applicable withholding agent with a valid IRS Form W-8ECI (or applicable successor form) properly certifying such exemption. Such effectively connected dividends, although generally not subject to withholding tax (provided certain certification and disclosure requirements are satisfied), are taxed at the same graduated rates applicable to U.S. persons, net of certain deductions and credits. In addition to the graduated tax described above, such effectively connected dividends received by corporate non-U.S. holders may also be subject to a branch profits tax at a rate of 30% or such lower rate as may be specified by an applicable income tax treaty.

Dispositions of Common Stock

Subject to the discussion below on backup withholding and other withholding requirements, gain realized by a non-U.S. holder on a sale, exchange or other disposition of our common stock generally will not be subject to U.S. federal income or withholding tax, unless:

- the gain (i) is effectively connected with the conduct by the non-U.S. holder of a U.S. trade or business and (ii) if required by an applicable income tax treaty between the United States and the non-U.S.

holder's country of residence, is attributable to a permanent establishment (or, in certain cases involving individual holders, a fixed base) maintained by the non-U.S. holder in the United States (in which case the special rules described below apply),

- the non-U.S. holder is an individual who is present in the United States for 183 or more days in the taxable year of such disposition and certain other conditions are met (in which case the gain would be subject to a flat 30% tax, or such reduced rate as may be specified by an applicable income tax treaty, which may be offset by certain U.S. source capital losses, provided the non-U.S holder has timely filed U.S. federal income tax returns with respect to such losses), or
- we are, or have been, a U.S. real property holding corporation (a "USRPHC") for U.S. federal income tax purposes at any time during the shorter of the five-year period ending on the date of disposition of our common stock and the non-U.S. holder's holding period for our common stock.

Generally, a corporation is a USRPHC if the fair market value of its "United States real property interests" equals 50% or more of the sum of the fair market value of (a) its worldwide real property interests and (b) its other assets used or held for use in a trade or business. The tax relating to a disposition of stock in a USRPHC does not apply to a non-U.S. holder whose holdings, actual and constructive, amount to 5% or less of our common stock at all times during the applicable period, provided that our common stock is regularly traded on an established securities market. No assurance can be provided that our stock will be regularly traded on an established securities market at all times for purposes of the rules described above. Although there can be no assurances in this regard, we believe we have not been and are not currently a USRPHC, and do not anticipate being a USRPHC in the future. You should consult your tax advisor about the consequences that could result if we have been, are or become a USRPHC.

If any gain from the sale, exchange or other disposition of our common stock (1) is effectively connected with a U.S. trade or business conducted by a non-U.S. holder and (2) if required by an applicable income tax treaty between the United States and the non-U.S. holder's country of residence, is attributable to a permanent establishment (or, in certain cases involving individuals, a fixed base) maintained by such non-U.S. holder in the United States, then the gain generally will be subject to U.S. federal income tax at the same graduated rates applicable to U.S. persons, net of certain deductions and credits. In addition to the graduated tax described above, such effectively connected gain realized by corporate non-U.S. holders may also be subject to a branch profits tax at a rate of 30% or such lower rate as may be specified by an applicable income tax treaty.

Backup Withholding and Information Reporting

Any dividends that are paid to a non-U.S. holder must be reported annually to the IRS and to the non-U.S. holder. Copies of these information returns also may be made available to the tax authorities of the country in which the non-U.S. holder resides under the provisions of various treaties or agreements for the exchange of information. Dividends paid on our common stock and the gross proceeds from a taxable disposition of our common stock may be subject to additional information reporting and may also be subject to U.S. federal backup withholding if such non-U.S. holder fails to comply with applicable U.S. information reporting and certification requirements. Provision of an IRS Form W-8 appropriate to the non-U.S. holder's circumstances will generally satisfy the certification requirements necessary to avoid the additional information reporting and backup withholding.

Backup withholding is not an additional tax. Any amounts so withheld under the backup withholding rules will be refunded by the IRS or credited against the non-U.S. holder's U.S. federal income tax liability, provided that the required information is timely furnished to the IRS.

Other Withholding Taxes

Provisions commonly referred to as "FATCA" impose withholding (separate and apart from, but without duplication of, the withholding tax described above) at a rate of 30% on payments of U.S.-source dividends

(including our dividends) paid to "foreign financial institutions" (which is broadly defined for this purpose and in general includes investment vehicles) and certain other non-U.S. entities unless various U.S. information reporting and due diligence requirements (generally relating to ownership by U.S. persons of interests in or accounts with those entities) have been satisfied, or an exemption applies. Withholding imposed under FATCA may also apply to gross proceeds from the sale or other disposition of domestic corporate stock (including our stock); although, under proposed U.S. Treasury regulations published on December 18, 2018, no withholding would apply to such gross proceeds. The preamble to such proposed regulations specifies that taxpayers (including withholding agents) are permitted to rely on the proposed regulations pending finalization. An intergovernmental agreement between the United States and an applicable foreign jurisdiction may modify these requirements. Accordingly, the entity through which our common stock is held may affect the determination of whether such withholding is required. If FATCA withholding is imposed, a beneficial owner that is not a foreign financial institution generally will be entitled to a refund of any amounts withheld by filing a U.S. federal income tax return containing the required information (which may entail significant administrative burden). Non-U.S. holders should consult their tax advisors regarding the effects of FATCA on their investment in our common stock.

THE PRECEDING DISCUSSION OF U.S. FEDERAL INCOME TAX CONSIDERATIONS IS FOR GENERAL INFORMATION ONLY. IT IS NOT TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS TAX ADVISOR REGARDING THE PARTICULAR U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF PURCHASING, HOLDING AND DISPOSING OF OUR COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAWS, INTERGOVERNMENTAL AGREEMENTS OR TAX TREATIES.

UNDERWRITING

BofA Securities, Inc., Goldman Sachs & Co. LLC and Jefferies LLC are acting as representatives of each of the underwriters named below. Subject to the terms and conditions set forth in an underwriting agreement among us and the underwriters, we have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us, the number of shares of common stock set forth opposite its name below.

Underwriter	Number of shares
BofA Securities, Inc.	
Goldman Sachs & Co. LLC	
Jefferies LLC	
Total	

Subject to the terms and conditions set forth in the underwriting agreement, the underwriters have agreed, severally and not jointly, to purchase all of the shares sold under the underwriting agreement if any of these shares are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the underwriting agreement may be terminated.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares, and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

Commissions and Discounts

The representatives have advised us that the underwriters propose initially to offer the shares to the public at the public offering price set forth on the cover page of this prospectus and to dealers at that price less a concession not in excess of $ per share. After the initial offering, the public offering price, concession or any other term of the offering may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to us. The information assumes either no exercise or full exercise by the underwriters of their option to purchase additional shares.

	Per Share	Without Option	With Option
Public offering price	$	$	$
Underwriting discount	$	$	$
Proceeds, before expenses, to us	$	$	$

The expenses of the offering, not including the underwriting discount, are estimated at $ and are payable by us. We have also agreed to reimburse the underwriters for certain of their expenses incurred in connection with, among others, the review and clearance by the Financial Industry Regulatory Authority, Inc. ("FINRA") in an amount up to $.

Option to Purchase Additional Shares

We have granted an option to the underwriters, exercisable for 30 days after the date of this prospectus, to purchase up to additional shares at the public offering price, less the underwriting discount. If the underwriters exercise this option, each will be obligated, subject to conditions contained in the underwriting agreement, to purchase a number of additional shares proportionate to that underwriter's initial amount reflected in the above table.

No Sales of Similar Securities

We, our executive officers and directors and our other existing security holders have agreed not to sell or transfer any common stock or securities convertible into, exchangeable for, exercisable for, or repayable with common stock, for 180 days after the date of this prospectus without first obtaining the written consent of the representatives. Specifically, we and these other persons have agreed, with certain limited exceptions, not to directly or indirectly

- offer, pledge, sell or contract to sell any common stock,
- sell any option or contract to purchase any common stock,
- purchase any option or contract to sell any common stock,
- grant any option, right or warrant for the sale of any common stock,
- lend or otherwise dispose of or transfer any common stock,
- request or demand that we file or make a confidential submission of a registration statement related to the common stock, or
- enter into any swap or other agreement that transfers, in whole or in part, the economic consequence of ownership of any common stock whether any such swap or transaction is to be settled by delivery of shares or other securities, in cash or otherwise.

This lock-up provision applies to common stock and to securities convertible into or exchangeable or exercisable for or repayable with common stock. It also applies to common stock owned now or acquired later by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition.

Stock Exchange Listing

We expect the shares to be approved for listing on Nasdaq, subject to notice of issuance, under the symbol "FWRG."

Before this offering, there has been no public market for our common stock. The initial public offering price will be determined through negotiations between us and the representatives. In addition to prevailing market conditions, the factors to be considered in determining the initial public offering price are

- the valuation multiples of publicly traded companies that the representatives believe to be comparable to us,
- our financial information,
- the history of, and the prospects for, our company and the industry in which we compete,
- an assessment of our management, its past and present operations, and the prospects for, and timing of, our future revenues,
- the present state of our development, and

- the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for the shares may not develop. It is also possible that after the offering the shares will not trade in the public market at or above the initial public offering price.

The underwriters do not expect to sell more than 5% of the shares in the aggregate to accounts over which they exercise discretionary authority.

Price Stabilization, Short Positions and Penalty Bids

Until the distribution of the shares is completed, SEC rules may limit underwriters and selling group members from bidding for and purchasing our common stock. However, the representatives may engage in transactions that stabilize the price of the common stock, such as bids or purchases to peg, fix or maintain that price.

In connection with the offering, the underwriters may purchase and sell our common stock in the open market. These transactions may include short sales, purchases on the open market to cover positions created by short sales and stabilizing transactions. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. “Covered” short sales are sales made in an amount not greater than the underwriters’ option to purchase additional shares described above. The underwriters may close out any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the option granted to them. “Naked” short sales are sales in excess of such option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of our common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of shares of common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Similar to other purchase transactions, the underwriters’ purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. The underwriters may conduct these transactions on the , in the over-the-counter market or otherwise.

Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor any of the underwriters make any representation that the representatives will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

Electronic Distribution

In connection with the offering, certain of the underwriters or securities dealers may distribute prospectuses by electronic means, such as e-mail.

Other Relationships

Some of the underwriters and their affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings in the ordinary course of business with us or our affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions.

In addition, in the ordinary course of their business activities, the underwriters and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

European Economic Area

In relation to each Member State of the European Economic Area (each a "Relevant State"), no shares have been offered or will be offered pursuant to the offering to the public in that Relevant State prior to the publication of a prospectus in relation to the shares which has been approved by the competent authority in that Relevant State or, where appropriate, approved in another Relevant State and notified to the competent authority in that Relevant State, all in accordance with the Prospectus Regulation), except that offers of shares may be made to the public in that Relevant State at any time under the following exemptions under the Prospectus Regulation:

a. to any legal entity which is a qualified investor as defined under the Prospectus Regulation;

b. to fewer than 150 natural or legal persons (other than qualified investors as defined under the Prospectus Regulation), subject to obtaining the prior consent of the representatives for any such offer; or

c. in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of shares shall require the Company or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation.

Each person in a Relevant State who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed to and with the Company and the underwriters that it is a qualified investor within the meaning of the Prospectus Regulation.

In the case of any shares being offered to a financial intermediary as that term is used in Article 5(1) of the Prospectus Regulation, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the shares acquired by it in the offer have not been acquired on a non-discretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer to the public other than their offer or resale in a Relevant State to qualified investors, in circumstances in which the prior consent of the representatives has been obtained to each such proposed offer or resale.

The Company, the underwriters and their affiliates will rely upon the truth and accuracy of the foregoing representations, acknowledgements and agreements.

For the purposes of this provision, the expression an "offer to the public" in relation to any shares in any Relevant State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, and the expression "Prospectus Regulation" means Regulation (EU) 2017/1129.

The above selling restriction is in addition to any other selling restrictions set out below.

In connection with the offering, the underwriters are not acting for anyone other than the Company and will not be responsible to anyone other than the Company for providing the protections afforded to their clients nor for providing advice in relation to the offering.

Notice to Prospective Investors in the United Kingdom

In relation to the United Kingdom ("UK"), no shares have been offered or will be offered pursuant to the offering to the public in the UK prior to the publication of a prospectus in relation to the shares which has been approved by the Financial Conduct Authority in the UK in accordance with the UK Prospectus Regulation and the FSMA, except that offers of shares may be made to the public in the UK at any time under the following exemptions under the UK Prospectus Regulation and the FSMA:

a. to any legal entity which is a qualified investor as defined under the UK Prospectus Regulation;

b. to fewer than 150 natural or legal persons (other than qualified investors as defined under the UK Prospectus Regulation), subject to obtaining the prior consent of representatives for any such offer; or

c. at any time in other circumstances falling within section 86 of the FSMA,

provided that no such offer of shares shall require the Company or any underwriter to publish a prospectus pursuant to Section 85 of the FSMA or Article 3 of the UK Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the UK Prospectus Regulation.

Each person in the UK who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed to and with the Company and the underwriters that it is a qualified investor within the meaning of the UK Prospectus Regulation.

In the case of any shares being offered to a financial intermediary as that term is used in Article 5(1) of the UK Prospectus Regulation, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the shares acquired by it in the offer have not been acquired on a non-discretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer to the public other than their offer or resale in the UK to qualified investors, in circumstances in which the prior consent of the representatives has been obtained to each such proposed offer or resale.

The Company, the underwriters and their affiliates will rely upon the truth and accuracy of the foregoing representations, acknowledgements and agreements.

For the purposes of this provision, the expression an "offer to the public" in relation to any shares in the UK means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, the expression "UK Prospectus Regulation" means Regulation (EU) 2017/1129 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018, and the expression "FSMA" means the Financial Services and Markets Act 2000, as amended.

This document is for distribution only to persons who (i) have professional experience in matters relating to investments and who qualify as investment professionals within the meaning of Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended, the "Financial Promotion Order"), (ii) are persons falling within Article 49(2)(a) to (d) ("high net worth companies, unincorporated associations etc.") of the Financial Promotion Order, (iii) are outside the United Kingdom, or (iv) are persons to whom an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) in connection with the issue or sale of any securities may otherwise lawfully be communicated or caused to be communicated (all such persons together being referred to as "relevant persons"). This document is directed only at relevant persons and must not be acted on or relied on by persons who are not relevant persons. Any investment or investment activity to which this document relates is available only to relevant persons and will be engaged in only with relevant persons.

Notice to Prospective Investors in Switzerland

The shares may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange ("SIX") or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX listing rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, the Company, the shares have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority, and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes ("CISA"). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

Notice to Prospective Investors in the Dubai International Financial Centre

This prospectus relates to an exempt offer ("Exempt Offer") in accordance with the Offered Securities Rules of the Dubai Financial Services Authority ("DFSA"). This prospectus is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus nor taken steps to verify the information set forth herein and has no responsibility for the prospectus. The shares to which this prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the shares offered should conduct their own due diligence on the shares. If you do not understand the contents of this prospectus you should consult an authorized financial advisor.

Notice to Prospective Investors in Australia

No placement document, prospectus, product disclosure statement or other disclosure document has been lodged with the Australian Securities and Investments Commission, in relation to the offering. This prospectus does not constitute a prospectus, product disclosure statement or other disclosure document under the Corporations Act 2001 (the "Corporations Act"), and does not purport to include the information required for a prospectus, product disclosure statement or other disclosure document under the Corporations Act.

Any offer in Australia of the shares may only be made to persons (the "Exempt Investors") who are "sophisticated investors" (within the meaning of section 708(8) of the Corporations Act), "professional investors" (within the meaning of section 708(11) of the Corporations Act) or otherwise pursuant to one or more exemptions contained in section 708 of the Corporations Act so that it is lawful to offer the shares without disclosure to investors under Chapter 6D of the Corporations Act.

The shares applied for by Exempt Investors in Australia must not be offered for sale in Australia in the period of 12 months after the date of allotment under the offering, except in circumstances where disclosure to investors under Chapter 6D of the Corporations Act would not be required pursuant to an exemption under section 708 of the Corporations Act or otherwise or where the offer is pursuant to a disclosure document which complies with Chapter 6D of the Corporations Act. Any person acquiring shares must observe such Australian on-sale restrictions.

This prospectus contains general information only and does not take account of the investment objectives, financial situation or particular needs of any particular person. It does not contain any securities

recommendations or financial product advice. Before making an investment decision, investors need to consider whether the information in this prospectus is appropriate to their needs, objectives and circumstances, and, if necessary, seek expert advice on those matters.

Notice to Prospective Investors in Hong Kong

The shares have not been offered or sold and will not be offered or sold in Hong Kong, by means of any document, other than (a) to "professional investors" as defined in the Securities and Futures Ordinance (Cap. 571) of Hong Kong and any rules made under that ordinance; or (b) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies Ordinance (Cap. 32) of Hong Kong or which do not constitute an offer to the public within the meaning of that ordinance. No advertisement, invitation or document relating to the shares has been or may be issued or has been or may be in the possession of any person for the purposes of issue, whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" as defined in the Securities and Futures Ordinance and any rules made under that ordinance.

Notice to Prospective Investors in Japan

The shares have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948, as amended) and, accordingly, will not be offered or sold, directly or indirectly, in Japan, or for the benefit of any Japanese Person or to others for re-offering or resale, directly or indirectly, in Japan or to any Japanese Person, except in compliance with all applicable laws, regulations and ministerial guidelines promulgated by relevant Japanese governmental or regulatory authorities in effect at the relevant time. For the purposes of this paragraph, "Japanese Person" shall mean any person resident in Japan, including any corporation or other entity organized under the laws of Japan.

Notice to Prospective Investors in Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, the shares were not offered or sold or caused to be made the subject of an invitation for subscription or purchase and will not be offered or sold or caused to be made the subject of an invitation for subscription or purchase, and this prospectus or any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares, has not been circulated or distributed, nor will it be circulated or distributed, whether directly or indirectly, to any person in Singapore other than (i) to an institutional investor (as defined in Section 4A of the Securities and Futures Act (Chapter 289) of Singapore, as modified or amended from time to time (the "SFA")) pursuant to Section 274 of the SFA, (ii) to a relevant person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

(a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

(b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

securities or securities-based derivatives contracts (each term as defined in Section 2(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred

within six months after that corporation or that trust has acquired the shares pursuant to an offer made under Section 275 of the SFA except:

(a) to an institutional investor or to a relevant person, or to any person arising from an offer referred to in Section 275(1A) or Section 276(4)(i)(B) of the SFA;

(b) where no consideration is or will be given for the transfer;

(c) where the transfer is by operation of law; or

(d) as specified in Section 276(7) of the SFA.

Notice to Prospective Investors in Canada

The shares may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 *Prospectus Exemptions* or subsection 73.3(1) of the *Securities Act* (Ontario), and are permitted clients, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations.* Any resale of the shares must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 (or, in the case of securities issued or guaranteed by the government of a non-Canadian jurisdiction, section 3A.4) of National Instrument 33-105 *Underwriting Conflicts* ("NI 33-105"), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

LEGAL MATTERS

Weil, Gotshal & Manges LLP, New York, New York, has passed upon the validity of the common stock offered hereby on behalf of us. Certain legal matters will be passed upon on behalf of the underwriters by Latham & Watkins LLP.

EXPERTS

The financial statements as of December 27, 2020 and December 29, 2019 and for each of the two years in the period ended December 27, 2020 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

In connection with the offering, PricewaterhouseCoopers LLP ("PwC") completed an independence assessment to evaluate the services and relationships with the Company and its affiliates that may bear on PwC's independence under the SEC and PCAOB independence rules for the audit period commencing December 31, 2018. PwC informed the Company that, commencing in February 2020 and continuing through June 2020, a PwC member firm was engaged to provide permissible tax compliance services to a portfolio company controlled by Advent, which currently is the majority equity holder of the Company, pursuant to a contingent fee of approximately $40,000. The existence of the contingent fee is not in accordance with the SEC and PCAOB auditor independence rules.

PwC provided an overview of the facts and circumstances surrounding the contingent fee arrangement to our audit committee and management, including the entity involved, the fees earned and other relevant factors. Considering the facts presented, our audit committee and PwC have concluded that the contingent fee would not impair PwC's application of objective and impartial judgment on any matters encompassed within the audit engagement performed by PwC for our financial statements as of and for the fiscal year ended December 27, 2020, and that no reasonable investor would conclude otherwise.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of our common stock offered by this prospectus. For purposes of this section, the term registration statement means the original registration statement and any and all amendments including the schedules and exhibits to the original registration statement or any amendment. This prospectus, filed as part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules thereto as permitted by the rules and regulations of the SEC. For further information about us and our common stock, you should refer to the registration statement, including the exhibits. This prospectus summarizes provisions that we consider material of certain contracts and other documents to which we refer you. Because the summaries may not contain all of the information that you may find important, you should review the full text of those documents.

This registration statement, including its exhibits and schedules, will be filed with the SEC. The SEC maintains a website at *http://www.sec.gov* from which interested persons can electronically access the registration statement, including the exhibits and schedules to the registration statement. We intend to furnish our stockholders with annual reports containing financial statements audited by our independent auditors.

We have not authorized anyone to give you any information or to make any representations about us or the transactions we discuss in this prospectus other than those contained in this prospectus. If you are given any information or representations about these matters that is not discussed in this prospectus, you must not rely on that information. This prospectus is not an offer to sell or a solicitation of an offer to buy securities anywhere or to anyone where or to whom we are not permitted to offer or sell securities under applicable law.

FIRST WATCH RESTAURANT GROUP, INC.
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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 27, 2020 and December 29, 2019, and the related consolidated statements of operations and comprehensive loss, of equity and of cash flows for the years then ended, 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 27, 2020 and December 29, 2019, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Change in Accounting Principle

As discussed in Note 2 to the consolidated financial statements, the Company changed the manner in which it accounts for leases in 2019.

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 and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the 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
April 23, 2021

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 DATA)

	DECEMBER 27, 2020	DECEMBER 29, 2019
Assets		
Current assets:		
Cash and cash equivalents	$ 38,846	$ 11,121
Restricted cash	251	—
Accounts receivable	3,915	5,741
Inventory	2,915	2,711
Prepaid expenses	2,490	3,109
Deferred offering costs	—	1,307
Other current assets	621	253
Total current assets	49,038	24,242
Goodwill	345,219	345,219
Intangible assets, net	143,662	144,558
Operating lease right-of-use assets	307,558	302,513
Property, fixtures and equipment, net	160,744	164,334
Other long-term assets	1,291	1,214
Total assets	$ 1,007,512	$ 982,080
Liabilities and Equity		
Current liabilities:		
Accounts payable	$ 4,220	$ 5,086
Accrued liabilities	13,482	19,144
Accrued compensation and deferred payroll taxes	10,856	11,260
Deferred revenues	4,273	7,119
Current portion of operating lease liabilities	40,111	27,436
Current portion of long-term debt	3,590	2,972
Total current liabilities	76,532	73,017
Operating lease liabilities	307,802	295,632
Long-term debt, net	286,400	250,397
Deferred income taxes	10,313	30,304
Deferred payroll taxes	3,333	—
Other long-term liabilities	2,266	2,933
Total liabilities	686,646	652,283
Commitments and contingencies (Note 18)		
Equity:		
Preferred stock; $0.01 par value; 266,667 shares authorized, issued and outstanding	3	—
Common stock; $0.01 par value; 4,588,667 shares authorized and 3,802,481 shares issued and outstanding at December 27, 2020; 4,321,000 shares authorized and 3,802,481 shares issued and outstanding at December 29, 2019	38	38
Additional paid-in capital	423,757	383,010
Accumulated deficit	(102,932)	(53,251)
Total equity	320,866	329,797
Total liabilities and equity	$ 1,007,512	$ 982,080

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

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

	FISCAL YEAR	
	2020	2019
Revenues:		
Restaurant sales	$ 337,433	$ 429,309
Franchise revenues	4,955	7,064
Total revenues	342,388	436,373
Operating costs and expenses:		
Restaurant operating expenses (exclusive of depreciation and amortization shown below):		
Food and beverage costs	76,975	100,689
Labor and other related expenses	120,380	148,537
Other restaurant operating expenses	63,776	59,402
Occupancy expenses	51,375	46,151
General and administrative expenses	46,322	55,818
Depreciation and amortization	30,725	28,027
Impairments and loss on disposal of assets	315	33,596
Transaction (income) expenses, net	(258)	1,709
Total operating costs and expenses	389,610	473,929
Loss from operations	(47,222)	(37,556)
Interest expense	(22,815)	(20,080)
Other income (expense), net	483	(255)
Loss before income tax benefit	(69,554)	(57,891)
Income tax benefit	19,873	12,419
Net loss and total comprehensive loss	(49,681)	(45,472)
Less: Net loss attributable to non-controlling interest	—	(33)
Net loss and comprehensive loss attributable to First Watch Restaurant Group, Inc.	$ (49,681)	$ (45,439)
Net loss per common share attributable to First Watch Restaurant Group, Inc. - basic and diluted	$ (13.07)	$ (11.95)
Weighted average number of common shares outstanding - basic and diluted	3,802,481	3,802,481

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 Attributable to First Watch Restaurant Group, Inc.	Non-controlling Interest	Total Equity
	Shares	Amount	Shares	Amount					
Balance at December 30, 2018	—	$ —	3,802,481	$ 38	$ 382,077	$ (7,691)	$ 374,424	$ 250	$ 374,674
Net loss	—	—	—	—	—	(45,439)	(45,439)	(33)	(45,472)
Stock-based compensation	—	—	—	—	1,160	—	1,160	—	1,160
Acquisition of non- controlling interest	—	—	—	—	(227)	—	(227)	(217)	(444)
Adoption - lease standard (ASC 842)	—	—	—	—	—	(121)	(121)	—	(121)
Balance at December 29, 2019	—	$ —	3,802,481	$ 38	$ 383,010	$ (53,251)	$ 329,797	$ —	$ 329,797
Share issuance	266,667	3	—	—	39,997	—	40,000	—	40,000
Net loss	—	—	—	—	—	(49,681)	(49,681)	—	(49,681)
Stock-based compensation	—	—	—	—	750	—	750	—	750
Balance at December 27, 2020	266,667	$ 3	3,802,481	$ 38	$ 423,757	$ (102,932)	$ 320,866	$ —	$ 320,866

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	
	2020	2019
Cash flows from operating activities:		
Net loss	$(49,681)	$(45,472)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:		
Depreciation and amortization	30,725	28,027
Deferred income taxes	(19,991)	(12,558)
Non-cash operating lease costs	11,727	10,772
Amortization of debt discount and deferred issuance costs	1,282	1,128
Impairments and loss on disposal of assets	315	33,596
Stock-based compensation	750	1,160
Settlement gains from acquisitions	—	(160)
Changes in assets and liabilities, net of acquisitions:		
Accounts receivable	1,826	(3,192)
Inventory	(203)	(439)
Prepaid expenses	619	(439)
Deferred offering costs	1,307	—
Other assets, current and long-term	(446)	(1,094)
Accounts payable	(866)	(740)
Accrued liabilities	(3,670)	5,566
Accrued compensation and deferred payroll taxes, current and long-term	2,929	643
Deferred revenues, current and long-term	(3,060)	2,024
Operating lease liabilities	8,073	3,101
Other liabilities	—	(458)
Net cash (used in) provided by operating activities	(18,364)	21,465
Cash flows from investing activities:		
Capital expenditures	(26,749)	(59,169)
Purchase of intangible assets	(225)	—
Acquisitions, net of cash acquired	—	(22,770)
Acquisition of non-controlling interest	—	(450)
Net cash used in investing activities	(26,974)	(82,389)
Cash flows from financing activities:		
Proceeds from preferred stock issuance	40,000	—
Proceeds from issuance of long-term debt	54,600	50,000
Repayments of long-term debt	(3,947)	(2,099)
Proceeds from borrowings on revolving credit facility	22,000	42,000
Repayments of borrowings on revolving credit facility	(39,000)	(32,500)
Payment of debt issuance costs	—	(915)
Finance lease payments	(339)	(500)
Contingent consideration payment	—	(225)
Net cash provided by financing activities	73,314	55,761
Net increase (decrease) in cash and cash equivalents and restricted cash	27,976	(5,163)
Cash and cash equivalents and restricted cash:		
Beginning of year	11,121	16,284
End of year	$ 39,097	$ 11,121

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	
	2020	2019
Supplemental cash flow information:		
Cash paid for interest	$19,821	$18,929
Cash paid for income taxes, net of refunds	$ 163	$ 152
Supplemental disclosures of non-cash investing and financing activities:		
Interest converted to long-term debt	$ 1,583	$ —
Leased assets obtained in exchange for new operating lease liabilities	$21,333	$70,355
Remeasurements of operating lease assets and lease liabilities	$ (3,850)	$ 134
Terminations of operating lease liabilities	$ (711)	$ (3,293)
Leased assets obtained in exchange for new finance lease liabilities	$ 277	$ 2,666
Remeasurements of finance leased assets and lease liabilities	$ 164	$ —
Change in liabilities from acquisition of property, fixtures and equipment	$ (860)	$ 210

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. On December 20, 2019, the name of the Company was changed from AI Fresh Super Holdco, Inc. to First Watch Restaurant Group, Inc. Effective August 21, 2017, the Company's outstanding stock was purchased for $530.0 million by funds affiliated with or managed by Advent International Corporation (the "Advent Acquisition").

The Company operates and franchises restaurants in 29 states operating under the "First Watch" trade name which prepare and serve 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 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 27, 2020, the Company operated 321 company-owned restaurants and 88 franchised restaurants. As of December 29, 2019, the Company operated 299 company-owned restaurants and 69 franchised restaurants.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP").

The Company operates on a 52- or 53-week fiscal year which ends on the last Sunday of the calendar year. The fiscal years ended December 27, 2020 ("Fiscal 2020") and December 29, 2019 ("Fiscal 2019") each included 52 weeks of operations.

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 loss and comprehensive loss.

Reclassifications

The Company reclassified certain items in the consolidated financial statements for the prior period to be comparable with the classification for the current period. These reclassifications are related to the disaggregation of certain balances, including supplemental disclosures of non-cash investing and finance activities and disclosures in the notes to the consolidated financial statements.

Correction of an Error in Fiscal 2019

Management identified an error relating to the valuation allowance for deferred tax assets in a prior period. Management excluded indefinite deferred tax liabilities, commonly referred to as "naked credits," in measuring the appropriate full valuation allowance amount. However, an incorrect value for the goodwill deferred tax liability was utilized in calculating the valuation allowance in a prior period. The error was corrected in Fiscal 2019. This out-of-period adjustment resulted in an increase of approximately $1.4 million in income tax benefit on the Consolidated Statements of Operations and Comprehensive Loss for Fiscal 2019 and a related decrease to deferred income taxes on the Consolidated Balance Sheet as of December 29, 2019. Management assessed the materiality of this error on the previously issued consolidated financial statements and concluded that the error was not material to any of the previously issued

consolidated financial statements and the impact of correcting the error in Fiscal 2019 is not material to the consolidated financial statements as of and for the fiscal year ended December 29, 2019.

COVID-19 Global Pandemic

In March 2020, the World Health Organization declared the novel strain of coronavirus ("COVID-19") a global pandemic and recommended containment and mitigation measures worldwide. The Company experienced a significant reduction in guest traffic at its restaurants due to changes in consumer behavior as public health officials encouraged social distancing and state and local governments mandated restrictions including suspension of dine-in operations, reduced restaurant seating capacity, table spacing requirements and additional physical barriers. On April 13, 2020, to help ensure the safety of its employees, Management temporarily suspended all operations at the company-owned restaurants. In June 2020, substantially all of the company-owned restaurants were reopened in compliance with state and local capacity restrictions.

The COVID-19 pandemic is not eradicated and the extent to which COVID-19 may continue to impact the Company's business and its customers is uncertain. The consolidated financial statements include estimates and judgments and there may be changes to those estimates in future periods as a result of the COVID-19 pandemic.

Principles of Consolidation

The Company's consolidated financial statements include the accounts of its wholly owned subsidiaries. In Fiscal 2019, the Company's consolidated financial statements included the accounts of its majority-owned subsidiary, TFW-NC, LLC, ("TFW"), in which the Company owned more than 50% of the voting shares and had a controlling financial interest. During Fiscal 2019, the Company acquired the remaining interest in TFW (see Note 12, *Acquisitions*, for additional information). 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 the 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 those 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% 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 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 and accounts payable, 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 off-premises third- party service 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 27, 2020 and December 29, 2019.

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. No adjustment is deemed necessary to reduce inventory to net realizable value due to the rapid turnover and utilization of inventory.

Leases

The Company's restaurant facilities, corporate offices and certain restaurant equipment are leased under various agreements having initial terms expiring between 2021 and 2032. 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. Upon possession of a leased asset, Management determines the classification of the related lease contract as an operating or finance lease. 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 loans 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. Lease 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 within Occupancy expenses. 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 extension 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 recorded as variable lease expense. Variable lease expense is recorded within Occupancy expenses and future variable rent obligations are not included within the lease liabilities on the Consolidated Balance Sheets.

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 expected lease term. None of the Company's leases 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 within Other restaurant operating expenses and Occupancy expenses.

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 COVID-19. In April 2020, the Financial Accounting Standards Board (the "FASB") issued a question

and answer document focused on the application of lease accounting guidance to lease concessions provided as a result of COVID-19 (the "Lease Modification Q&A"). The Lease Modification Q&A provides entities with the option to elect to account for lease concessions, primarily rent deferrals or rent abatements, as though the enforceable rights and obligations existed in the original lease when the total cash flows resulting from the modified lease are substantially similar to the cash flows in the original lease. Management elected this practical expedient for COVID-19 related rent concessions and has elected to remeasure the lease liability using the original discount rate with a corresponding adjustment to the right-of- use asset. Rent deferrals increase the lease liability and right-of use asset until amounts are paid with no impact to lease expense. Rent abatements are 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 expected 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, on the Consolidated Balance Sheets.

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 expected 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 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. Upon restaurant opening, these costs are depreciated and recorded in Depreciation and amortization. Direct internal costs of $0.4 million and $0.3 million were capitalized in Fiscal 2020 and Fiscal 2019, 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, which consist of the Company's registered trademarks, trade names, domains and liquor licenses 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.

Management's quantitative assessment for determining the fair value of the reporting unit uses a blend of the market capitalization approach and the income approach. The market capitalization approach uses Management's selection of peer companies to estimate fair value. The income approach uses 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 value.

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.

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.

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 $105,000 per occurrence and workers' compensation claims in Ohio in excess of $450,000 per occurrence annually. The Consolidated Statements of Operations and Comprehensive Loss include expenses related to the costs of claims reported and an estimate of claims incurred but not reported. A liability of

$1.3 million and $1.5 million for estimated unpaid claims is recorded within Accrued liabilities as of December 27, 2020 and December 29, 2019, 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 includes 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 the "breakage factor", 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

Other restaurant operating expenses and Occupancy expenses include pre-opening expenses which are costs incurred to open new restaurants. These costs consist of manager salaries, recruiting expenses,

employee payroll, training and marketing costs, as well as lease expense recorded during the period between the date of possession of the restaurant facility and the restaurant opening date. Pre-opening expenses are recognized in the period in which the expense is incurred and totaled $3.9 million and $5.8 million during Fiscal 2020 and Fiscal 2019, respectively.

Consideration Received from Vendors

The Company receives consideration from certain vendors for volume rebates and advertising allowances. Volume rebates are accounted for as an adjustment to the cost of the vendors' products. Advertising allowances are intended to offset the Company's costs of advertising and promotions and are recorded as a reduction of General and administrative expenses when recognized.

Advertising Costs

Advertising costs are recognized as incurred or, in the case of advertisements, when the advertisement occurs. Advertising costs were $3.3 million and $4.4 million during Fiscal 2020 and Fiscal 2019, respectively, and are included in General and administrative expenses and in Other restaurant operating expenses.

Debt 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 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.

The Company has no uncertain tax positions requiring recognition or disclosure in the consolidated financial statements in Fiscal 2020 and Fiscal 2019.

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

Stock-Based Compensation

Stock-based compensation expense is recognized for stock option awards granted and is based on the fair value of the options 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 service-based stock option awards is recognized as expense on a graded vesting schedule over the requisite service period. The fair value of performance- based stock option awards is recognized as expense when the performance condition is probable of being achieved. 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 options 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.

Recently Adopted Financial Accounting Standards

On December 30, 2019, the Company adopted Accounting Standards Update ("ASU") 2018-15, "*Intangibles-Goodwill and Other-Internal-Use Software* (Subtopic 350-40): *Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*," ("ASU 2018-15"), which aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. Amortization expense is recorded in the same expense line as the hosted service costs over the expected term of the hosting arrangement, which includes reasonably certain renewals, pursuant to ASU 2018-15. A total of $0.3 million of implementation costs of hosting arrangements that are service contracts were capitalized in Fiscal 2020, which were recorded within Prepaid expenses and Other long-term assets. The amortization of the Company's hosting arrangements was recorded in General and administrative expenses.

On December 30, 2019, the Company adopted ASU 2016-13, "*Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*," ("ASU 2016-13"), which requires measurement and recognition of losses for financial instruments under the current expected credit loss model versus incurred losses under previous guidance. The Company's adoption of ASU 2016-13 and its related amendments did not have a material effect on its consolidated financial statements.

On December 31, 2018, the Company adopted ASC 842 using the modified retrospective transition method included in ASU 2018-11, "*Leases (Topic 842), Targeted Improvements*", ("ASU 2018-11"). Management elected the package of practical expedients permitted under the transition guidance and also elected the accounting policy election to combine lease and non-lease components for restaurant facility leases. In addition, the Company adopted the short-term lease recognition exemption and did not recognize operating lease right-of-use assets and operating lease liabilities for leases with terms of twelve months or less. Management used the Company's incremental borrowing rate to discount the future fixed lease payments for all leases. The Company's incremental borrowing rate was determined based on a market yield implied by the outstanding secured term loans (see Note 10, *Debt*, for additional information), which was interpolated for various maturities based on the shape of the corresponding market yield curve. The corresponding market yield curve was selected based on the Company's synthetic credit rating, which was determined using a regression analysis of rated publicly-traded comparable companies and their financial data.

On December 31, 2018, operating lease right-of-use assets of $246.0 million, operating lease liabilities of $252.8 million and a debit to the beginning balance of accumulated deficit for $0.1 million were recorded in conjunction with the adoption of ASU 2018-11. In addition, the land lease asset and related financing obligation of $1.5 million which related to one restaurant facility that was sold and leased back from a third

party in 2014 and which did not previously qualify for sale accounting was derecognized. The lease related to this transaction is accounted for as an operating lease. Financing obligations are classified within Long-term debt, net. The adoption of ASC 842 did not have a material impact on the Consolidated Statements of Operations and Comprehensive Loss and the Consolidated Statement of Cash Flows in Fiscal 2019.

Summary of Recently Issued Accounting Pronouncements

In March 2020, the FASB issued ASU 2020-04, "*Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*," ("ASU 2020-04"). The new guidance provides optional expedients and exceptions for applying GAAP 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. Management is currently evaluating its contracts and the optional expedients provided by the new standard.

3. Revenues

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

(in thousands)	DECEMBER 27, 2020	DECEMBER 29, 2019
Deferred revenues:		
Deferred gift card revenue	$ 4,024	$ 6,902
Deferred franchise fee revenue - current	249	217
Total current deferred revenues	$ 4,273	$ 7,119
Other long-term liabilities:		
Deferred franchise fee revenue - non-current	$ 2,025	$ 2,239

Changes in deferred gift card liabilities were as follows:

	FISCAL YEAR	
(in thousands)	2020	2019
Deferred gift card revenue:		
Balance, beginning of period	$ 6,902	$ 4,982
Gift card sales	5,197	15,898
Gift card liabilities assumed through acquisitions	—	146
Gift card redemptions	(6,924)	(12,689)
Gift card breakage	(1,151)	(1,435)
Balance, end of period	$ 4,024	$ 6,902

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 liabilities were as follows:

(in thousands)	FISCAL YEAR 2020	2019
Deferred franchise fee revenue:		
Balance, beginning of period	$2,456	$2,331
Cash received	158	687
Franchise revenues recognized	(340)	(436)
Business combinations [1]	—	(126)
Balance, end of period	$2,274	$2,456

[1] *Recognized $0.1 million of deferred franchise fees within additional paid-in capital upon acquisition of non-controlling interest in Fiscal 2019.*

Revenues recognized disaggregated by type were as follows:

(in thousands)	FISCAL YEAR 2020	2019
Restaurant sales:		
In-restaurant dining sales	$ 257,029	$ 400,345
Third-party delivery sales	38,524	2,648
Take-out sales	41,880	26,316
Total restaurant sales	$ 337,433	$ 429,309
Franchise revenues:		
Royalty and system fund contributions	4,615	6,628
Initial fees	340	436
Total franchise revenues	$ 4,955	$ 7,064
Total revenues	$ 342,388	$ 436,373

Deferred revenues as of December 27, 2020 are expected to be recognized as follows:

	(in thousands)
Fiscal year	
2021	$ 4,273
2022	$ 276
2023	$ 298
2024	$ 299
2025	$ 301
Thereafter	$ 851

4. COVID-19 Charges

Following is a summary of the charges recorded in connection with the COVID-19 pandemic in Fiscal 2020:

(in thousands)	Consolidated Statement of Operations and Comprehensive Loss	FISCAL 2020
Inventory obsolescence and spoilage	Food and beverage costs	$ 562
Compensation for employees upon furlough and return from furlough	Labor and other related expenses	1,065
Health insurance costs paid for furloughed employees, net of employee retention credit of $0.9 million	Labor and other related expenses	746
Other expenses	Other restaurant operating expenses	936
Compensation for employees upon furlough and return from furlough	General and administrative expenses	360
Other expenses	General and administrative expenses	1,080
Total COVID-19 charges		$ 4,749

5. Accounts Receivable

Accounts receivable consists of the following:

(in thousands)	DECEMBER 27, 2020	DECEMBER 29, 2019
Receivables from third-party delivery providers	$ 1,742	$ 42
Receivables related to gift card sales	1,028	3,622
Receivables from franchisees	591	721
Rebate receivables	514	675
Receivable for lease termination	—	450
Other receivables	40	231
Total accounts receivable	$ 3,915	$ 5,741

6. Goodwill

The changes in the carrying value of goodwill were as follows:

(in thousands)	
Balance as of December 30, 2018	$ 330,834
Increases - acquisitions	14,385
Balance as of December 29, 2019	345,219
Increases	—
Balance as of December 27, 2020	$ 345,219

The combination of the abrupt limitations on seating capacity in restaurant dining rooms and the temporary suspension of operations at the company-owned restaurants in April 2020 due to COVID-19 was considered a triggering event indicating that the carrying value of goodwill may not be recoverable. As a result, Management performed a quantitative annual impairment assessment of goodwill in April 2020. No impairment loss was recorded as a result of the quantitative assessment.

In June 2020, substantially all of the company-owned restaurants had re-opened dining rooms with limited seating capacity in compliance with state and local regulations and had operationalized digital ordering, take-out and delivery methods.

Management performed a quantitative annual impairment assessment of goodwill on the first day of the fourth quarter of Fiscal 2020. Based on this quantitative assessment, no impairment loss for goodwill was recorded.

Management performed a qualitative assessment for its annual evaluation of goodwill in Fiscal 2019 and determined there was no impairment loss to be recognized.

7. Intangible Assets, Net

Intangible assets, net consists of the following:

		DECEMBER 27, 2020		
(in thousands)	Weighted Average Useful Lives	Gross Carrying Value	Accumulated Amortization	Net Carrying Value
Registered trademarks, trade names, domains, liquor licenses	Indefinite	$137,776	$ (316)	$137,460
Franchise rights	9 years	9,404	(3,202)	6,202
		$147,180	$ (3,518)	$143,662

		DECEMBER 29, 2019		
(in thousands)	Weighted Average Useful Lives	Gross Carrying Value	Accumulated Amortization	Net Carrying Value
Registered trademarks, trade names, domains, liquor licenses	Indefinite	$137,551	$ (316)	$137,235
Franchise rights	11 years	10,363	(3,040)	7,323
		$147,914	$ (3,356)	$144,558

As described above, in April 2020, the effects of COVID-19 were considered a triggering event indicating that the carrying value of intangible assets may not be recoverable. As a result, Management performed a quantitative impairment assessment for the Company's intangible assets in April 2020. No impairment loss was recorded as a result of the quantitative assessment. Management performed a quantitative annual impairment assessment on the first day of the fourth quarter of Fiscal 2020 and determined there was no impairment loss to be recognized.

The Company's franchise rights which arose from the Advent Acquisition were also tested for impairment in April 2020. These franchise rights are a separate asset group for impairment testing as the related franchise agreements have distinct royalty cash inflows. The quantitative assessment indicated the estimated future undiscounted net cash flows were greater than the net book value of the franchise rights and

no impairment loss was recorded during the second quarter of Fiscal 2020. The definite-lived reacquired rights from the Company's acquisitions were tested at the individual restaurant level in the asset group which includes long-lived assets of the individual restaurants (see Note 8, *Property, Fixtures and Equipment*, net, for additional information).

In the second quarter of Fiscal 2019, Management conducted a strategic review of its restaurant operations and identified needs for increased capital investment and operational changes in The Egg & I restaurants in order for them to remain competitive. Following an internal assessment related to the company-owned The Egg & I restaurants and discussions with The Egg & I franchisees, Management determined there was a reluctance to make sufficient capital investment and operational changes. As such, Management concluded a triggering event had occurred in the second quarter of Fiscal 2019 and determined it was more likely than not that the carrying value of The Egg & I definite and indefinite-lived intangible assets exceeded their fair values.

Management performed a quantitative assessment of the expected future cash flows from The Egg & I trade name using the relief from royalty method. As a result of this assessment, a non-cash impairment charge of $29.0 million was recognized related to the indefinite-lived intangible assets during the second quarter of Fiscal 2019. Additionally, the Company's management evaluated The Egg & I franchise rights, which were definite-lived intangible assets amortized over 13 years. As a result of this evaluation, the Company recognized an additional non-cash impairment charge of $3.2 million during the second quarter of Fiscal 2019. The remaining net book value for The Egg & I trade name and franchise rights, respectively, were amortized through the end of Fiscal 2019. All remaining restaurants that operated under The Egg & I trade name had either closed, disenfranchised or were strategically acquired by the Company and converted to restaurants operating under the First Watch trade name as of December 29, 2019.

Management performed a qualitative assessment for its annual evaluation of indefinite-lived intangible assets in Fiscal 2019 and determined there was no impairment loss to be recognized.

Total amortization expense related to definite-lived intangible assets was $1.1 million and $2.1 million in Fiscal 2020 and Fiscal 2019, respectively. Amortization expense in Fiscal 2019 included the accelerated amortization totaling $0.7 million related to the net carrying value of The Egg & I definite and indefinite-lived intangible assets after the non-cash impairment charges recognized during the second quarter of Fiscal 2019.

Estimated future amortization of definite-lived intangible assets as of December 27, 2020 is as follows:

	(in thousands)
Fiscal year	
2021	$ 1,030
2022	$ 957
2023	$ 807
2024	$ 807
2025	$ 809

8. Property, Fixtures and Equipment, Net

Property, fixtures and equipment, net consists of the following:

(in thousands)	DECEMBER 27, 2020	DECEMBER 29, 2019
Building and land improvements	$ 1,354	$ 1,354
Leased land asset	1,190	1,190
Leasehold improvements	128,252	111,543
Furniture, fixtures and equipment (including capitalized software)	105,520	91,985
Financing lease assets	3,137	2,272
Vehicles	455	455
Total property, fixtures and equipment	239,908	208,799
Accumulated depreciation	(86,250)	(56,737)
Construction-in-progress	7,086	12,272
Total property, fixtures and equipment, net	$ 160,744	$ 164,334

The Company's long-lived assets at company-owned restaurants were evaluated for impairment in April 2020 as a result of the effects of the COVID-19 pandemic using future undiscounted net cash flows over the respective lease terms. As the estimated future undiscounted net cash flows were greater than the net book value of the respective asset groups, no impairment loss was recognized.

Assets totalling $0.3 million were retired or replaced in the ordinary course of business in Fiscal 2020.

In Fiscal 2019, a non-cash impairment charge of $0.3 million was recognized primarily related to one under- performing restaurant. The impairment was determined as the amount by which the carrying value of the restaurant's asset group exceeded its fair value. Fair value was determined based on estimates of discounted future cash flows. In addition, $1.1 million of assets were disposed of associated with restaurants that were remodeled, relocated or closed. These charges were recorded in Impairment and loss on disposal of assets.

Depreciation expense was $29.6 million and $25.9 million during Fiscal 2020 and Fiscal 2019, respectively.

As of December 27, 2020 and December 29, 2019, Property, fixtures and equipment, net included $1.2 million in land related to sale and leaseback transactions accounted for as financing obligations.

9. Accrued Liabilities

Accrued liabilities consists of the following:

(in thousands)	DECEMBER 27, 2020	DECEMBER 29, 2019
Construction liabilities	$ 4,301	$ 5,318
Sales tax	2,159	2,996
Self-insurance and general liability reserves	1,297	1,792
Utilities	1,016	1,417
Common area maintenance	700	180
Credit card fees	520	803
Property tax	424	939
Accounting and consulting	251	1,282
Contingent rent	234	423
Legal services and contingencies	126	2,207
Other	2,454	1,787
Total accrued liabilities	$ 13,482	$ 19,144

10. Debt

Long-term debt, net consists of the following:

(in thousands)	DECEMBER 27, 2020 Balance	DECEMBER 27, 2020 Interest rate (1)	DECEMBER 29,2019 Balance	DECEMBER 29,2019 Interest rate (1)
Senior Credit Facilities:				
Initial Term Loan Repayment in quarterly installments of 0.25%; outstanding balance paid at maturity	$150,214	8.00%	$151,513	7.29%
Initial Delayed Draw Term Loan Repayment in quarterly installments of 0.25%; outstanding balance paid at maturity	48,992	8.00%	49,410	7.29%
First Amendment Delayed Draw Term Facility Repayment in quarterly installments of 0.25%; outstanding balance paid at maturity	49,458	8.00%	34,875	7.29%
Second Amendment Delayed Draw Term Facility Repayment in quarterly installments of 0.25%; outstanding balance paid at maturity	39,369	8.00%	—	—
Revolving Credit Facility Annual commitment fee of 0.50%	—	—	17,000	7.29%
Finance lease liabilities	2,300		2,196	
Financing obligations	3,050		3,050	
Less: Unamortized debt discount and deferred issuance costs	(3,393)		(4,675)	
Total Debt, net	289,990		253,369	
Less: Current portion of long-term debt	(3,590)		(2,972)	
Long-term debt, net	$286,400		$250,397	

(1) *Borrowings under the Senior Credit Facilities bear interest, at the Company's option, at a rate per annum equal to either (a) (i) the greater of an adjusted London Interbank Offered Rate (the "Adjusted Eurocurrency Rate") and 1.00%, plus (ii) the applicable Adjusted Eurocurrency Rate spread, or (b) (i) the alternate base rate ("ABR") plus (ii) the applicable ABR spread. ABR is a floating rate per annum equal to the highest of (i) the federal funds effective rate plus 0.50%, (ii) to the extent ascertainable, the London interbank offered rate for a 1-month interest period on such day plus 1.00%, (iii) the rate of interest last quoted by The Wall Street Journal as the "prime rate" in the U.S. and (iv)1.00%. Borrowings under the Senior Credit Facilities also bear an additional interest pursuant to the Fourth Amendment that is paid in kind. The applicable rate for the additional interest ranges from 0.25% to 1.5% of the outstanding balances, depending on the leverage ratio.*

FWR Holding Corporation, a Delaware corporation and a wholly-owned subsidiary of the Company, is the borrower (the "Borrower") under a credit agreement, dated as of August 21, 2017, (as amended by the First Amendment to Credit Agreement dated as of February 28, 2019 (the "First Amendment"), the Second Amendment to Credit Agreement dated as of December 20, 2019 (the "Second Amendment"), the Third Amendment and Waiver to Credit Agreement dated as of April 27, 2020 (the "Third Amendment") and the Fourth Amendment to Credit Agreement dated as of August 14, 2020 (the "Fourth Amendment"), the "Credit Agreement"), which consists of an initial term loan facility ($155.0 million), an initial delayed draw term facility ($50.0 million) and a revolving credit facility (available commitment of $20.0 million and

includes a $5.0 million sub-limit for letters of credit) for an initial total available borrowing commitment of $225.0 million. The Credit Agreement matures on August 21, 2023.

Pursuant to the First Amendment, the lenders agreed to decrease the interest rate applicable to the loans under the Credit Agreement and certain lenders agreed to provide additional delayed term loan commitments in an aggregate principal amount of $50.0 million that was available commencing on February 28, 2019 (the “first amendment delayed draw term facility”). The total $50.0 million had been drawn in Fiscal 2019.

Pursuant to the Second Amendment, certain lenders agreed to provide additional delayed term loan commitments in an aggregate principal amount of $40.0 million that was available commencing on December 20, 2019 (the “second amendment delayed draw term facility”). A total of $39.6 million had been drawn in Fiscal 2020.

The First Amendment and Second Amendment were accounted for as debt modifications and a total of $1.5 million in costs was incurred, of which $0.9 million was recognized and amortized as debt discount and deferred issuance costs and $0.6 million was recognized in Other (expense) income, net during Fiscal 2019.

Pursuant to the Third Amendment, a condition to borrowing under each delayed draw term facility and the revolving credit facility was added, whereby the aggregate cash balance of the Borrower and its subsidiaries would not exceed $15.0 million at the time of and immediately after giving effect to any such borrowing, which was superseded by the Fourth Amendment with respect to the revolving credit facility, as described below. In addition, the Third Amendment modified certain affirmative and negative covenants under the Credit Agreement and added new affirmative covenants that require the Borrower to deliver cash flow forecasts and monthly financial reports and hold monthly conference calls with lenders until December 31, 2020. The new reporting affirmative covenants were superseded by the Fourth Amendment, as described below. Furthermore, the Third Amendment waived a specific event of default relating to an over- borrowing. The Third Amendment was accounted for as a debt modification and all costs incurred were third-party costs that were recognized in Other (expense) income, net.

Prior to the execution of the Fourth Amendment, the Company received proceeds from an offering of preferred shares totaling $40.0 million, a portion of the proceeds of which were subsequently used to repay the outstanding balance of $10.5 million on the revolving credit facility (see Note 15, *Stockholders’ Equity*, for additional information).

Pursuant to the Fourth Amendment, additional interest is charged on outstanding amounts drawn by the Borrower that shall be paid in kind by being added to the outstanding principle amounts. The Fourth Amendment also provided for: (i) the suspension of debt covenant compliance from April 1, 2020 through March 28, 2021, (ii) an extension of the additional monthly reporting requirements implemented pursuant to the Third Amendment until the first date on which a Compliance Certificate (as defined in the Credit Agreement) is delivered demonstrating compliance with a Total Leverage Ratio (as defined in the Credit Agreement) of 7.00:1.00, (iii) a minimum liquidity covenant, tested twice monthly until the first date on or after June 27, 2021 on which a Compliance Certificate is delivered demonstrating compliance with the Financial Covenant Level (as defined in the Credit Agreement) applicable at such time, (iv) additional restrictions on the ability of the Borrower and its subsidiaries to make restricted payments and restricted debt payments, incur indebtedness, make investments and pay management fees during the period from August 14, 2020 until the first date on or after September 26, 2021 on which a Compliance Certificate is delivered demonstrating compliance with the Financial Covenant Level applicable at such time, (v) additional limitations on the ability of the Borrower to make certain restricted payments and pay management fees and (vi) a restriction on the ability of the Borrower and its subsidiaries to make capital expenditures for new restaurant openings and/or repurchases of franchised unit locations (other than to the

extent funded with certain capital contributions) unless a liquidity threshold is met. The Fourth Amendment was accounted for as a debt modification and all costs incurred were third-party costs that were recognized in Other (expense) income, net.

The initial term loan facility, an initial delayed draw term facility, first amendment delayed draw term facility and the second amendment delayed draw term facility are collectively referred to as “DDTL facilities”.

In addition to the undrawn revolving credit facility, the Company had availability of $1.5 million of DDTL facilities at December 27, 2020.

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 using market yield and yield volatility. The estimated fair value of the outstanding debt, excluding finance lease liabilities and financing obligations, is as follows:

(in thousands)	DECEMBER 27, 2020	DECEMBER 29, 2019
Initial term loan	$ 150,239	$ 151,955
Initial delayed draw term facility	49,000	49,554
First amendment delayed draw term facility	49,466	34,977
Second amendment delayed draw term facility	39,376	—
Revolving credit facility	—	17,048
Total	$ 288,081	$ 253,534

Principal payments due on the outstanding debt, excluding finance lease liabilities and financing obligations, as of December 27, 2020 are as follows:

	(in thousands)
Fiscal Year	
2021	$ 2,946
2022	2,946
2023	282,141
	$ 288,033

Letter of Credit

The Company utilizes a standby letter of credit to satisfy workers’ compensation requirements, as discussed in Note 2, *Summary of Significant Accounting Policies*. The contract amount of the letter of credit approximates its fair value. As of December 27, 2020 and December 29, 2019, the open letter of credit was approximately $0.4 million 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

Substantially all of the Company’s assets are pledged as collateral under the Credit Agreement. The Credit Agreement contains covenants that provide for, among other things, maintenance of certain financial ratios; restrictions on payment of dividends or other distributions; restrictions on creating liens; restrictions on making investments, including acquisitions, loans, and advances; restrictions on additional indebtedness; selling, transferring, or otherwise disposing of assets; liquidating or dissolving subsidiaries of the Company; materially altering the Company’s business; engaging in transactions with affiliates and entering into burdensome agreements. The Borrower was in compliance with all covenants as of December 27, 2020 and December 29, 2019.

11. Leases

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

(in thousands)	Consolidated Balance Sheets Classification	DECEMBER 27, 2020	DECEMBER 29, 2019
Operating lease right-of-use assets	Operating lease right-of-use assets	$ 307,558	$ 302,513
Finance lease assets	Property, fixtures and equipment, net	2,212	2,272
Total lease assets		$ 309,770	$ 304,785
Operating lease liabilities(1) - current	Current portion of operating lease liabilities	$ 40,111	$ 27,436
Operating lease liabilities - non-current	Operating lease liabilities	307,802	295,632
Finance lease liabilities - current	Current portion of long-term debt	645	578
Finance lease liabilities - non-current	Long-term debt, net	1,655	1,618
Total lease liabilities		$ 350,213	$ 325,264

(1) *Excludes all variable lease expense*

The components of lease expense are as follows:

(in thousands)	Consolidated Statements of Operations and Comprehensive Loss Classification	Fiscal Year 2020	2019
Operating lease expense	Occupancy expenses General and administrative expenses Other restaurant operating expenses	$41,813	$37,075
Variable lease expense	Occupancy expenses General and administrative expenses Food and beverage costs	9,692	9,788
Finance lease expense:			
Amortization of leased assets	Depreciation and amortization	501	425
Interest on lease liabilities	Interest expense	184	163
Total lease expense (1)		$52,190	$47,451

(1) Includes contingent rent of $0.1 million and $0.7 million during Fiscal 2020 and Fiscal 2019, respectively.

Supplemental cash flow information related to leases is as follows:

(in thousands)	Fiscal Year 2020	2019
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows - operating leases	$22,011	$23,195
Operating cash flows - finance leases	$ 184	$ 163
Financing cash flows - finance leases	$ 339	$ 500

Supplemental information related to leases was as follows:

	Fiscal Year 2020	2019
Weighted-average remaining lease term (in years)		
Operating leases	16.3	17.1
Finance leases	4.4	4.8
Weighted-average discount rate (1)		
Operating leases	9.1%	9.1%
Finance leases	8.0%	8.1%

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

Future minimum lease payments on lease liabilities as of December 27, 2020 are as follows:

(in thousands)	Operating Leases	Finance Leases
Fiscal year		
2021	$ 41,695	$ 663
2022	39,755	618
2023	40,572	618
2024	41,252	618
2025	41,278	201
Thereafter	491,306	10
Total future minimum lease payments (1)	695,858	2,728
Less: imputed interest	(347,945)	(428)
Total present value of lease liabilities	$ 347,913	$ 2,300

(1) *Excludes approximately $61.6 million of signed operating leases that have not commenced as of December 27, 2020.*

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. As of December 27, 2020 and December 29, 2019, the balance of the financing obligation was $3.1 million.

12. Acquisitions

The Company did not have acquisitions in Fiscal 2020.

On December 31, 2018, four restaurants were acquired from a franchisee for approximately $7.0 million in cash. The acquisition was accounted for as a business combination and $5.1 million was attributed to goodwill, which was tax deductible for income tax purposes. The purchase price was allocated to the fair value of assets acquired and liabilities assumed at the date of the acquisition as follows:

(in thousands)	
Purchase price	$6,999
Recognized amounts of identifiable assets acquired and liabilities assumed:	
Cash	$ 3
Inventory	25
Other long-term assets	21
Property, fixtures and equipment	903
Reacquired rights	971
Favorable leasehold positions	67
Accrued liabilities	(55)
Gain on settlement of pre-existing agreements	(40)
Goodwill	$5,104

On January 28, 2019, five operating restaurants and rights for two additional restaurant sites were acquired from a franchisee for approximately $9.9 million in cash. The acquisition was accounted for as a business combination and $4.4 million was attributed to goodwill, which was tax deductible for income tax purposes. A total of $0.2 million of deferred franchise revenues was recognized in Franchise revenues in Fiscal 2019 as a result of terminating the pre-existing franchise agreements. The purchase price was allocated to the fair value of assets acquired and liabilities assumed at the date of the acquisition as follows:

(in thousands)	
Purchase price	$9,907
Recognized amounts of identifiable assets acquired and liabilities assumed:	
Cash	$ 5
Inventory	56
Prepaid expenses	9
Other long-term assets	15
Property, fixtures and equipment	4,438
Reacquired rights	968
Accrued liabilities	(20)
Goodwill	$4,436

During the months June 2019 through December 2019, a series of acquisitions of nine individual restaurants from unrelated franchisees was completed for total cash consideration of approximately $6.2 million. The acquisitions were individually accounted for as business combinations and $4.8 million was attributed to goodwill, which was tax deductible for income tax purposes. The total purchase price was allocated to the fair value of assets acquired and liabilities assumed at the respective dates of the acquisitions as follows:

(in thousands)	
Purchase price	$6,196
Recognized amounts of identifiable assets acquired and liabilities assumed:	
Cash	$ 7
Inventory	52
Prepaid expenses	31
Other current assets	42
Property, fixtures and equipment	966
Reacquired rights	455
Accrued liabilities	(82)
Gains on settlements of pre-existing agreements	(120)
Goodwill	$4,845

The portions of the purchase price of all acquisitions during Fiscal 2019 attributable to goodwill represent benefits expected as a result of the strategic acquisitions, including sales and unit growth opportunities. The Company incurred transaction costs totaling $0.9 million during Fiscal 2019 for all acquisitions, which were expensed as incurred. The operating results of the acquired restaurants have been included in the consolidated financial statements since the respective dates of the acquisitions. Pro-forma financial information for the period prior to the acquisitions was not presented due to the immaterial impact of the financial results on the consolidated financial statements during Fiscal 2019.

On June 14, 2018, the Company acquired a 75% controlling financial interest in TFW, which was a franchisee with no operating restaurants at the time of the acquisition, for approximately $0.1 million. On December 24, 2019, the remaining 25% non-controlling interest in TFW was acquired for $0.45 million. The acquisition was accounted for as an equity transaction with the difference between the cash paid and the carrying amount of the non-controlling interest recognized as a decrease to equity attributable to First Watch Restaurant Group, Inc.

13. Transaction (Income) Expenses, Net

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

	FISCAL YEAR	
(in thousands)	2020	2019
Conversion costs	$ 71	$1,596
Acquisition - related costs	—	872
(Gain) Loss on restaurant closures	(36)	488
Gain on lease termination, net	—	(885)
Contingent consideration liability revaluation (Note 14)	(293)	(362)
Total transaction (income) expenses, net	$(258)	$1,709

The Company incurred $0.1 million and $1.6 million of costs in Fiscal 2020 and Fiscal 2019, respectively, in connection with the conversion of certain restaurants to company-owned restaurants operating under the First Watch trade name.

As a result of revaluing the contingent consideration liability initially recognized in connection with the Advent Acquisition (see Note 14, *Income Taxes*, for additional information), the Company decreased the liability and recorded $0.3 million and $0.4 million in Fiscal 2020 and Fiscal 2019, respectively, within Transaction (income) expenses, net.

In Fiscal 2019, the Company incurred $0.9 million of costs in connection with the acquisitions of restaurants from franchisees and incurred lease termination and other related costs of $0.5 million for closures of restaurants.

On December 16, 2019, an agreement was executed to terminate the lease for one restaurant facility in January 2020. Pursuant to the agreement, the Company received $0.45 million in December 2019 and received an additional $0.45 million upon vacating the leased property in January 2020. A gain on lease termination of $0.9 million, net of closure costs, was recorded in Fiscal 2019.

14. Income Taxes

Income tax benefit consists of the following:

(in thousands)	FISCAL YEAR 2020	2019
Current provision:		
Federal	$ —	$ —
State	118	139
	118	139
Deferred (benefit) provision:		
Federal	(18,458)	(10,438)
State	(1,533)	(2,120)
	(19,991)	(12,558)
Income tax benefit	$ (19,873)	$ (12,419)

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

	FISCAL YEAR 2020	2019
Income taxes at federal statutory rate	(21.0)%	(21.0)%
State income taxes, net of federal tax effect	(4.1)	(2.9)
FICA tip credit	(4.7)	(6.9)
Valuation allowance for federal and state	1.8	10.2
Rate change	(0.1)	(0.9)
Other	(0.5)	—
Total	(28.6)%	(21.5)%

The Company has a blended federal and state statutory rate of approximately 25.0%. The effective income tax rate for Fiscal 2020 was higher than the blended federal and state statutory rate primarily due to the change in the valuation allowance and the benefit of the tax credits for FICA taxes on certain employee tips. The effective income tax rate for Fiscal 2019 was lower than the blended federal and state statutory rate primarily due to the change in the valuation allowance for federal and state deferred tax assets and the benefit of tax credits for FICA taxes on certain employees' tips.

The components of deferred tax assets and liabilities at December 27, 2020 and December 29, 2019 are as follows:

(in thousands)	DECEMBER 27, 2020	DECEMBER 29, 2019
Deferred income tax assets		
FICA tip credit	$ 28,324	$ 24,771
Net operating loss	37,365	12,254
Operating lease liabilities	86,615	81,487
Organizational costs	914	1,091
Interest limitation	1,500	2,818
Accrued compensation	2,032	421
Deferred revenues	561	600
Stock-based compensation	918	733
Other	1,094	1,276
Valuation allowance	(30,214)	(28,975)
Total deferred income tax assets	129,109	96,476
Deferred income tax liabilities		
Operating lease right-of-use assets	(76,190)	(75,092)
Depreciation	(27,873)	(16,876)
Indefinite-lived assets	(35,359)	(34,812)
Total deferred income tax liabilities	(139,422)	(126,780)
Net deferred income tax liabilities	$ (10,313)	$ (30,304)

Based upon an evaluation of the Company's deferred tax assets, Management has recognized a valuation allowance of $30.2 million and $29.0 million as of December 27, 2020 and December 29, 2019, respectively. The valuation allowance primarily relates to the Company's federal tax credit carryforwards and charitable contribution 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.

The Company has federal net operating loss carryforwards of $161.7 million at December 27, 2020, of which $117.3 million have an indefinite life and $44.4 million can be carried forward twenty years and will expire between 2033 and 2037. The Company had federal net operating loss carryforwards of $53.1 million at December 29, 2019, of which $9.5 million had an indefinite life and $43.6 million can be carried forward twenty years and will expire between 2033 and 2037. The Company has state net operating loss carryforwards of $66.5 million and $24.1 million at December 27, 2020 and December 29, 2019, respectively. The Company also has general business tax credits of $28.5 million and $24.9 million at

December 27, 2020 and December 29, 2019, respectively, which can be carried forward twenty years and will expire between 2027 and 2040.

As of December 27, 2020, approximately $38.3 million, $19.0 million and $14.7 million of the federal loss carryforwards, state loss carryforwards and general business credits, respectively, were accumulated from operations prior to the Advent Acquisition in August 2017. To the extent these federal and state loss carryforwards and general business credits 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 accounting for the Advent Acquisition, a contingent consideration liability of $1.2 million was initially recognized, of which approximately $0.2 million was paid in Fiscal 2019. As a result of revaluing the contingent consideration liability using actual results, expected projections and state tax law changes in Fiscal 2020, the contingent consideration liability for expected payments to be made to the previous stockholders was $0.3 million as of December 27, 2020, of which $0.2 million was recorded within Other long-term liabilities and $0.1 million was recorded within Accrued liabilities. As of December 29, 2019, the contingent consideration liability was $0.6 million, of which $0.1 million was recorded within Accrued liabilities and $0.5 million within Other long-term liabilities.

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

(in thousands)	
Balance as of December 30, 2018	$(24,654)
Increases to income tax benefit	(4,321)
Balance as of December 29, 2019	(28,975)
Increases to income tax benefit	(1,239)
Balance as of December 27, 2020	$(30,214)

The Company is subject to examination by federal, state, and local jurisdictions, where applicable. As of December 27, 2020, 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 recorded within Accrued compensation and deferred payroll taxes and the remaining amount was recorded within Deferred payroll taxes. 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.

15. Stockholders' Equity

The Company is authorized to issue 266,667 of preferred stock having a par value of $0.01 per share. The Company issued 266,667 preferred stock shares to existing stockholders, including Advent International Corporation, directors and executive officers, in Fiscal 2020. Preferred stockholders are entitled to receive dividends, as and if declared by the board of directors, on an as-converted basis with common stock. In the event of liquidation, dissolution or winding up of the Company, or upon a change of control, sale of all or substantially all the assets of the Company, the preferred stockholders are first entitled to the assets of the Company available for distribution. Each preferred stockholder is entitled to receive for each share of preferred stock, prior to distribution on the common stock, an amount equal to the greater of (i) the original price per share of preferred stock plus any declared and unpaid dividends, and (ii) the amount such preferred stockholder would receive on an as-converted to common stock basis. The preferred stock is convertible at the option of the holders without the payment of additional consideration and is mandatorily convertible upon an initial public offering of the Company. The preferred stock votes on an as-converted to common stock basis. The preferred stock is not redeemable other than in the event the Company consummates a change of control, sale, or sale of substantially all the assets of the Company, but does not distribute the proceeds thereof in a dissolution event. The proceeds from the issuance of the preferred shares were used to repay the outstanding balance of $10.5 million on the revolving credit facility and for working capital and general corporate purposes.

The Company is authorized to issue 4,588,667 common stock shares with a par value of $0.01 per share. 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.

No cash dividends were declared or paid in Fiscal 2020 and Fiscal 2019.

16. 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 $0.3 million and $0.5 million in Fiscal 2020 and Fiscal 2019, respectively.

17. Stock Based Compensation

Stock-based awards are granted to employees and non-employee directors. The 2017 Omnibus Equity Incentive Plan (the "Options Plan"), which was effective from August 31, 2017, authorizes stock-based awards to be granted for up to 518,520 shares of common stock. The Options Plan provides for the issuance of any one or combination of the following awards: (i) Stock Options; (ii) Stock Appreciation Rights; (iii) Restricted Stock and (iv) Other Stock-Based Awards, for which the terms are defined by the Options Plan. There was a total of 85,047 and 85,202 common stock authorized and available for future issuance as of December 27, 2020 and December 29, 2019, respectively.

Stock option awards are generally granted with 50% of the awards vesting over a five-year requisite service period and 50% of the awards vesting upon the occurrence of certain events, and only if certain

market conditions have been achieved, as defined. Stock-based compensation expense for the performance-based option awards is recognized if it is considered probable that the performance conditions will be met. Any performance-based option awards not achieving the market conditions upon a change in control will be terminated. Stock options have an exercisable life of no more than ten years from the date of grant. The exercise price for any stock option award must be at least equal to the fair value of the common stock on the grant date.

A summary of option transactions under the Options Plan for Fiscal 2020 and Fiscal 2019 was as follows:

	FISCAL YEAR			
	2020		2019	
	Number of Options	Weighted-Average Exercise Price	Number of Options	Weighted-Average Exercise Price
Outstanding, beginning of period	433,318	$ 110.24	368,219	$ 101.70
Granted	23,013	$ 155.07	70,099	$ 154.34
Forfeited	(21,858)	$ 139.48	(5,000)	$ 100.00
Outstanding, end of period	434,473	$ 111.14	433,318	$ 110.24
Exercisable, end of period	106,575	$ 103.89	67,472	$ 100.93

The fair value of the non-vested options at grant dates was as follows:

	Number of Options	Grant Date Fair Value
Nonvested, December 30, 2018	336,569	$ 21.71
Granted	70,099	$ 15.67
Vested	(36,322)	$ 21.95
Forfeited	(4,500)	$ 19.87
Nonvested, December 29, 2019	365,846	$ 20.55
Granted	23,013	$ 12.04
Vested	(41,146)	$ 21.27
Forfeited	(19,815)	$ 20.33
Nonvested, December 27, 2020	327,898	$ 19.88

The fair value of vested stock options was $0.9 million and $0.8 million during Fiscal 2020 and Fiscal 2019, respectively. Stock-based compensation expense was $0.8 million and $1.2 million during Fiscal 2020 and Fiscal 2019, respectively, which was included in General and administrative expenses.

As of December 27, 2020, the amount of stock-based compensation expense not yet recognized on non- vested time-based awards was approximately $0.8 million and will be recognized over a weighted-average period of approximately two years. As of December 27, 2020, the amount of stock-based compensation expense not yet recognized on non-vested performance-based awards was approximately $4.5 million and will be expensed upon the performance conditions becoming probable. The remaining contractual life for stock option awards granted was approximately 7 years at December 27, 2020.

The assumptions utilized to determine the fair value of stock options were as follows for the following periods:

	FISCAL YEAR	
	2020	2019
Weighted average risk-free interest rate	0.64%	2.02%
Weighted average expected volatility	41.18%	34.13%
Expected term (years)	4.5	4.5
Expected dividend yield	—	—

The risk-free interest rate is determined by reference to the U.S. Treasury yield curve in effect at the time of the grant of the award for time periods approximately equal to the expected term of the stock option award. The expected term of stock option awards has been determined based on data from publicly traded companies as the Company lacks company-specific historical or implied volatility information. Therefore, Management also estimates its expected volatility based on historical volatilities of a publicly traded set of peer companies in the restaurant industry and expects to continue to do so until such time as it has adequate historical data regarding the volatility of its own traded stock price. 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.

18. Commitments and Contingencies

Purchase Commitments

Effective January 1, 2016, 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 406,905 gallons of product or (ii) five years from the effective date. The remaining minimum purchase commitment as of December 27, 2020 was approximately $2.5 million.

The Company uses a limited number of suppliers and distributors for many of its ingredients. In Fiscal 2020 and Fiscal 2019, the Company purchased 100% of its pork from two suppliers, 100% of its eggs from two suppliers and 80% of its avocados from one supplier. These ingredients were purchased pursuant to purchase orders at prevailing market prices and were not limited by minimum purchase requirements. The Company also purchased 100% of its coffee from one supplier pursuant to a contract that includes quarterly minimum purchase commitments at prevailing market prices. There are no material financial penalties associated with these quarterly minimum purchase commitments.

In the normal course of business, the Company has other agreements with terms of one year or less, expiring at various dates through Fiscal 2021 whereby the Company is able to purchase ingredients at prevailing market prices. These obligations are generally short-term in nature and are recorded as liabilities when the related goods are received or services rendered. The Company also entered into other contracts with certain vendors to supply food, beverages, paper goods, and other supplies related to normal business operations, service contracts and technology. There are no material financial penalties associated with these commitments in the event of early termination.

Legal Proceedings

The Company is subject to legal proceedings, claims and liabilities that arise in the ordinary course of business. In the opinion of Management, the amount of the ultimate liability with respect to these matters was not material as of December 27, 2020. In the event any litigation losses become probable and estimable, the Company will recognize any anticipated losses.

Disputed claims involving former employees for which a $0.6 million liability was recorded in Fiscal 2019 was settled and paid in Fiscal 2020.

19. Net Loss Per Common Share

The following table sets forth the computations of basic and diluted net loss per common share attributable to First Watch Restaurant Group, Inc.:

(in thousands, except share and per share data)	FISCAL YEAR 2020	2019
Numerator:		
Net loss attributable to First Watch Restaurant Group, Inc.	$ (49,681)	$ (45,439)
Denominator:		
Weighted average common shares outstanding—basic and diluted	3,802,481	3,802,481
Net loss per common share attributable to First Watch Restaurant Group, Inc. -basic and diluted	$ (13.07)	$ (11.95)

Diluted net 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 and stock option awards outstanding and unvested as of December 27, 2020 and December 29, 2019 using the two-class method and treasury method, respectively. All preferred stock and stock option awards outstanding were excluded from the calculation of diluted loss per common share because of their anti-dilutive impact for Fiscal 2020. All stock option awards were excluded from the calculation of diluted loss per common share because of their anti-dilutive impact for Fiscal 2019. 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 2020 and Fiscal 2019.

20. 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 DATA)

	DECEMBER 27, 2020	DECEMBER 29, 2019
Assets:		
Investment in subsidiaries	$ 320,866	$ 329,797
Equity:		
Preferred Stock; $0.01 par value; 266,667 shares authorized, issued and outstanding	$ 3	$ —
Common stock; $0.01 par value; 4,588,667 shares authorized and 3,802,481 shares issued and outstanding at December 27, 2020; 4,321,000 shares authorized and 3,802,481 shares issued and outstanding at December 29, 2019	38	38
Additional paid-in capital	423,757	383,010
Accumulated deficit	(102,932)	(53,251)
Total equity attributable to First Watch Restaurant Group, Inc.	$ 320,866	$ 329,797

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

	FISCAL YEAR	
	2020	2019
Equity in net loss of subsidiaries		
Net loss	$ (49,681)	$ (45,472)
Net loss per common share attributable to First Watch Restaurant Group, Inc. – basic and diluted	$ (13.07)	$ (11.96)
Weighted average number of common shares outstanding – basic and diluted	3,802,481	3,802,481

Statements of cash flows have not been presented as First Watch Restaurant Group, Inc. did not have any cash as of, or for the fiscal years ended December 27, 2020 and December 29, 2019.

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 10, *Debt*, the Company and certain of its subsidiaries have restrictions on their ability to, among other things, incur additional indebtedness, pay dividends or make certain intercompany loans and advances. 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 27, 2020 and December 29, 2019.

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

21. Subsequent Events

Subsequent events were evaluated through April 23, 2021, the date on which the consolidated financial statements were available to be issued. There were no such events that require adjustment to the consolidated financial statements or disclosure in the notes to the consolidated financial statements.

Shares

Common Stock

Prospectus

BofA Securities **Goldman Sachs & Co. LLC** **Jefferies**

, 2021

Until , 2021 (25 days after the date of this prospectus), all dealers that buy, sell or trade in shares of these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

PART II—INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth all costs and expenses, other than the underwriting discount, paid or payable by us in connection with the sale of the common stock being registered. All amounts shown are estimates except for the SEC registration fee, the FINRA filing fee and the listing fee for Nasdaq.

	Amount Paid or to be Paid
SEC registration fee	$ *
FINRA filing fee	*
Stock exchange listing fee	*
Blue sky qualification fees and expenses	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Transfer agent and registrar fees and expenses	*
Miscellaneous expenses	*
Total	$ *

* To be provided by amendment

Item 14. Indemnification of Officers and Directors.

The Registrant is governed by the DGCL. Section 145 of the DGCL provides that a corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person was or is an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such officer, director, employee or agent acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the corporation's best interest and, for criminal proceedings, had no reasonable cause to believe that such person's conduct was unlawful. A Delaware corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or contemplated action or suit by or in the right of such corporation, under the same conditions, except that such indemnification is limited to expenses (including attorneys' fees) actually and reasonably incurred by such person, and except that no indemnification is permitted without judicial approval if such person is adjudged to be liable to such corporation. Where an officer or director of a corporation is successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to above, or any claim, issue or matter therein, the corporation must indemnify that person against the expenses (including attorneys' fees) which such officer or director actually and reasonably incurred in connection therewith.

The Registrant's amended and restated bylaws will authorize the indemnification of its officers and directors, consistent with Section 145 of the DGCL, as amended. The Registrant intends to enter into indemnification agreements with each of its directors and executive officers. These agreements, among other things, will require the Registrant to indemnify each director and executive officer to the fullest extent permitted by Delaware law, including indemnification of expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or executive officer in any action or proceeding, including any action or proceeding by or in right of the Registrant, arising out of the person's services as a director or executive officer.

Reference is made to Section 102(b)(7) of the DGCL, which enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for violations of the director's fiduciary duty, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL, which provides for liability of directors for unlawful payments of dividends of unlawful stock purchase or redemptions or (iv) for any transaction from which a director derived an improper personal benefit.

The Registrant expects to maintain standard policies of insurance that provide coverage (i) to its directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (ii) to the Registrant with respect to indemnification payments that it may make to such directors and officers.

The proposed form of Underwriting Agreement to be filed as Exhibit 1.1 to this Registration Statement provides for indemnification to the Registrant's directors and officers by the underwriters against certain liabilities.

Item 15. Recent Sales of Unregistered Securities

The following sets forth information regarding all unregistered securities sold by the Registrant in transactions that were exempt from the requirements of the Securities Act in the last three years:

- In July 2018, the Registrant granted options to three employees to purchase an aggregate of 41,000 shares of its common stock at an exercise price of $100 per share.
- In October 2018, the Registrant granted options to 11 employees to purchase an aggregate of 15,719 shares of its common stock at an exercise price of $140 per share.
- In April 2019, the Registrant granted options to 10 employees to purchase an aggregate of 39,670 shares of its common stock at an exercise price of $150 per share.
- From July 2019 through April 2020, the Registrant granted options to seven employees and directors to purchase an aggregate of 42,107 shares of its common stock at an exercise price of $160 per share.
- From September 2020 through February 2021, the Registrant granted options to seven employees and directors to purchase an aggregate of 23,834 shares of its common stock at an exercise price of $150 per share.
- On August 14, 2020, the Registrant sold 258,745.8805 shares of preferred stock to AI Fresh Holdings Limited Partnership for an aggregate purchase price of $38,811,882.08, at a price of $150 per share.

The offers, sales and issuances of the preferred stock listed above were exempt from registration under the Securities Act under Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder as transactions by an issuer not involving a public offering. The shares of common stock in all of the transactions listed above were issued or will be issued in reliance upon Section 4(2) of the Securities Act or Rule 701 promulgated under Section 3(b) of the Securities Act as the sale of such securities did not or will not involve a public offering. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed upon the stock certificates issued in these transactions. All recipients had adequate access, through their relationships with the Registrant, to information about the Registrant.

Item 16. Exhibits and Financial Statement Schedules

(a) *Exhibits:*

Exhibit No.	Description
1.1*	Form of Underwriting Agreement.
3.1*	Form of Amended and Restated Certificate of Incorporation of First Watch Restaurant Group, Inc. to be in effect prior to the consummation of the offering made under this Registration Statement.
3.2*	Form of Amended and Restated Bylaws of First Watch Restaurant Group, Inc. to be in effect prior to the consummation of the offering made under this Registration Statement.
3.3**	Certificate of Incorporation of First Watch Restaurant Group, Inc., as currently in effect.
3.4A**	Bylaws of First Watch Restaurant Group, Inc., as currently in effect.
4.1*	Form of Certificate of Common Stock.
4.2*	Form of Certificate of Preferred Stock.
5.1*	Opinion of Weil, Gotshal & Manges LLP.
10.1(a)	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.
10.1(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.
10.1(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.
10.1(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.
10.1(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.
10.2**	Employment Agreement, dated August 21, 2017, by and between First Watch Restaurants, Inc. and Christopher A. Tomasso.
10.3**	2017 AI Fresh Super Holdco, Inc. Equity Incentive Plan, dated as of August 31, 2017.
10.4	Employment Agreement, dated August 21, 2017, by and between First Watch Restaurants, Inc. and Laura Sorensen.
10.5	Employment Agreement, dated August 21, 2017, by and between First Watch Restaurants, Inc. and Eric Hartman.
10.6*	Form of First Watch Restaurant Group, Inc. 2021 Equity Incentive Plan.
10.7*	Form of Director Indemnification Agreement for First Watch Restaurant Group, Inc.
21.1	List of subsidiaries.
23.1*	Consent of PricewaterhouseCoopers LLP.
23.2*	Consent of Weil, Gotshal & Manges LLP (included in Exhibit 5.1).
24.1*	Power of Attorney (included on signature page).

* To be filed by amendment.
** Previously filed.

Item 17. Undertakings

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreements, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Bradenton, State of Florida, on , 2021.

FIRST WATCH RESTAURANT GROUP, INC.

By: _____
Name: Christopher A. Tomasso
Title: President, Chief Executive Officer and Director

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned constitutes and appoints each of Christopher A. Tomasso, Mel Hope and Jay Wolszczak, or any of them, each acting alone, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in his name, place and stead, in any and all capacities, to sign this Registration Statement on Form S-1 (including all pre-effective and post-effective amendments and registration statements filed pursuant to Rule 462(b) under the Securities Act), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, each acting alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming that any such attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities indicated on , 2021.

Signature	Title
Christopher A. Tomasso	President, Chief Executive Officer and Director (Principal Executive Officer)
Mel Hope	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)
Jay Wolszczak	General Counsel and Secretary
Kenneth L. Pendery, Jr.	Chairman Emeritus
Ralph Alvarez	Director and Chairman of the Board
Julie M.B. Bradley	Director
Tricia Glynn	Director

Signature	Title
William Kussell	Director
David Mussafer	Director
Lisa Price	Director
Michael White	Director

Exhibit 10.1(a)

CREDIT AGREEMENT
Dated as of August 21, 2017

among

AI FRESH MERGER SUB, INC.
(to be merged with and into FWR HOLDING CORPORATION),
as the Borrower,

AI FRESH PARENT, INC.,
as Holdings,

THE FINANCIAL INSTITUTIONS PARTY HERETO,
as Lenders,

GOLUB CAPITAL MARKETS LLC,
as Administrative Agent,

GOLUB CAPITAL MARKETS LLC,
TCG BDC, INC.,
ARES CAPITAL MANAGEMENT LLC,
GOLDMAN SACHS PRIVATE MIDDLE MARKET CREDIT LLC,
GOLDMAN SACHS MIDDLE MARKET LENDING CORP. and
SENIOR CREDIT FUND SPV I, LLC,
as Joint Lead Arrangers and Joint Bookrunners

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SCHEDULES:

EXHIBITS:

CREDIT AGREEMENT

CREDIT AGREEMENT, dated as of August 21, 2017 (this "Agreement"), by and among AI Fresh Merger Sub, Inc., a Delaware corporation ("Merger Sub" and, prior to the Closing Date Merger (as defined below), the Borrower), which upon the effectiveness of the Closing Date Merger will be merged with and into FWR Holding Corporation, a Delaware corporation (the "Target" and, after the Closing Date Merger, the Borrower), AI Fresh Parent, Inc., a Delaware corporation ("Holdings"), the Lenders from time to time party hereto, Golub Capital Markets LLC ("Golub Capital"), in its capacities as administrative agent and collateral agent for the Secured Parties (in such capacities and together with its successors and assigns, the "Administrative Agent").

RECITALS

A. Pursuant to the terms of the Merger Agreement, Merger Sub will be merged with and into the Target on the Closing Date, with the Target as the surviving entity of such merger (the "Closing Date Merger").

B. Substantially concurrently with the consummation of the Closing Date Merger, all indebtedness for borrowed money that is outstanding under that certain Amended and Restated Credit Agreement, dated as of May 27, 2015 (as amended, modified and supplemented from time to time and in effect on the date hereof, the "Existing Credit Agreement"), by and among, *inter alios*, First Watch Restaurants, Inc., a Delaware corporation, as the borrower, the Target, as a guarantor, the lenders from time to time party thereto and Golub Capital, as administrative agent, will be repaid in full (or in the case of letters of credit issued under the Existing Credit Agreement, at the election of the Borrower, replaced, backstopped or incorporated or "grandfathered" into the Revolving Facility) and all commitments, liens and security interests under the Existing Credit Agreement shall be terminated and released (the "Refinancing").

C. To fund the Refinancing and a portion of the consideration for the Closing Date Merger, the Borrower has requested that the Lenders extend credit under this Agreement in the form of (i) Initial Term Loans in an original aggregate principal amount equal to $155,000,000, (ii) an Initial Delayed Draw Term Facility in an original aggregate principal amount equal to $50,000,000 of commitments and (iii) an Initial Revolving Facility with an available amount of $20,000,000.

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 1.01. 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.

"Acceptable Intercreditor Agreement" means:

(a) with respect to any Indebtedness that is secured on a pari passu basis with the Initial Loans, a First Lien Intercreditor Agreement; and/or

(b) with respect to any other Indebtedness (i) any other customary intercreditor or subordination agreement or arrangement, as applicable, the terms of which are consistent with market terms (as determined by the Borrower and the Administrative Agent in good faith) in each case, 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) any other intercreditor agreement the terms of which are reasonably acceptable to the Borrower and the Administrative Agent.

"ACH" means automated clearing house transfers.

"Additional Agreement" has the meaning assigned to such term in Article 8.

"Additional Commitment" means any commitment hereunder added pursuant to Sections 2.22 or 2.23.

"Additional Loans" means any Additional Revolving Loans and any Additional Term Loans.

"Additional Revolving Credit Commitments" means any revolving credit commitment added pursuant to Sections 2.22 or 2.23.

"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, 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 or 2.23.

"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 or 2.23.

"Additional Term Loans" means any term loan added pursuant to Section 2.22 or 2.23.

"Adjusted Eurocurrency Rate" means, with respect to any Eurocurrency Rate Borrowing for any Interest Period, an interest rate per annum equal to the greater of (i) the Eurocurrency Rate for such Interest Period, multiplied by the Statutory Reserve Rate and (ii) 1.00%. The Adjusted Eurocurrency Rate for any Eurocurrency Rate Borrowing that includes the Statutory Reserve Rate as a component of the calculation will be adjusted automatically with respect to all such Eurocurrency Rate Borrowings then outstanding as of the effective date of any change in the Statutory Reserve Rate.

"Adjustment Date" has the meaning assigned to such term in the definition of "Applicable Rate".

"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.

"Advent" means Advent International Corporation.

"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 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 Subsidiaries, threatened in writing, against or affecting Holdings, the Borrower or any of its Subsidiaries or any property of Holdings, the Borrower or any of its Subsidiaries.

"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" solely because it is an unrelated portfolio company of the Sponsor and none of the Administrative Agent, the Arrangers, any Lender (other than any Affiliated Lender or Debt Fund Affiliate) or any of their respective Affiliates shall be considered an Affiliate of Holdings or any subsidiary thereof.

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

"Affiliated Lender Assignment and Assumption" means 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 or 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.

"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 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 LIBO Rate for any day shall be based on the rate determined on such day at 11:00 a.m. (London time)) plus 1.00%, (c) the Prime Rate and (d) 1.00%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the LIBO Rate, 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 LIBO Rate, as the case may be.

"Applicable Initial Delayed Draw Term Loan Percentage" means, with respect to any Initial Delayed Draw Term Lender of any Class, a percentage equal to a fraction the numerator of which is the aggregate outstanding principal amount of the unused Initial Delayed Draw Term Loan Commitments of such Initial Delayed Draw Term Lender under the applicable Class and the denominator of which is the aggregate outstanding principal amount of the Initial Delayed Draw Term Loan Commitments of all Initial Delayed Draw Term Lenders under the applicable Class.

"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 and Initial Delayed Draw 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 Additional Term Loan Commitments and Initial Delayed Draw Term Loan 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 (a) with respect to any Initial Revolving Loan, the rate per annum applicable to the relevant Class of Revolving Loans set forth below under the caption "ABR Spread" or "Adjusted Eurocurrency Rate Spread," as the case may be, opposite the applicable level of Total Leverage Ratio, and (b) with respect to any Initial Term Loan and any Initial Delayed Draw Term Loan, the rate per annum applicable to the relevant Class of Initial Loans set forth below under the caption "ABR Spread" or "Adjusted Eurocurrency Rate Spread," as the case may be, opposite the applicable level of Total Leverage Ratio; provided that until the first Adjustment Date following the first full Fiscal Quarter ended after the Closing Date for which the Borrower has delivered financial statements pursuant to Section 5.01(a) or (b), the "Applicable Rate" for any Revolving Loan, any Initial Term Loan and any Initial Delayed Draw Term Loan shall be 6.00% per annum for Adjusted Eurocurrency Rate Loans and 5.00% per annum for ABR Loans:

		Initial Revolving Loans		Initial Term Loans		Initial Delayed Draw Term Loans	
Level	Total Leverage Ratio	ABR Spread	Adjusted Eurocurrency Rate Spread	ABR Spread	Adjusted Eurocurrency Rate Spread	ABR Spread	Adjusted Eurocurrency Rate Spread
I	Greater than 4.25:1.00	5.00%	6.00%	5.00%	6.00%	5.00%	6.00%
II	Less than or equal to 4.25:1.00	4.75%	5.75%	4.75%	5.75%	4.75%	5.75%

The Applicable Rate shall be adjusted from time to time upon delivery to the Administrative Agent of the financial statements for each Fiscal Quarter required to be delivered pursuant to Section 5.01(a) or (b), as applicable, accompanied by a written calculation of the Total Leverage Ratio pursuant to a properly completed Compliance Certificate delivered to Administrative Agent with such financial statements pursuant to Section 5.01(c) hereof. If such calculation indicates that any of the rates per annum applicable to any Class of Revolving Loans, the Initial Term Loans or any Delayed Draw Term Loans shall increase or decrease, then on the first day of the month following the month in which such financial statements and Compliance Certificate are delivered to Administrative Agent (the "Adjustment Date"), the "Applicable Rate" shall be adjusted in accordance therewith; provided, however, that if Borrower shall fail to deliver any such financial statements or Compliance Certificate for any such Fiscal Quarter by the date required pursuant to the applicable clause of Section 5.01(a) or (b), as applicable, then, effective as of the first day of the month following the end of the month during which such financial statements were to have been delivered, and continuing through the last day of the month in which such financial statements and such written calculation are finally delivered (if ever), the "Applicable Rate" for any Initial Revolving Loan or Initial Loan shall be the rate per annum set forth above in Level I until such financial statements are delivered in compliance with Section 5.01(a) or (b), as applicable; provided further, however, that during the existence of any Default or Event of Default, at the election of Administrative Agent or Required Lenders, the "Applicable Rate" shall not decrease with respect to any Loan as otherwise set forth above.

"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) 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 Golub Capital, TCG BDC, Inc., Ares Capital Management LLC, Goldman Sachs Private Middle Market Credit LLC, Goldman Sachs Middle Market Lending Corp. and Senior Credit Fund SPV I, LLC.

"Assignment Agreement" means, collectively, each Assignment and Assumption and each Affiliated Lender Assignment and Assumption.

"Assignment and Assumption" means 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 or 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) $7,500,000; plus

(ii) the Retained Excess Cash Flow Amount (provided that the Retained Excess Cash Flow Amount shall not be available for (x) any Restricted Payment made pursuant to Section 6.04(a)(iii)(A) or Restricted Debt Payment made pursuant to Section 6.04(b)(vi) unless (A) no Event of Default exists at the time of making such Restricted Payment or Restricted Debt Payment, as applicable, and (B) after giving effect thereto, the Total Leverage Ratio, calculated on a Pro Forma Basis, would not exceed 4.50:1.00) or (y) any Investment made pursuant to Section 6.06(r) unless (A) no Event of Default under Sections 7.01(a), (f) or (g) exists at the time of the making of such Investment and (B) after giving effect thereto, the Total Leverage Ratio, calculated on a Pro Forma Basis, would not exceed 5.25:1.00; plus

(iii) 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 (other than any amounts (x) constituting a Cure Amount or a Contribution Indebtedness Amount, (y) received from the Borrower or any Subsidiary or (z) consisting of the proceeds of any loan or advance made pursuant to Section 6.06(h)(ii)) received as Cash equity by the Borrower or any of its Subsidiaries; plus

(iv) the aggregate principal amount of any Indebtedness (including any Disqualified Capital Stock) of the Borrower or any Subsidiary issued after the Closing Date (other than Indebtedness or such Disqualified Capital Stock issued to the Borrower or any Subsidiary), which has been converted into or exchanged for Capital Stock of the Borrower, any Subsidiary or any Parent Company that does not constitute Disqualified Capital Stock, together with the fair market value of any Cash Equivalents received by the Borrower or such 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 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 Subsidiary) of any Investment made pursuant to Section 6.06(r) (but, in the aggregate for each of this clause (v) and clause (vi) below, not in excess of the original amount of the Available Amount used to fund such Investment); 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 net proceeds received by the Borrower or any 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) (but, in the aggregate for each of this clause (vi) and clause (v) above, not in excess of the original amount of the Available Amount used to fund such Investment); plus

(vii) [Reserved];

(viii) the amount of any Declined Proceeds; 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), in each case, after the Closing Date and prior to such time or contemporaneously therewith.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Banking Services" means each and any of the following bank services provided to any Loan Party (a) under any arrangement that is in effect on the Closing Date between any Loan Party and a counterparty that is (or is an Affiliate of) the Administrative Agent, any Lender or any Arranger as of the Closing Date or (b) under any arrangement that is entered into after the Closing Date by any Loan Party with any counterparty that is (or is an Affiliate of) the Administrative Agent, any Lender or any Arranger at the time such arrangement is entered into: 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 and any arrangements or services 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), in connection with Banking Services, in each case, that have been designated to the Administrative Agent in writing by the Borrower as being Banking Services Obligations for the purposes of the Loan Documents, 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 Acceptable Intercreditor Agreement as if it were a Lender.

"Bankruptcy Code" means Title 11 of the United States Code (11 U.S.C. § 101 *et seq*.), as it has been, or may be, amended, from time to time.

"Bona Fide Debt Fund" means any debt fund, investment vehicle, regulated bank entity or unregulated lending entity that is 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 which is managed, sponsored or advised by any Person controlling, controlled by or under common control with (a) any Company Competitor or (b) any Affiliate of any Company Competitor, but, in each case, with respect to which no personnel involved with any investment in such Person or the management, control or operation of such Person (i) directly or indirectly makes, has the right to make or participates with others in making any investment decisions, or otherwise causing the direction of the investment policies, with respect to 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 Holdings, the Borrower or its subsidiaries or any entity that forms a part of any of their respective businesses; it being understood and agreed that the term "Bona Fide Debt Fund" shall not include any Person that is a Disqualified Lending Institution.

"Borrower" means (a) prior to the Closing Date Merger, Merger Sub, (b) following the Closing Date Merger, the Target and (c) 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 Adjusted Eurocurrency Rate 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.

"Business Day" means:

(a) 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; and

(b) if such day relates to any interest rate setting as to any Adjusted Eurocurrency Rate Loan or Letter of Credit denominated in Dollars, any funding, disbursement, settlement and/or payments in respect of such Adjusted Eurocurrency Rate Loan or Letter of Credit or any other dealing to be carried out pursuant to this Agreement in respect of any such Adjusted Eurocurrency Rate Loan or Letter of Credit, means any such day described in clause (a) above that is also a London Banking Day.

"Capital Expenditures" means, with respect to the Borrower and its 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, are, or are required to be included as, capital expenditures on the consolidated statement of cash flows for the Borrower and its 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 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 Subsidiary of the Borrower that is subject to regulation as an insurance company (or any 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. government or (ii) issued by any agency or instrumentality of the U.S. the obligations of which are backed by the full faith and credit of the U.S., 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 U.S. 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, if at any time neither S&P nor Moody's shall be rating 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 or at least P-2 from Moody's (or, if at any time neither S&P nor Moody's shall be rating 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 U.S., any state thereof or the District of Columbia or any political subdivision thereof or any foreign bank or its branches or agencies 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 money market mutual 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 or at least P-2 from Moody's; 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.

"CFC" means a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"CFC Holdco" means (a) any direct or indirect Domestic Subsidiary that has no material assets other than the Capital Stock or Capital Stock and Indebtedness of one or more CFCs and (b) any direct or indirect Domestic Subsidiary that has no material assets other than the Capital Stock or Capital Stock and Indebtedness of one or more Persons of the type described in the immediately preceding clause (a); provided that, for purposes of this definition of "CFC Holdco", references to "Indebtedness" shall include all intercompany indebtedness of such CFCs or Persons, notwithstanding the definition of "Indebtedness".

"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 U.S. 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 the earliest to occur of:

(a) at any time prior to a Qualifying IPO, the Permitted Holders ceasing to beneficially own, either directly or indirectly (within the meaning of Rule 13d-3 and Rule 13d-5 under the Exchange Act), Capital Stock representing more than 50% of the total voting power of all of the outstanding Capital Stock of Holdings;

(b) at any time on or after a Qualifying IPO, the acquisition by any Person or group (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) any Permitted Holder and (iii) any underwriter in connection with any Qualifying IPO), of Capital Stock representing more than the greater of (x) 35% of the total voting power of all of the outstanding Capital Stock of Holdings and (y) the percentage of the total voting power of all of the outstanding Capital Stock of Holdings owned, directly or indirectly, beneficially by the Permitted Holders; and

(c) the Borrower ceasing to be a direct or indirect Wholly-Owned Subsidiary of Holdings (it being understood and agreed for the avoidance of doubt that the Closing Date Merger shall not trigger a "Change of Control" for any purpose under this Agreement or any other Loan Document).

"Charge" means any fee, loss, charge, expense, cost, accrual or reserve 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 Loans, Additional Term Loans of any series established as a separate "Class" pursuant to Section 2.22 or 2.23, Initial Revolving Loans or Additional Revolving Loans of any series established as a separate "Class" pursuant to Section 2.22 or 2.23, (b) any Commitment, refers to whether such Commitment is an Initial Term Loan Commitment, Initial Delayed Draw Term Loan Commitment, an Additional Term Loan Commitment of any series established as a separate "Class" pursuant to Section 2.22 or 2.23, an Initial Revolving Credit Commitment or an Additional Revolving Credit Commitment of any series established as a separate "Class" pursuant to Section 2.22 or 2.23, (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. Notwithstanding anything to the contrary in this Agreement, the Initial Term Loans and the Initial Delayed Draw Term Loans are a single Class for all purposes under this Agreement (except as provided in Section 2.10).

"Closing Date" means August 21, 2017, the date on which the conditions specified in Section 4.01 were satisfied (or waived in accordance with Section 9.02).

"Closing Date Material Adverse Effect" has the meaning assigned to "Material Adverse Effect" in the Merger Agreement, as in effect on July 25, 2017 and giving effect to any amendment, waiver or consent permitted under Section 4.01(n).

"Closing Date Merger" has the meaning assigned to such term in the recitals to this Agreement.

"Code" means the Internal Revenue Code of 1986.

"Collateral" has the meaning set forth in the Security Agreement.

"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 (y) the time periods (and extensions thereof) set forth in Section 5.12, the requirement that:

(a) the Administrative Agent shall have received in the case of any Subsidiary that is required to become a Loan Party after the Closing Date (including by ceasing to be an Excluded Subsidiary):

(i) (A) a Joinder Agreement, (B) if the respective Subsidiary required to comply with the requirements set forth in this definition pursuant to Section 5.12 owns registrations of or applications for U.S. Patents, Trademarks and/or Copyrights that constitute Collateral, an Intellectual Property Security Agreement in substantially the form attached as Exhibit C hereto, (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, (E) if applicable, an executed joinder to any Acceptable Intercreditor Agreement in substantially the form attached as an exhibit thereto, (F) a joinder to the Intercompany Note and (G) control agreements or other control arrangements with respect to Deposit Accounts of such Loan Party that are concentration accounts; and

(ii) each item of Collateral that such Subsidiary is required to deliver under Section 4.02 of the Security Agreement (which, for the avoidance of doubt, shall be delivered within the applicable time period set forth in Section 5.12(a)); and

(b) the Administrative Agent shall have received with respect to any Material Real Estate Asset acquired after the Closing Date, a Mortgage and any necessary UCC fixture filing in respect thereof, in each case together with, to the extent customary and appropriate (as reasonably determined by the Administrative Agent and the Borrower)):

(i) evidence that (A) counterparts of such Mortgage have been duly executed, acknowledged and delivered and such Mortgage and any corresponding UCC or equivalent fixture filing are in form suitable for filing or recording in all filing or recording offices that the Administrative Agent may deem reasonably necessary in order to create a valid and subsisting Lien on such Material Real Estate Asset in favor of the Administrative Agent for the benefit of the Secured Parties, (B) such Mortgage and any corresponding UCC or equivalent fixture filings have been submitted to the relevant recorder's office for recording and (C) all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Administrative Agent;

(ii) one or more fully paid policies of title insurance (the "Mortgage Policies") in an amount reasonably acceptable to the Administrative Agent (not to exceed the fair market value of the Material Real Estate Asset covered thereby (as reasonably determined by the Borrower)) issued by a nationally recognized title insurance company in the applicable jurisdiction that is reasonably acceptable to the Administrative Agent, insuring the relevant Mortgage as having created a valid subsisting Lien on the real property described therein with the ranking or the priority which it is expressed to have in such Mortgage, subject only to Permitted Liens, together with such endorsements, coinsurance and reinsurance as the Administrative Agent may reasonably request to the extent the same are available in the applicable jurisdiction;

(iii) customary legal opinions of local counsel for the relevant Loan Party in the jurisdiction in which such Material Real Estate Asset is located, and if applicable, in the jurisdiction of formation of the relevant Loan Party, in each case as the Administrative Agent may reasonably request; and

(iv) surveys and appraisals (if required under the Financial Institutions Reform Recovery and Enforcement Act of 1989, as amended) and "Life-of-Loan" flood certifications and any required borrower notices under Regulation H (together with evidence of federal flood insurance for any such Flood Hazard Property located in a flood hazard area); provided that the Administrative Agent may in its reasonable discretion accept (A) any existing appraisal so long as such existing appraisal or survey satisfies any applicable local law requirements and (B) any new survey or any existing survey, together with a no change affidavit, in either case sufficient for the relevant title insurance company to remove the standard survey exception and issue the survey-related endorsements.

Notwithstanding any provision of any Loan Document to the contrary, if any mortgage tax or similar tax or charge is owed on the entire amount of the Obligations evidenced hereby, then, to the extent permitted by, and in accordance with, applicable Requirements of Law, the amount of such mortgage tax or similar tax or charge shall be calculated based on the lesser of (x) the amount of the Obligations allocated to the applicable Material Real Estate Asset and (y) the fair market value of the applicable Material Real Estate Asset at the time the Mortgage is entered into and determined in a manner reasonably acceptable to Administrative Agent and the Borrower, which in the case of clause (y) will result in a limitation of the Obligations secured by the Mortgage to such amount.

"Collateral Documents" means, collectively, (i) the Security Agreement, (ii) each Mortgage, (iii) each Intellectual Property Security Agreement, (iv) any supplement to any of the foregoing delivered to the Administrative Agent pursuant to the definition of "Collateral and Guarantee Requirement", (v) the Perfection Certificate (including any Perfection Certificate delivered to the Administrative Agent pursuant to the definition of "Collateral and Guarantee Requirement") and (vi) 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 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 Delayed Draw Term Loan Commitment, Initial Revolving Credit Commitment and Additional Commitment, as applicable, in effect as of such time.

"Commitment Schedule" means the Schedule attached hereto as Schedule 1.01(a).

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 *et seq*.).

"Company Competitor" means any competitor of the Borrower and/or any of its subsidiaries and/or the Target and/or any of its subsidiaries.

"Compliance Certificate" means a Compliance Certificate substantially in the form of Exhibit D.

"Confidential Information" has the meaning assigned to such term in Section 9.13.

"Consolidated Adjusted EBITDA" means, with respect to any Person on a consolidated basis for any period, the sum of (without duplication):

(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 in an amount representing the earnings for the applicable period that such proceeds are intended to replace (whether or not then received so long as such Person in good faith expects to receive such proceeds within the next four Fiscal Quarters (it being understood that to the extent such proceeds are not actually received within such Fiscal Quarters, such proceeds shall be deducted in calculating Consolidated Adjusted EBITDA for such Fiscal Quarters)); plus

(c) those amounts which, in the determination of Consolidated Net Income for such period, have been deducted for:

(i) Consolidated Interest Expense;

(ii) [Reserved];

(iii) any provision for federal, foreign, state or local income, franchise, excise and similar Taxes paid or accrued (which shall be net of any tax credits);

(iv) (A) all depreciation, 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;

(v) any earn-out and contingent consideration obligations (including to the extent accounted for as bonuses, compensation or otherwise) incurred in connection with any acquisition and/or other Investment permitted under Section 6.06 which is paid or accrued during such period and in connection with any similar acquisition or other Investment completed prior to the Closing Date and, in each case, adjustments thereof;

(vi) any non-cash Charge, including (x) contractual rent increases that have not then actually been enacted and (y) 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, the cash payment in respect thereof in such future period shall be subtracted from Consolidated Adjusted EBITDA to such extent);

(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);

(viii) (A) Transaction Costs, (B) Charges incurred (1) in connection with any transaction (in each case, regardless of whether consummated), and whether or not permitted under this Agreement, including any incurrence, issuance and/or incurrence of Indebtedness and/or any issuance and/or offering of Capital Stock (including, in each case, by any Parent Company), any Investment, any acquisition, 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) in connection with any Qualifying IPO, (C) the amount of any Charge that is actually reimbursed or reimbursable by third parties pursuant to indemnification or reimbursement provisions or similar agreements or insurance; provided that in respect of any Charge that is added back in reliance on clause (C) above, the relevant Person in good faith expects to receive reimbursement for such fee, cost, expense or reserve within the next four Fiscal Quarters (it being understood that to the extent any reimbursement amount is not actually received within such Fiscal Quarters, such reimbursement amount shall be deducted in calculating Consolidated Adjusted EBITDA for such Fiscal Quarters) and/or (D) after a Qualifying IPO or any issuance of debt securities, Public Company Costs;

(ix) any Charge or deduction that is associated with any Subsidiary and attributable to any non-controlling interest and/or minority interest of any third party;

(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 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 within the next four Fiscal Quarters (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within the next four Fiscal Quarters) or (ii) without duplication of amounts 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 (it being understood that if the amount received in cash under any such agreement in any period exceeds the amount of Charge paid during such period such excess amounts received may be carried forward and applied against any Charge in any future period);

(xi) the amount of management, monitoring, consulting, transaction and advisory fees and related indemnities and expenses (including reimbursements) pursuant to any sponsor management agreement and payments made to any Investor (and/or its Affiliates or management companies) for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities and payments to outside directors of the Borrower or a Parent Company actually paid by or on behalf of, or accrued by, such Person or any of its subsidiaries; provided that such payment is permitted under this Agreement;

(xii) any Charge attributable to the undertaking and/or implementation of cost savings initiatives, cost rationalization programs, operating expense reductions and/or synergies and/or similar initiatives and/or programs (including in connection with any integration, restructuring or transition, any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, any facility, restaurant, store or Unit Location opening and/or pre-opening (including unused warehouse space costs), any inventory optimization program and/or any curtailment), any business optimization Charge, any restructuring 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 a new market, any Charge relating to any strategic initiative, any signing Charge, 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 software development Charge, any Charge associated with new systems design, any implementation Charge, any project startup Charge, any Charge in connection with new operations, any Charge in connection with unused warehouse space, any Charge relating to a new contract, any consulting Charge and/or any corporate development Charge; provided that (A) the amount added back in such period pursuant to this clause (c)(xii), together with all amounts added back in such period to Consolidated Adjusted EBITDA pursuant to clauses (c)(xiv), (c)(xviii) and (e)(iii) of this definition shall not exceed 25% of Consolidated Adjusted EBITDA (calculated after giving effect to all permitted other pro forma adjustments other than the addbacks with respect to such clauses) and (B) such cap shall not apply to any other provision of the definition of "Consolidated Adjusted EBITDA" other than the clauses specifically enumerated above; plus

(xiii) any Charge incurred or accrued in connection with (i) the Closing Date Merger and/or any other acquisition or similar Investment (including, legal, accounting and other professional fees and expenses incurred in connection therewith) prior to, on or after the Closing Date, (ii) real property leases (including Charges in connection with the relocation or closure of any leased facilities, stores, restaurants or Unit Locations during such period) and (iii) one-time consulting costs; plus

(xiv) the amount of any fees, expenses and other Charges of consultants incurred after the Closing Date in connection with strategic and operational analyses; provided that (A) the amount added back in such period pursuant to this clause (c)(xiv), together with all amounts added back in such period to Consolidated Adjusted EBITDA pursuant to clauses (c)(xii), (c)(xviii) and (e)(iii) of this definition shall not exceed 25% of Consolidated Adjusted EBITDA (calculated after giving effect to all permitted other pro forma adjustments other than the addbacks with respect to such clauses) and (B) such cap shall not apply to any other provision of the definition of "Consolidated Adjusted EBITDA" other than the clauses specifically enumerated above; plus

(xv) any Charge in connection with the severance, hiring and relocation of corporate level employees (excluding store-level employees), including executive search expenses; plus

(xvi) 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; plus

(xvii) other add backs, adjustments and exclusions reflected in the Quality of Earnings Reports; plus

(xviii) any Charge from any extraordinary, nonrecurring and/or unusual item, less any gains from such extraordinary, nonrecurring and/or unusual item, (in each case as determined in good faith by the Borrower); provided that (A) the amount added back in such period pursuant to this clause (c)(xviii), together with all amounts added back in such period to Consolidated Adjusted EBITDA pursuant to clauses (c)(xii), (c)(xiv) and (e)(iii) of this definition shall not exceed 25% of Consolidated Adjusted EBITDA (calculated after giving effect to all permitted other pro forma adjustments other than the addbacks with respect to such clauses) and (B) such cap shall not apply to any other provision of the definition of "Consolidated Adjusted EBITDA" other than the clauses specifically enumerated above; 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 so long as the non-cash income or gain was deducted in the calculation of Consolidated Adjusted EBITDA (including any component definition) pursuant to clause (h) below for such period or any previous period and not added back; plus

(e) the full pro forma "run rate" cost savings, operating expense reductions, operational improvements and synergies (net of actual amounts realized) that are reasonably identifiable and factually supportable (in the good faith determination of such Person, as certified by a Responsible Officer of such Person in the Compliance Certificate required by Section 5.01(c) to be delivered in connection with the financial statements for such period) related to (i) the Transactions, (ii) any Investment, Disposition, operating improvement, restructuring, cost savings initiative, any similar initiative (including the renegotiation of contracts and other arrangements) and/or specified transaction, in each case, on or prior to the Closing Date and (iii) any Investment, Disposition, operating improvement, restructuring, cost savings initiative, any similar initiative (including the renegotiation of contracts and other arrangements) and/or specified transaction, in each case, after the Closing Date for which the relevant action resulting in such expected cost savings, operating expense reductions, operational improvements and/or synergies with respect to this clause (e)(iii) must either be taken or expected to be taken after the date of determination within 18 months and shall not, when taken together with all amounts added back in such period to Consolidated Adjusted EBITDA pursuant to clauses (c)(xii), (c)(xiv) and (c)(xviii) of this definition shall not exceed 25% of Consolidated Adjusted EBITDA (calculated after giving effect to all permitted other pro forma adjustments other than the addbacks with respect to such clauses); provided, such cap shall not apply to any amounts relating to (i) any other provision of the definition of "Consolidated Adjusted EBITDA" other than the clauses specifically enumerated above or (ii) amounts that would be permitted to be included in pro forma financial statements prepared in accordance with Regulation S-X under the Securities Act; plus

(f) if greater than zero, with respect to any new facility, store or restaurant (which, for the avoidance of doubt, shall mean a facility, store or restaurant open for less than 12 months), the pro forma "run rate" Consolidated Adjusted EBITDA attributable to such new facility, store or restaurant, which will be assumed to be (i)(A) the Consolidated Adjusted EBITDA attributable to comparable facilities, stores or restaurants that have been opened and operating for a period of at least 12 consecutive months and determined in good faith by a Responsible Officer of the Borrower by annualizing the Consolidated Adjusted EBITDA attributable to relevant comparable facilities in their respective fourth full Fiscal Quarter of operation, minus (ii) the actual Consolidated Adjusted EBITDA generated by the relevant facility, store or restaurant; provided that (i) the amount added back in such period pursuant to this clause (f) of this definition shall not exceed 7.5% of Consolidated Adjusted EBITDA (calculated after giving effect to all permitted other pro forma adjustments other than the addbacks with respect to this clause (f)) and (ii) such cap with respect to this clause (f) shall not apply to any other provision of the definition of "Consolidated Adjusted EBITDA"; plus

(g) Consolidated Restaurant Pre-Opening Costs; provided that the amount added back pursuant to this clause (g) shall not exceed $300,000 during such period for each single new or converted facility, store, restaurant or other Unit Location; minus

(h) 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, 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

(i) the amount of any cash payment made during such period in respect of any noncash accrual, reserve or other non-cash Charge that is accounted for in a prior period which was added to Consolidated Net Income to determine Consolidated Adjusted EBITDA for such prior period and which does not otherwise reduce Consolidated Net Income for the current period; minus

(j) any non-cash gain, including (x) contractual rent decreases that have not then actually been enacted and (y) the excess of actual cash rent paid during such period over GAAP rent expense due to the use of straight line rent for GAAP purposes (provided that, to the extent that any such non-cash gain represents an accrual or reserve for any potential cash item in any future period, (A) such Person may elect not to deduct such non-cash gain in the current period and (B) to the extent such Person elects to deduct such non-cash gain, the cash payment in respect thereof in such future period shall be added back to Consolidated Adjusted EBITDA to such extent).

Notwithstanding anything to the contrary herein, it is agreed that for the purpose of calculating the Total Leverage Ratio for any period that includes the Fiscal Quarters ended on or about September 25, 2016, December 25, 2016, March 26, 2017 or June 25, 2017, (i) Consolidated Adjusted EBITDA for the Fiscal Quarter ended on or about September 25, 2016 shall be deemed to be $4,817,993, (ii) Consolidated Adjusted EBITDA for the Fiscal Quarter ended on or about December 25, 2016 shall be deemed to be $5,521,804, (iii) Consolidated Adjusted EBITDA for the Fiscal Quarter ended on or about March 26, 2017 shall be deemed to be $8,457,014 and (iv) Consolidated Adjusted EBITDA for the Fiscal Quarter ended on or about June 25, 2017 shall be deemed to be $8,202,678 in each case, as adjusted on a Pro Forma Basis, as applicable.

"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 Subsidiaries for such period, whether paid or accrued and whether or not capitalized, (including, without limitation (and without duplication), amortization of any debt issuance cost and/or 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 and 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 Loan Party, 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:

(a) (i) the income of any Person (other than a Subsidiary of the Subject Person) in which any other Person (other than the Subject Person or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or 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 Subsidiaries by such Person during such period or (ii) the loss of any Person (other than a Subsidiary of the Subject Person) in which any other Person (other than the Subject Person or any of its Subsidiaries) has a joint interest, other than to the extent that the Subject Person or any of its Subsidiaries has contributed cash or Cash Equivalents to such Person in respect of such loss during such period,

(b) any gain or Charge (i) as a result of, or in connection with Dispositions or abandonments of assets outside the ordinary course of business (including asset retirement costs) and (ii) from Disposed or abandoned, divested and/or discontinued assets, properties or operations and/or discontinued operations (other than, at the option of the Borrower, relating to assets or properties held for sale or pending the divestiture or termination thereof),

(c) any Charge associated with and/or payment of any actual or prospective legal settlement, fine, judgment or order,

(d) any net gain or Charge with respect to (i) any disposed, abandoned, divested and/or discontinued asset, property or operation (other than, at the option of the Borrower, any asset, property or operation pending the disposal, abandonment, divestiture and/or termination thereof), (ii) any disposal, abandonment, divestiture and/or discontinuation of any asset, property or operation (other than, at the option of such Person, 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,

(e) any net income or write-off or amortization made of any deferred financing cost and/or premium paid or other Charge, in each case attributable to the early extinguishment of Indebtedness (and the termination of any associated Hedge Agreement),

(f) (i) any Charge incurred pursuant to any management equity plan, profits interest or stock option plan or any other management or employee benefit plan or agreement, any pension 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 of Holdings (or any other Parent Company), the Borrower and/or any Subsidiary; provided that with respect to any such Charges that are cash Charges, in each case, to the extent that any such cash Charge 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,

(g) any Charge 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 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,

(h) (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, lease, rights fee arrangement, software, goodwill, intangible asset, in-process research and development, deferred revenue, advanced billing and debt line items thereof), resulting from the application of purchase accounting in relation to the Transactions or any consummated acquisition or recapitalization accounting or the amortization or write-off of any amounts thereof, net of Taxes, and (ii) the cumulative effect of changes (effected through cumulative effect adjustment or retroactive application) in, or 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 the Borrower 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),

(i) [Reserved],

(j) solely for the purpose of calculating Excess Cash Flow, the income or loss of any Person accrued prior to the date on which such Person becomes a Subsidiary of such Person or is merged into or consolidated with such Person or any Subsidiary of such Person or the date that such other Person's assets are acquired by such Person or any Subsidiary of such Person,

(k) (i) any unrealized gain or loss in respect 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, (ii) any realized or unrealized foreign currency exchange gain or loss (including any currency re-measurement of Indebtedness, any net gain or loss resulting from Hedge Agreements for currency exchange risk resulting from any intercompany Indebtedness, any foreign currency translation or transaction or any other currency-related risk), and

(l) 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.

"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.

"Consolidated Total Debt" means, as to any Person at any date of determination, the aggregate principal amount of all third party debt for borrowed money (including LC Disbursements that have not been reimbursed within three Business Days and the outstanding principal balance of all Indebtedness of such Person represented by notes, bonds and similar instruments and excluding undrawn letters of credit), Earn-Out Obligations, Capital Leases and purchase money Indebtedness; provided that "Consolidated Total Debt" shall be calculated (i) net of the amount of Unrestricted Cash Amount and (ii) excluding 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.

"Consolidated Working Capital" means, as at any date of determination, the excess of Current Assets over Current Liabilities.

"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.

"Contribution Indebtedness Amount" has the meaning assigned to such term in Section 6.01(r).

"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.

"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, without limitation, 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.

"Credit Extension" means each of (i) the making of a Revolving Loan (other than any Letter of Credit Reimbursement Loan) or (ii) 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.

"Cure Amount" has the meaning assigned to such term in Section 6.15(b).

"Cure Right" has the meaning assigned to such term in Section 6.15(b).

"Current Assets" means, at any date, all assets of the Borrower and its Subsidiaries which under GAAP would be classified as current assets (excluding any (i) cash or Cash Equivalents (including cash and Cash Equivalents held on deposit for third parties by the Borrower and/or any Subsidiary), (ii) permitted loans to third parties, (iii) deferred bank fees and derivative financial instruments related to Indebtedness, (iv) the current portion of current and deferred Taxes and (v) management fees receivables).

"Current Liabilities" means, at any date, all liabilities of the Borrower and its Subsidiaries which under GAAP would be classified as current liabilities, other than (i) current maturities of long term debt, (ii) outstanding revolving loans and letter of credit exposure, (iii) accruals of Consolidated Interest Expense (excluding Consolidated Interest Expense that is due and unpaid), (iv) obligations in respect of derivative financial instruments related to Indebtedness, (v) the current portion of current and deferred Taxes, (vi) liabilities in respect of unpaid earnouts or unpaid acquisition, disposition or refinancing related expenses and deferred purchase price holdbacks, (vii) accruals relating to restructuring reserves, (viii) liabilities in respect of funds of third parties on deposit with the Borrower and/or any Subsidiary, (ix) management fees payables, (x) the current portion of any Capital Lease Obligation, (xi) the current portion of any other long term liability for Indebtedness, (xii) accrued settlement costs, (xiii) non-cash compensation costs and expenses and (xiv) any other liabilities that are not Indebtedness and will not be settled in Cash or Cash Equivalents during the next succeeding twelve month period after such date.

"Debt Fund Affiliate" means any affiliate of the Sponsor (other than a natural person) that is a bona fide debt fund or 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 the affiliate of the Sponsor that is the ultimate indirect holder of the equity interests of Holdings) 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.

"Debtor Relief Laws" means the Bankruptcy Code of the U.S., 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 U.S. 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 required to be funded by it hereunder within two Business Days of the date such obligation arose or such Loan or Letter of Credit 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 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 prospective Loans and participations in then outstanding Letters of Credit; 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 Lender or its parent by any Governmental Authority; provided that such action does not result in or provide such Lender with immunity from the jurisdiction of courts within the U.S. 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.

"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 Subsidiary in connection with any Disposition pursuant to Section 6.07(h) and/or Section 6.08 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).

"Disposition" or "Dispose" means the sale, lease, sublease, or other disposition of any property of any Person.

"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 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 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 91 days following the Latest Maturity Date at the time such Capital Stock is issued, (c) contains any mandatory repurchase obligation or any other repurchase obligation at the option of the holder thereof (other than for Qualified Capital Stock), in whole or in part, which may come into effect prior to 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 91 days following the Latest Maturity Date shall constitute Disqualified Capital Stock) or (d) provides for the scheduled payments of dividends in Cash on or prior to 91 days following the Latest Maturity Date at the time such Capital Stock is issued; provided that any 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, Qualifying IPO or any Disposition occurring prior to 91 days following the Latest Maturity Date at the time such Capital Stock is issued shall not constitute Disqualified Capital Stock if such Capital Stock provides that the issuer thereof will not redeem any such Capital Stock pursuant to such provisions prior to the Termination Date.

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 Holdings, the Borrower or any Subsidiary, 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:

(a) (i) any Person identified in writing to the Arrangers on or prior to July 28, 2017, (ii) any Affiliate of any Person described in clause (i) above that is reasonably identifiable as an Affiliate of such Person on the basis of such Affiliate's name and (iii) any other Affiliate of any Person described in clause (i) or (ii) above that is identified in a written notice to Golub Capital (if prior to the Closing Date) or the Administrative Agent (if after the Closing Date) (each such person described in clauses (i) through (iii) above, a "Disqualified Lending Institution");

(b) (i) any Person that is or becomes a Company Competitor and/or any Affiliate of any Company Competitor (other than any Affiliate that is a Bona Fide Debt Fund) and is identified as such in writing to Golub Capital (if prior to the Closing Date) or the Administrative Agent (if after the Closing Date) from time to time, (ii) any Affiliate of any Person described in clause (i) above (other than any Affiliate that is a Bona Fide Debt Fund) that is reasonably identifiable as an Affiliate of such person on the basis of such Affiliate's name and (iii) any other Affiliate of any Person described in clauses (i) and/or (ii) above that is identified in a written notice to Golub Capital (if prior to the Closing Date) or to the Administrative Agent (if after the Closing Date) (it being understood and agreed that no Bona Fide Debt Fund may be designated as a Disqualified Institution pursuant to this clause (iii)); and

(c) any Affiliate of any Arranger (or director (or equivalent manager), officer or employee of any Arranger or any Affiliate thereof) that is engaged as a principal primarily in private equity or venture capital;

it being understood and agreed that no written notice delivered pursuant to clauses (a)(iii), (b)(i) and/or (b)(iii) above shall apply retroactively to disqualify any Person that has previously acquired an assignment or participation interest in any Loans.

"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).

"Dollar Equivalent" means, at any time, (a) with respect to any amount denominated in Dollars, such amount and (b) with respect to any amount denominated in any currency other than Dollars, the equivalent amount thereof in Dollars as determined by the Administrative Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date or other relevant date of determination) for the purchase of Dollars with such other currency.

"Dollars" or "$" refers to lawful money of the U.S.

"Domestic Subsidiary" means any Subsidiary incorporated or organized under the laws of the U.S., any state thereof or the District of Columbia.

"Dutch Auction" has the meaning assigned to such term on Schedule 1.01(b) hereto.

"Earn-Out Obligations" means all payment obligations pursuant to earn-out provisions in any definitive agreement relating to an acquisition or similar Investment permitted hereunder that are classified as liability in accordance with GAAP (but only to the extent all conditions to payment (other than the specified date for payment) have been realized), the amount of which, together with any earn-outs actually paid in the applicable Test Period, exceed $5,500,000 in such Test Period.

"ECF Prepayment Amount" has the meaning assigned to such term in Section 2.11(b)(i).

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Yield" means, as to any Indebtedness, the effective yield applicable thereto calculated by the Administrative Agent in consultation with the Borrower in a manner consistent with generally accepted financial practices, taking into account (a) interest rate margins, (b) interest rate floors (subject to the proviso set forth below), (c) any amendment to the relevant interest rate margins and interest rate floors prior to the applicable date of determination and (d) original issue discount and upfront or similar fees (based on an assumed four-year average life to maturity or lesser remaining average life to maturity), but excluding (i) any arrangement, commitment, structuring, underwriting, ticking, unused line fees and/or amendment fees (regardless of whether any such fees are paid to or shared in whole or in part with any lender), (ii) any other fee that is not paid directly by the Borrower generally to all relevant lenders ratably and (iii) any effects of any step downs of the Applicable Rate; provided, however, that (A) to the extent that the LIBO Rate (with an Interest Period of three months) or Alternate Base Rate (without giving effect to any floor specified in the definition thereof) is less than any floor applicable to the applicable Loans in respect of which the Effective Yield is being calculated on the date on which the Effective Yield is determined, the amount of the resulting difference will be deemed added to the interest rate margin applicable to the relevant Indebtedness for purposes of calculating the Effective Yield and (B) to the extent that the LIBO Rate (for a period of three months) or Alternate Base Rate (without giving effect to any floor specified in the definition thereof) is greater than any applicable floor on the date on which the Effective Yield is determined, the floor will be disregarded in calculating the Effective Yield.

"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, (ii) any Disqualified Institution or (iii) except as permitted under Section 9.05(g), the Borrower or any of its subsidiaries.

"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 and all current or future applicable foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other applicable requirements of Governmental Authorities and the common 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 the Borrower or any of its 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.

"Equity Contribution" means, collectively, the direct or indirect contribution on the Closing Date by the Investors to Merger Sub of an aggregate amount of cash and rollover equity in the form of Qualified Capital Stock that represents not less than 40% of the sum of (i) the aggregate gross proceeds of the Initial Term Loans funded on the Closing Date, plus (ii) the amount of such cash and rollover equity (such sum, the "Funded Capitalization"); provided that, on the Closing Date, after giving effect to the Transactions and the Equity Contribution, the Sponsor will own, directly or indirectly, at least 50.1% of the issued and outstanding Capital Stock of Holdings.

"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 the Borrower or any 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 the Borrower or any 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 the Borrower or any 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 the Borrower or any Subsidiary or any ERISA Affiliate from a Multiemployer Plan resulting in the imposition of Withdrawal Liability on the Borrower or any Subsidiary or any ERISA Affiliate, notification of the Borrower or any 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 or is in "reorganization" within the meaning of Section 4241 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 the Borrower or any 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 the Borrower or any 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.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Eurocurrency Rate" means, (i) for any Interest Period, the rate per annum equal to the offered rate which appears on the page of the Reuters Screen which displays the London interbank offered rate administered by ICE Benchmark Administration Limited (such page currently being the LIBOR01 page) (the "LIBO Rate") for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time), two Business Days prior to the commencement of such Interest Period, (ii) in the event the rate referenced in the preceding clause (i) does not appear on such page or service or if such page or service shall cease to be available, the rate reasonably determined by the Administrative Agent to be the offered rate on such other page or other service which displays the LIBO Rate for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time) two Business Days prior to the commencement of such Interest Period, or (iii) provided that if LIBO Rates are quoted under either of the preceding clauses (i) or (ii), but there is no such quotation for the Interest Period elected, the LIBO Rate shall be equal to the Interpolated Rate; provided, that if any such rate determined pursuant to the preceding clauses (i), (ii), or (iii) is below zero, the Eurocurrency Rate will be deemed to be zero. When used in reference to any Loan or Borrowing, "Eurocurrency Rate" shall refer to whether such Loan or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Eurocurrency Rate as set forth in the preceding sentence.

"Event of Default" has the meaning assigned to such term in Article 7.

"Excess Cash Flow" means, for any Excess Cash Flow Period, any amount (if positive) equal to:

(a) Consolidated Adjusted EBITDA for such Excess Cash Flow Period (without giving effect to clauses (b), (e) and (f) of the definition thereof, the amounts added back in reliance on which shall be deducted in determining Excess Cash Flow); plus

(b) any extraordinary, unusual or non-recurring cash gain during such Excess Cash Flow Period (whether or not accrued in such Excess Cash Flow Period) to the extent not otherwise included in Consolidated Adjusted EBITDA (including any component definition used therein); plus

(c) any foreign currency exchange gain actually realized and received in cash in U.S. Dollars (including any currency re-measurement of Indebtedness, any net gain or loss resulting from Hedge Agreements for currency exchange risk resulting from any intercompany Indebtedness, any foreign currency translation or transaction or any other currency-related risk), net of any loss from foreign currency translation; plus

(d) [Reserved];

(e) an amount equal to all Cash received for such period on account of any net non-Cash gain or income from any Investment deducted in a previous period pursuant to clause (s)(ii) of this definition; plus

(f) the decrease, if any, in Consolidated Working Capital from the first day to the last day of such Excess Cash Flow Period, but excluding any such decrease in Consolidated Working Capital arising from (i) the acquisition or Disposition of any Person by the Borrower or any Subsidiary, (ii) the reclassification during such period of current assets to long term assets and current liabilities to long term liabilities, (iii) the application of purchase and/or recapitalization accounting and/or (iv) the effect of any fluctuation in the amount of accrued and contingent obligations under any Hedge Agreement; minus

(g) the amount, if any, which, in the determination of Consolidated Adjusted EBITDA (including any component definitions used therein) for such Excess Cash Flow Period, has been included in respect of income or gain from any Disposition outside of the ordinary course of business (including Dispositions constituting covered losses or taking of assets referred to in the definition of "Net Insurance/Condemnation Proceeds") of the Borrower and/or any Subsidiary; minus

(h) cash payments actually made in respect of the following (without duplication):

(i) any Investment permitted by Section 6.06 (other than Investments (i) in Cash or Cash Equivalents, (ii) in any Loan Party or (iii) made pursuant to Section 6.06(r)), earn-out payments and/or any Restricted Payment permitted by Section 6.04(a) (other than pursuant to Section 6.04(a)(iii)(A)) and actually made in cash during such Excess Cash Flow Period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such Excess Cash Flow Period, (A) except to the extent the relevant Investment and/or Restricted Payment is financed with the proceeds of long term funded Indebtedness (other than revolving Indebtedness) and (B) without duplication of any amounts deducted from Excess Cash Flow for a prior Excess Cash Flow Period;

(ii) any realized foreign currency exchange loss actually paid or payable in cash (including any currency re-measurement of Indebtedness, any net gain or loss resulting from Hedge Agreements for currency exchange risk resulting from any intercompany Indebtedness, any foreign currency translation or transaction or any other currency-related risk);

(iii) the aggregate amount of any extraordinary, unusual or non-recurring cash Charge (whether or not incurred in such Excess Cash Flow Period) excluded in calculating Consolidated Adjusted EBITDA (including any component definition used therein);

(iv) consolidated Capital Expenditures actually made in cash during such Excess Cash Flow Period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such Excess Cash Flow Period, (A) except to the extent financed with the proceeds of long term funded Indebtedness (other than revolving Indebtedness) and (B) without duplication of any amount deducted from Excess Cash Flow for a prior Excess Cash Flow Period;

(v) any long-term liability, excluding the current portion of any such liability (other than Indebtedness) of the Borrower and/or any Subsidiary;

(vi) any cash Charge added back in calculating Consolidated Adjusted EBITDA pursuant to clause (c) of the definition thereof or excluded from the calculation of Consolidated Net Income in accordance with the definition thereof;

(vii) the aggregate amount of expenditures actually made by the Borrower and/or any Subsidiary during such Fiscal Year (including any expenditure for the payment of financing fees) to the extent that such expenditures are not expensed; minus

(i) the aggregate principal amount of (i) all optional prepayments of Indebtedness (other than any optional prepayment of (A) Indebtedness under the Loan Documents that is prepaid, repurchased, redeemed or otherwise retired prior to such date, in each case, that is deducted in calculating the amount of any Excess Cash Flow payment in accordance with Section 2.11(b)(i) or (B) revolving Indebtedness except to the extent any related commitment is permanently reduced in connection with such repayment), (ii) all mandatory prepayments and scheduled repayments of Indebtedness during such Excess Cash Flow Period and (iii) the aggregate amount of any premium, make-whole or penalty payment actually paid in cash by the Borrower and/or any Subsidiary during such period that are required to be made in connection with any prepayment of Indebtedness, in each case, except to the extent financed with long term funded Indebtedness (other than revolving Indebtedness); minus

(j) Consolidated Interest Expense actually paid or payable in cash by the Borrower and/or any Subsidiary during such Excess Cash Flow Period; minus

(k) Taxes (inclusive of Taxes paid or payable under tax sharing agreements or arrangements and/or in connection with any intercompany distribution) paid or payable by Borrower and/or any Subsidiary with respect to such Excess Cash Flow Period; minus

(l) the increase, if any, in Consolidated Working Capital from the first day to the last day of such Excess Cash Flow Period, but excluding any such increase in Consolidated Working Capital arising from (i) the acquisition or Disposition of any Person by the Borrower and/or any Subsidiary, (ii) the reclassification during such period of current assets to long term assets and current liabilities to long term liabilities, (iii) the application of purchase and/or recapitalization accounting and/or (iv) the effect of any fluctuation in the amount of accrued and contingent obligations under any Hedge Agreement; minus

(m) the amount of any Tax obligation of the Borrower and/or any Subsidiary that is estimated in good faith by the Borrower as due and payable (but is not currently due and payable) by the Borrower and/or any Subsidiary as a result of the repatriation of any dividend or similar distribution of net income of any Foreign Subsidiary to the Borrower and/or any Subsidiary; minus

(n) without duplication of amounts deducted from Excess Cash Flow in respect of a prior period, at the option of the Borrower, the aggregate consideration (i) required to be paid in Cash by the Borrower and/or any Subsidiary pursuant to binding contracts entered into prior to or during such period relating to Capital Expenditures, acquisitions or Investments (including with respect to earn out payments) and Restricted Payments described in clause (h)(i) above and/or (ii) otherwise committed to be made in connection with Capital Expenditures, acquisitions or Investments and/or Restricted Payments described in clause (h)(i) above (clauses (i) and (ii), the "Scheduled Consideration") (other than Investments in (A) Cash and Cash Equivalents and (B) the Borrower and/or any Subsidiary) to be consummated or made during the period of four consecutive Fiscal Quarters of the Borrower following the end of such period (except, in each case, to the extent financed with long term funded Indebtedness (other than revolving Indebtedness)); provided that to the extent the aggregate amount actually utilized to finance such Capital Expenditures, acquisitions or Investments or Restricted Payments during such subsequent period of four consecutive Fiscal Quarters is less than the Scheduled Consideration, the amount of the resulting shortfall shall be added to the calculation of Excess Cash Flow at the end of such subsequent period of four consecutive Fiscal Quarters; minus

(o) [Reserved];

(p) cash payments (other than in respect of Taxes, which are governed by clause (k) above) made during such Excess Cash Flow Period for any liability the accrual of which in a prior Excess Cash Flow Period resulted in an increase in Excess Cash Flow in such prior period (provided that there was no other deduction to Consolidated Adjusted EBITDA or Excess Cash Flow related to such payment), except to the extent financed with long term funded Indebtedness (other than revolving Indebtedness); minus

(q) cash expenditures made in respect of any Hedge Agreement during such period to the extent (i) not otherwise deducted in the calculation of Consolidated Net Income or Consolidated Adjusted EBITDA and (ii) not financed with long term funded Indebtedness (other than revolving Indebtedness); minus

(r) amounts paid in Cash (except to the extent financed with long term funded Indebtedness (other than revolving Indebtedness)) during such period on account of (i) items that were accounted for as non-Cash reductions of Consolidated Net Income or Consolidated Adjusted EBITDA in a prior period and (ii) reserves or amounts established in purchase accounting to the extent such reserves or amounts are added back to, or not deducted from, Consolidated Net Income; minus

(s) an amount equal to the sum of (i) the aggregate net non-cash loss on any non-ordinary course Disposition by the Borrower and/or any Subsidiary during such period (other than any Disposition among the Borrower and/or any Subsidiaries during such period) to the extent included in arriving at Consolidated Net Income and (ii) the aggregate net non-Cash gain or income from any non-ordinary course Investment to the extent included in arriving at Consolidated Adjusted EBITDA.

"Excess Cash Flow Period" means each full Fiscal Year of the Borrower ending thereafter (commencing with the Fiscal Year ending on December 30, 2018).

"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:

(a) 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; 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,

(b) the Capital Stock of any (i) Captive Insurance Subsidiary, (ii) not-for-profit subsidiary and/or (iii) special purpose entity used for any permitted securitization facility,

(c) any intent-to-use (or similar) Trademark application prior to the filing and acceptance of a "Statement 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 Trademark application under applicable federal Law,

(d) any asset (including any Capital Stock), the grant or perfection of a security interest in which would (i) be prohibited under applicable Requirements of Law (including, without limitation, rules and regulations of any Governmental Authority) or (ii) require any governmental or regulatory consent, approval, license or authorization, except to the extent such requirement or prohibition would be rendered ineffective under the UCC or other applicable Requirements of Law notwithstanding such requirement or prohibition; it being understood that the term "Excluded Asset" shall not include proceeds or receivables arising out of any asset described in clause (d)(i) or (d)(ii) 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 requirement or prohibition or (iii) result in material adverse tax consequences to any Loan Party as reasonably determined by the Borrower and specified in a written notice to the Administrative Agent,

(e) (i) any leasehold Real Estate Asset, (ii) any leasehold interest in any other assets, to the extent the creation and perfection of a Lien on such assets is not the type that may be perfected by the filing of a Form UCC-1 financing statement under the UCC and (iii) any owned Real Estate Asset that is not a Material Real Estate Asset,

(f) the Capital Stock of any Person that is not a Wholly-Owned Subsidiary,

(g) any Margin Stock,

(h) the Capital Stock of any Foreign Subsidiary and of any CFC Holdco, in each case (x) in excess of 65% of the issued and outstanding voting Capital Stock of any such Person or (y) to the extent such Person is not a first-tier Subsidiary of any Loan Party,

(i) Commercial Tort Claims,

(j) escrow, fiduciary and trust accounts,

(k) [Reserved],

(l) any lease, license or agreement or any assets subject to any purchase money security interest, Capital Lease 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, the Borrower or any Subsidiary of the Borrower) after giving effect to the applicable anti-assignment provisions of the UCC or any other applicable Requirement of Law; it being understood that the term "Excluded Asset" shall not include proceeds or receivables arising out of any asset described in this clause (l) 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, and

(m) any asset with respect to which the Administrative Agent and the Borrower have reasonably determined in writing that the cost, burden, difficulty or consequence (including any effect on the ability of the Borrower and its subsidiaries to conduct their operations and business in the ordinary course of business and including the cost of title insurance, surveys or flood insurance (if necessary)) 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.

"Excluded Subsidiary" means:

(a) any Subsidiary that is not a Wholly-Owned Subsidiary,

(b) any Immaterial Subsidiary,

(c) any Subsidiary (i) that 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 Subsidiary becomes a subsidiary (which Contractual Obligation was not entered into in contemplation of this Agreement), (ii) that would require a governmental (including regulatory) or third-party consent (which third-party consent is required on the Closing Date or at the time such Subsidiary becomes a Subsidiary), 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) (in each case, at the time such Subsidiary became a Subsidiary) or (iii) with respect to which the provision of a Loan Guaranty would result in material adverse tax consequences as reasonably determined by the Borrower in consultation with the Administrative Agent,

(d) any not-for-profit subsidiary,

(e) any Captive Insurance Subsidiary,

(f) any special purpose entity used for any permitted securitization or receivables facility or financing,

(g) any Foreign Subsidiary,

(h) (i) any CFC Holdco and/or (ii) any Domestic Subsidiary that is a direct or indirect subsidiary of any Foreign Subsidiary that is a CFC,

(i) any Subsidiary acquired by the Borrower or any of its Subsidiaries 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 incurred or modified in contemplation of such acquisition) and/or

(j) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower, the burden or cost of providing a Loan Guaranty outweighs, or would be excessive in light of, the practical benefits afforded thereby.

"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) (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, (a) any Taxes imposed on (or measured by) such recipient's net or overall gross income 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 U.S. 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 the Administrative Agent, such Lender or any Issuing Bank to comply with Sections 2.17(f) or (j) and (e) any U.S. federal withholding Tax 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 each of (a) Holdings, 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, hereof owned, leased, operated or used by the Borrower or any of its 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 current Section 1471(b)(1) of the Code (or any amended or successor version described above) and any intergovernmental agreements implementing any of the foregoing and any treaty, law, regulation or other official guidance issued under or with respect to any of the foregoing.

"FCPA" has the meaning assigned to such term in Section 3.17(c).

"Federal Assignment of Claims Act" means the Federal Assignment of Claims Act (41 U.S.C. § 15).

"Federal Funds Effective Rate" means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depositary institutions (as determined in such manner as the Federal Reserve Bank of New York sets 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.

"Fee Letter" means that certain Fee Letter, dated as of July 28, 2017, by and among Merger Sub, the Arrangers and the Administrative Agent.

"Financial Covenant Level" has the meaning assigned to such term in Section 6.15.

"First Lien Intercreditor Agreement" means an intercreditor agreement (a) substantially in the form of Exhibit E, with (i) any immaterial changes (as determined in the Administrative Agent's sole discretion) thereto as the Borrower and the Administrative Agent may agree in their respective reasonable discretion and/or (ii) any material changes thereto as the Borrower and the Administrative Agent may agree in their respective reasonable discretion and/or (b) any other form to which the Borrower and the Administrative Agent may agree in their respective reasonable discretion.

"First Priority" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that, subject to any applicable Acceptable Intercreditor Agreement, such Lien is senior in priority to any other Lien to which such Collateral is subject, other than any Permitted Lien.

"Fiscal Quarter" means any fiscal quarter of any Fiscal Year of the Borrower ending on a date set forth on Schedule 1.01(c) hereto, which schedule may be amended in the event of a change in the Fiscal Year of the Borrower permitted under Section 6.13.

"Fiscal Year" means the fiscal year of the Borrower ending on or about December 31 of each calendar year.

"Fixed Amounts" has the meaning assigned to such term in Section 1.10(c).

"Fixed Incremental Amount" means the greater of (a) $20,000,000 and (b) 75% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period.

"Flood Hazard Property" means any parcel of any Material Real Estate Asset subject to a Mortgage located in the U.S. in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"FLSA" has the meaning assigned to such term in Section 3.15.

"Foreign Lender" means any Lender or Issuing Bank that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary.

"Funded Capitalization" has the meaning set forth in the definition of "Equity Contribution".

"FRB" means the Board of Governors of the Federal Reserve System of the U.S.

"GAAP" means generally accepted accounting principles in the U.S. in effect and applicable to the accounting period in respect of which reference to GAAP is made.

"Golub Capital" has the meaning assigned to such term in the preamble to this Agreement.

"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 U.S., a foreign government or any political subdivision thereof.

"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.

"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 between any Loan Party or any 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.

"Immaterial Subsidiary" means, as of any date, any Subsidiary of the Borrower the contribution to Consolidated Adjusted EBITDA of which does not exceed 5.00% of the Consolidated Adjusted EBITDA of the Borrower and its Subsidiaries, in each case, as of the last day of the most recently ended Test Period; provided that the Consolidated Adjusted EBITDA (as so determined) of all Immaterial Subsidiaries shall not exceed 5.00% of Consolidated Adjusted EBITDA, in each case, of the Borrower and its Subsidiaries as of the last day of the most recently ended Test Period; provided, further, 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 of the Merger Sub delivered pursuant to Section 4.01 hereof.

"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 daughter-in-law (including adoptive relationships), 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.

"Incremental Cap" means:

(a) the Fixed Incremental Amount, plus

(b) the amount of any optional prepayment in accordance with Section 2.11(a) of any Incremental Term Loan incurred in reliance on clause (a) above; provided that such prepayment was not funded with the proceeds of any long-term Indebtedness (other than revolving Indebtedness), plus

(c) an unlimited amount so long as, in the case of this clause (c), after giving effect to the relevant Incremental Facility, the Total Leverage Ratio does not exceed 5.25:1.00, calculated on a Pro Forma Basis for the Test Period then most recently ended including the application of the proceeds thereof (without "netting" the cash proceeds of the applicable Incremental Facility or any other simultaneous incurrence of debt on the consolidated balance sheet of the Borrower), and in the case of any Incremental Revolving Facility then being incurred or established, assuming a full drawing of such Incremental Revolving Facility;

provided, that:

(i) any Incremental Facility may be incurred under one or more of clauses (a) through (c) of this definition as selected by the Borrower in its sole discretion, and

(ii) if any Incremental Facility is intended to be incurred under clause (c) of this definition and any other clause of this definition in a single transaction or series of related transaction, (A) the incurrence of the portion of such Incremental Facility to be incurred or implemented under clause (c) of this definition shall be calculated first without giving effect to any Incremental Facilities to be incurred under any other clause of this definition, but giving full *pro forma* effect to the use of proceeds of the entire amount of such Incremental Facility and the related transactions, and (B) the incurrence of the portion of such Incremental Facility to be incurred or implemented under the other applicable clauses of this definition shall be calculated thereafter; and

(iii) the aggregate amount of all Incremental Revolving Facilities shall not exceed $7,500,000 (unless otherwise agreed by the Required Revolving Lenders).

"Incremental Commitment" means any commitment made by a lender to provide all or any portion of any Incremental Facility or Incremental Loan.

"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 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 Revolving Commitment" means any commitment made by a lender to provide all or any portion of any Incremental Revolving Facility.

"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 Loans" has the meaning assigned to such term in Section 2.22(a).

"Incurrence-Based Amounts" has the meaning assigned to such term in Section 1.10(c).

"Indebtedness" as applied to any Person means, without duplication:

(a) all indebtedness for borrowed money;

(b) 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;

(c) 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;

(d) any obligation 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 (A) such obligation becomes a liability on the statement of financial position or balance sheet (excluding the footnotes thereto) in accordance with GAAP and (B) all conditions to payment of such obligation (other than the specified date for payment) have been realized, (ii) any such obligations 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 incurrence of the obligation in respect thereof or (B) evidenced by a note or similar written instrument);

(e) all Indebtedness of others secured by any Lien on any asset owned or held by such Person regardless of whether the Indebtedness secured thereby have been assumed by such Person or is non-recourse to the credit of such Person;

(f) 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;

(g) the Guarantee by such Person of the Indebtedness of another;

(h) all obligations of such Person in respect of any Disqualified Capital Stock; and

(i) 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 obligations under any Derivative Transaction be deemed "Indebtedness" for any calculation of the Total 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 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", as it applies to the Borrower and its Subsidiaries, shall exclude intercompany Indebtedness so long as (A) such intercompany Indebtedness has a term not exceeding 364 days (inclusive of any roll-over or extension of terms) and (B) in the case of any Indebtedness owed by any Loan Party to any Subsidiary that is not a Loan Party, such Indebtedness is unsecured and subordinated to the Obligations and evidenced by the Intercompany Note.

For all purposes hereof, the Indebtedness of any Person shall 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; provided 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, (x) 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 (y) 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).

"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).

"Initial Delayed Draw Term Loan Extension" means the making of an Initial Delayed Draw Term Loan.

"Initial Delayed Draw Term Facility" means the Initial Delayed Draw Term Loan Commitments and the Initial Delayed Draw Term Loans and other extensions of credit thereunder.

"Initial Delayed Draw Term Lender" means any Lender with an Initial Delayed Draw Term Loan Commitment or an outstanding Initial Delayed Draw Term Loan.

"Initial Delayed Draw Term Loan Commitment" means, with respect to each Term Lender, the commitment of such Term Lender to make Initial Delayed Draw Term Loans hereunder in an aggregate amount not to exceed the amount set forth opposite such Initial Delayed Draw Term Lender's name on the Commitment Schedule, as the same may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Term Lender pursuant to Section 9.05. The aggregate amount of the Term Lenders' Initial Delayed Draw Term Loan Commitments on the Closing Date is $50,000,000.

"Initial Delayed Draw Term Loan Commitment Fee Rate" means, on any date with respect to the Initial Delayed Draw Term Loan Commitments, 1.0% per annum.

"Initial Delayed Draw Term Loan Commitment Termination Date" means the earlier of (a) date that is two years after the Closing Date and (b) the date the Initial Delayed Draw Term Loan Commitment is wholly terminated pursuant to Section 2.09(a)(ii)(A) or Section 2.09(b)(ii).

"Initial Delayed Draw Term Loans" means the term loans made by the Initial Delayed Draw Term Lenders to the Borrower pursuant to Section 2.01(a)(iii).

"Initial Lenders" means, in their capacities as Lenders hereunder, the Arrangers and the affiliates of the Arrangers who are party to this Agreement as Lenders on the Closing Date.

"Initial Loans" means the Initial Term Loans and the Initial Delayed Draw Term Loans.

"Initial Revolving Credit Commitment" means, with respect to each Lender, the commitment of such Lender to make Initial Revolving Loans (and acquire participations in Letters of Credit) hereunder as set forth on the Commitment Schedule, or in the Assignment Agreement pursuant to which such Lender 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 $20,000,000.

"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, in each case, attributable to its Initial Revolving Credit Commitment.

"Initial Revolving Credit Maturity Date" means the date that is six 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" means any revolving loan made by the Initial Revolving Lenders to the Borrower pursuant to 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 each Term Lender, the commitment of such Term Lender to make Initial Term Loans hereunder in an aggregate amount not to exceed the amount set forth opposite such Term Lender's name on the Commitment Schedule, as the same may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Term Lender pursuant to Section 9.05 or (ii) 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 $155,000,000.

"Initial Term Loan Maturity Date" means the date that is six years after the Closing Date.

"Initial Term Loans" means the term loans made by the Initial Term Lenders to the Borrower pursuant to 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, in accordance with this Agreement and the Security Agreement, including an Intellectual Property Security Agreement substantially in the form of Exhibit C hereto.

"Intercompany Note" means a promissory note substantially in the form of Exhibit F.

"Interest Election Request" means a request by the Borrower in the form of Exhibit G 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) with respect to any ABR Loan, the last Business Day of each Fiscal Quarter (commencing with the Fiscal Quarter ending on September 24, 2017) and the maturity date applicable to such ABR Loan and (b) with respect to any Adjusted Eurocurrency Rate Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of any Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months (or, to the extent available to all relevant affected Lenders, twelve months or a shorter period) thereafter, as the Borrower may elect; provided that (i) 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 (ii) 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.

"Interpolated Rate" means, in relation to the LIBO Rate or Screen Rate, the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the applicable LIBO Rate or Screen Rate for the longest period (for which that LIBO Rate or Screen Rate is available) which is less than the Interest Period of that Loan; and (b) the applicable LIBO Rate or Screen Rate for the shortest period (for which that LIBO Rate or Screen Rate is available) which exceeds the Interest Period of that Revolving Loan, each as of approximately 11:00 a.m. (London, England time) two Business Days prior to the commencement of such Interest Period of that Loan.

"Investment" means (a) any purchase or other acquisition by the Borrower or any of its Subsidiaries of any of the Securities of any other Person (other than any Loan Party), (b) the acquisition 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 or any division or line of business or other business unit of any 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 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 by the Borrower or any of its Subsidiaries to any other Person. 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 adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto, but giving effect to any repayments of principal in the case of any Investment in the form of a loan and 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).

"Investors" means (a) the Sponsor, (b) the Management Investors and (c) other investors that, directly or indirectly, beneficially own Capital Stock in Holdings on the Closing Date.

"Information" has the meaning assigned to such term in Section 3.11(a).

"IP Rights" has the meaning assigned to such term in Section 3.05(c).

"IRS" means the U.S. Internal Revenue Service.

"Issuing Bank" means, as the context may require, (a) a financial institution selected by the Administrative Agent that is reasonably acceptable to the Borrower and/or (b) the Administrative Agent and/or any Revolving Lender that is appointed as an Issuing Bank in accordance with Section 2.05(i) hereof. 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.

"Joinder Agreement" means a Joinder Agreement substantially in the form of Exhibit J or such other form that is reasonably satisfactory to the Administrative Agent and the Borrower.

"Junior Indebtedness" means any Indebtedness of the types described in clauses (a) and (c) of the definition of "Indebtedness" (other than Indebtedness among Holdings, Borrower and/or its subsidiaries) of the Borrower or any of its Subsidiaries that is expressly subordinated in right of payment to the Obligations.

"Junior Lien Indebtedness" means any Indebtedness of the types described in clauses (a) and (c) of the definition of "Indebtedness" that is secured by a security interest on the Collateral (other than Indebtedness among Holdings, the Borrower and/or its subsidiaries) that is expressly junior or subordinated to the Lien securing the Credit Facilities on the Closing Date.

"Junior Unsecured Indebtedness" means any Indebtedness of the types described in clauses (a) and (c) of the definition of "Indebtedness" that is unsecured.

"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(j).

"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 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 Percentage of the aggregate LC Exposure at such time.

"LCA Investment" has the meaning assigned to such term in Section 1.10.

"Legal Reservations" means the application of 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.

"Letter of Credit" means any standby letter of credit issued pursuant to this Agreement.

"Letter of Credit Reimbursement Loan" has the meaning assigned to such term in Section 2.05(e).

"Letter-of-Credit Right" has the meaning set forth in Article 9 of the UCC.

"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 M hereto or such other form that is reasonably satisfactory to the relevant Issuing Bank and the Borrower.

"Letter of Credit Sublimit" means $5,000,000, subject to increase in accordance with Section 2.22.

"LIBO Rate" has the meaning set forth in the definition of "Eurocurrency Rate".

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any 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, any Promissory Note, each Loan Guaranty, the Collateral Documents, any Acceptable Intercreditor Agreement to which the Borrower is a party, 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 Guaranty" means the Guaranty Agreement, substantially in the form of Exhibit H hereto, executed by each Loan Guarantor 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 Holdings, the Borrower and each Subsidiary Guarantor.

"Loan Guarantor" means Holdings and any Subsidiary Guarantor.

"Loans" means any Initial Loans, any Additional Term Loan, any Revolving Loan or any Additional Revolving Loan.

"London Banking Day" means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank market.

"Management Investors" means the officers, directors, managers, employees and members of management of the Borrower, any Parent Company and/or any subsidiary of the Borrower (including, on the Closing Date, those of the Target and its subsidiaries).

"Margin Stock" has the meaning assigned to such term in Regulation U.

"Material Adverse Effect" means (a) on the Closing Date (including, for purposes of any representation and warranty made as of the Closing Date), a Closing Date Material Adverse Effect and (b) after the Closing Date, a material adverse effect on (i) the business, financial condition or results of operations, in each case, of the Borrower and its 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 which is required to be pledged and delivered to the Administrative Agent (or its bailee) pursuant to the Security Agreement.

"Material Real Estate Asset" means (a) on the Closing Date, each Real Estate Asset listed on Schedule 3.05 and (b) any "fee-owned" Real Estate Asset acquired by any Loan Party after the Closing Date having a fair market value (as reasonably determined by the Borrower after taking into account any liabilities with respect thereto that impact such fair market value) in excess of $1,750,000 as of the date of acquisition thereof.

"Maturity Date" means (a) with respect to the Initial Revolving Facility, the Initial Revolving Credit Maturity Date, (b) with respect to the Initial Loans, the Initial Term Loan Maturity Date, (c) with respect to any Incremental Facility, the final maturity date set forth in the applicable Incremental Facility Amendment, and (d) 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.

"Merger Agreement" means that certain Agreement and Plan of Merger, dated as of July 26, 2017, among Holdings, Merger Sub, the Target, Freeman Spogli Management Co., LP, a Delaware limited partnership, as shareholders' representative and other parties thereto.

"Merger Sub" has the meaning assigned to such term in the preamble to this Agreement.

"Minimum Extension Condition" has the meaning assigned to such term in Section 2.23(b).

"Moody's" means Moody's Investors Service, Inc.

"Mortgage Policies" has the meaning assigned to such term in the definition of "Collateral and Guarantee Requirement".

"Mortgage" means any mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent and the relevant Secured Parties, on any Material Real Estate Asset constituting Collateral, which shall contain such terms as may be necessary under applicable local Requirements of Law to perfect a Lien on the applicable Material Real Estate Asset.

"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 the Borrower or any of its 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.

"Narrative Report" means, with respect to the financial statements in respect of which it is delivered, a customary narrative report describing the operations of the Borrower and its Subsidiaries for the relevant Fiscal Quarter and for the period from the beginning of the then-current Fiscal Year to the end of the period to which the relevant financial statements relate.

"Net Insurance/Condemnation Proceeds" means an amount equal to: (a) any Cash payments or proceeds (including Cash Equivalents) received by the Borrower or any of its Subsidiaries (i) under any casualty insurance policy in respect of a covered loss thereunder of any assets of the Borrower or any of its Subsidiaries or (ii) as a result of the taking of any assets of the Borrower or any of its 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, minus (b)(i) any actual out-of-pocket costs and expenses incurred by the Borrower or any of its Subsidiaries in connection with the adjustment, settlement or collection of any claims of the Borrower or the relevant 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 any Indebtedness secured by a Lien on the Collateral that is *pari passu* with or expressly subordinated to the Lien on the Collateral securing any Secured Obligation) 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) in the case of a taking, the reasonable out-of-pocket costs of putting any affected property

in a safe and secure position, (iv) any 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 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, (v) any amounts 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 amounts are 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), (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 amounts are 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 secured by a Lien on the Collateral that is *pari passu* with or expressly subordinated to the Lien on the Collateral securing any Secured Obligation) 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) Cash escrows (until released from escrow to the Borrower or any of its Subsidiaries) from the sale price for such Disposition and (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)) 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 (b) with respect to any issuance or incurrence of Indebtedness or 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.

"Non-Debt Fund Affiliate" means the Sponsor and any Affiliate of the Sponsor (other than any Debt Fund Affiliate, Holdings, the Borrower or any subsidiary of the Borrower).

"Non-Consenting Lender" has the meaning assigned to such term in Section 2.19(b).

"Non-Defaulting Revolving Lenders" has the meaning assigned to such term in Section 2.21(d)(i).

"Notice of Intent to Cure" has the meaning assigned to such term in Section 6.15(b).

"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.

"OFAC" has the meaning assigned to such term in Section 3.17(a).

"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)(i).

"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 excise or property Taxes arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, 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(b)).

"Outstanding Amount" means (a) with respect to any Term Loan and/or Revolving Loan on any date, the amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Term Loan and/or Revolving Loan, 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 changes 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 disbursements with respect to any Letter of Credit occurring on such date and any other changes in the aggregate amount of such LC Disbursement as of such date, including as a result of any reimbursements by the Borrower of such unreimbursed LC Disbursement.

"Parent Company" means Holdings and any other Person of which the Borrower is an indirect Wholly-Owned Subsidiary.

"Participant" has the meaning assigned to such term in Section 9.05(c)(i).

"Participant 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, without limitation, 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.

"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 the Borrower or any of its 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 I.

"Perfection Requirements" means 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 U.S. Patent and Trademark Office and the U.S. Copyright Office, the proper recording or filing, as applicable, of Mortgages and fixture filings with respect to any Material Real Estate Asset constituting Collateral, in each case in favor of the Administrative Agent for the benefit of the Secured Parties and the delivery to the Administrative Agent of any stock certificate or promissory note, together with instruments of transfer executed in blank, in each case, to the extent required by the applicable Loan Documents.

"Permitted Acquisition" means any acquisition made by the Borrower or any of its Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of (or, with respect to such acquisition by the Borrower or any of its Subsidiaries, substantially all of the assets of the relevant target that are legally permitted to be owned by the Borrower or any of its Subsidiaries under applicable Requirements of Law), or any business line, unit or division or product line (including research and development and related assets in respect of any product) and/or the repurchase of franchised Unit Locations, of any Person or of a majority of the outstanding Capital Stock of any Person who is engaged in a Similar Business (and, in any event, including any Investment in (x) any Subsidiary the effect of which is to increase the Borrower's or any Subsidiary's equity ownership in such Subsidiary or (y) any joint venture for the purpose of increasing the Borrower's or its relevant Subsidiary's ownership interest in such joint venture) if (1) such Person becomes a Subsidiary or (2) such Person, in one transaction or a series of related transaction, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets (or such division, business unit or product line) to, or is liquidated into, the Borrower and/or any Subsidiary as a result of such Investment; provided that:

(a) the Total Leverage Ratio calculated on a Pro Forma Basis is not greater than the lesser of (i) the Financial Covenant Level as of such date and (ii) 6.00:1.00;

(b) the total consideration paid by Persons that are Loan Parties for (i) the Capital Stock of any Person that does not become a Loan Party or is not 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 Subsidiary or joint venture is not, or 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, when taken together with the total consideration for all such Persons and assets so acquired after the Closing Date, the aggregate amount of Investments made in reliance on Section 6.06(b)(iii) and the aggregate outstanding amount of Indebtedness incurred pursuant to Section 6.01(j), shall not exceed $12,500,000; and

(c) the limitation described in clause (b) above shall not apply to any acquisition to the extent 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 Subsidiary, other than any Cure Amount or Contribution Indebtedness Amount.

"Permitted Holders" means (a) the Sponsor and Management Investors and (b) any person or entity with which the Sponsor and/or any Management Investor forms a "group" (within the meaning of Section 14(d) of the Exchange Act) so long as, in the case of this clause (b), the Sponsor beneficially owns more than 50% of the relevant voting stock beneficially owned by that group.

"Permitted Liens" means Liens permitted pursuant to Section 6.02.

"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 the Borrower and/or any 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 non-ordinary course Disposition by the Borrower or its Subsidiaries made pursuant to Section 6.07(h).

"Primary Obligor" has the meaning assigned to such term in the definition of "Guarantee".

"Prime Rate" means the rate of interest last quoted by *The Wall Street Journal* (or another national publication reasonably selected by the Administrative Agent) as the "Prime Rate" in the U.S. or, if *The Wall Street Journal* (or such other publication) 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 Leverage Ratio or Consolidated Adjusted EBITDA (including component definitions thereof), that:

(a) (i) in the case of any Disposition of all or substantially all of the Capital Stock of any Subsidiary or any division and/or product line of the Borrower, any Subsidiary income statement items (whether positive or negative) 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 and (ii) in the case of any Permitted Acquisition and/or Investment described in the definition of the term "Subject Transaction", 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,

(b) any retirement or repayment of Indebtedness (other than normal fluctuations in revolving Indebtedness incurred for working capital purposes) 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,

(c) any Indebtedness incurred by the Borrower or any of its Subsidiaries in connection therewith 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, (x) 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), (y) 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 to be the rate of interest implicit in such obligation in accordance with GAAP and (z) 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 and

(d) the acquisition of Cash or Cash Equivalents, 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 Cash or Cash Equivalent 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.

It is hereby agreed that for purposes of determining pro forma compliance with Section 6.15(a) prior to the last day of the first Fiscal Quarter after the Closing Date, the applicable level shall be the level cited in Section 6.15(a). Notwithstanding anything to the contrary set forth in the immediately preceding paragraph, for the avoidance of doubt, when calculating the Total Leverage Ratio for purposes of Section 6.15(a) (other than for the purpose of determining pro forma compliance with Section 6.15(a) 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 of the Borrower and its subsidiaries delivered to Golub Capital on July 21, 2017 and the pro forma financial statements delivered by the Borrower pursuant to Section 4.01(c)(iii).

"Promissory Note" means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit K hereto, evidencing the aggregate outstanding principal amount of Loans of the Borrower to such Lender resulting from the Loans made by such Lender.

"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 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' or managers' 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 and listing fees.

"Public Lender" has the meaning assigned to such term in Section 9.01(d).

"Quality of Earnings Report" means that certain Quality of Earnings Report dated as of July 21, 2017 (as amended by the Addendum to the Quality of Earnings Report, dated as of July 24, 2017), prepared by PricewaterhouseCoopers LLP.

"Qualified Capital Stock" of any Person means any Capital Stock of such Person that is not Disqualified Capital Stock.

"Qualifying IPO" means (a) the issuance and sale by the Borrower or any Parent Company of its common Capital Stock in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act (whether alone or in connection with a secondary public offering) or (b) any merger, amalgamation or consolidation by the Borrower or any Parent Company with and into any Person whose Capital Stock is listed on any securities exchange or otherwise publicly held.

"Real Estate Asset" means, at any time of determination, all right, title and interest (fee, leasehold or otherwise) of any Loan Party in and to real property (including, but not limited to, land, improvements and fixtures thereon).

"Refinancing" has the meaning assigned to such term in the recitals to this Agreement.

"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).

"Regulation D" means Regulation D of the FRB as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation H" means Regulation H of the FRB as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation U" means Regulation U of the FRB as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"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, 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.

"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 Delayed Draw Lenders" means, at any time, Lenders having Initial Delayed Draw Term Loan Commitments representing more than 50% of the Initial Delayed Draw Term Loan Commitments.

"Required Excess Cash Flow Percentage" means, as of any date of determination, (a) if the Total Leverage Ratio is greater than 4.25:1.00, 50%, (b) if the Total Leverage Ratio is less than or equal to 4.25:1.00 and greater than 3.75:1.00, 25%, (c) if the Total Leverage Ratio is less than or equal to 3.75:1.00, 0%; it being understood and agreed that, for purposes of this definition as it applies to the determination of the amount of Excess Cash Flow that is required to be applied to prepay the Term Loans under Section 2.11(b)(i) for any Excess Cash Flow Period, the Total Leverage Ratio shall be determined on the scheduled date of prepayment.

"Required Initial Lenders" means, at any time, Initial Lenders having Loans or unused Commitments representing more than 50% of the sum of the total Loans and such unused Commitments held by the Initial Lenders at such time.

"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 other requirements 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.

"Responsible Officer" of any Person means the chief executive officer, the president, the chief financial officer, the treasurer, any assistant treasurer, any executive vice president, any senior vice president, any vice president or the chief operating officer of such Person and any other individual or similar official thereof responsible for the administration of the obligations of such Person in respect of this Agreement, 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. 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.

"Responsible Officer Certification" means, with respect to the financial statements for which such certification is required, the certification of a Responsible Officer of the Borrower that such financial statements fairly present, in all material respects, in accordance with GAAP, the consolidated financial condition of the Borrower as at the dates indicated and its consolidated operations and cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"Restricted Amount" has the meaning set forth in Section 2.11(b)(iv).

"Restricted Debt" has the meaning set forth in Section 6.04(b).

"Restricted Debt Payments" 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.

"Retained Excess Cash Flow Amount" means, at any date of determination, an amount, determined on a cumulative basis, that is equal to the aggregate cumulative sum of the Excess Cash Flow that is not required to be applied as a mandatory prepayment under Section 2.11(b)(i) for all Excess Cash Flow Periods ending after the Closing Date and prior to such date; provided that such amount shall not be less than zero for any Excess Cash Flow Period.

"Revaluation Date" means (a) with respect to any Revolving Loan, each of the following: (i) the date of the Borrowing of such Revolving Loan, (ii) each date of any continuation of such Revolving Loan pursuant to the terms of this Agreement and (iii) the date of any voluntary reduction of the related Commitment pursuant to Section 2.09(b), (b) with respect to any Letter of Credit, each of the following: (i) the date of on which such Letter of Credit is issued and (ii) the date of any amendment of such Letter of Credit that has the effect of increasing the face amount thereof and (c) any additional date as the Administrative Agent or the relevant Issuing Bank, as applicable, may determine or the Required Lenders may require at any time.

"Revolving Commitment Fee Rate" means, on any date (a) with respect to the Initial Revolving Credit Commitments, the 0.50% per annum and (b) with respect to Additional Revolving Credit Commitments of any Class, the rate or rates per annum specified in the applicable Incremental Facility Amendment or Extension Amendment.

"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 and any facility governing Extended Revolving Credit Commitments or Extended Revolving Loans.

"Revolving Lender" means any Initial Revolving Lender and any Additional Revolving Lender.

"Revolving Loans" means any Initial Revolving Loans and any Additional Revolving Loans.

"S&P" means Standard & Poor's Financial Services LLC, a subsidiary of the McGraw-Hill Companies, Inc.

"Sale and Lease-Back Transaction" has the meaning assigned to such term in Section 6.08.

"Scheduled Consideration" has the meaning assigned to such term in the definition of "Excess Cash Flow".

"Screen Rate" means the rate appearing on the applicable Reuters screen page (or any successor or substitute page of such Reuters service, or if the Reuters service ceases to be available, any successor to or substitute for such service providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time in consultation with the Borrower, for purposes of providing quotations of interest rates applicable to deposits in Dollars in the London interbank market).

"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 Obligations) under each Hedge Agreement that (a) is in effect on the Closing Date between any Loan Party and a counterparty that is (or is an Affiliate of) the Administrative Agent, a Lender or an Arranger as of the Closing Date or (b) is entered into after the Closing Date between any Loan Party and any counterparty that is (or is an Affiliate of) the Administrative Agent, a Lender or an Arranger at the time such Hedge Agreement is entered into, 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, 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 Acceptable Intercreditor Agreement as if it were a Lender.

"Secured Obligations" means all Obligations, together with all Banking Services Obligations and all Secured Hedging Obligations.

"Secured Parties" means (i) the Lenders and the Issuing Banks, (ii) the Administrative Agent, (iii) each counterparty to a Hedge Agreement with a Loan Party the obligations under which constitute Secured Hedging Obligations, (iv) each provider of Banking Services to any Loan Party the obligations under which constitute Banking Services Obligations, (v) the Arrangers and (vi) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document.

"Securities" means any stock, shares, units, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing; provided that "Securities" shall not include any earn-out agreement or obligation or any employee bonus or other incentive compensation plan or agreement.

"Securities Act" means the Securities Act of 1933 and the rules and regulations of the SEC promulgated thereunder.

"Security Agreement" means the Pledge and Security Agreement, substantially in the form of Exhibit L, among the Loan Parties 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 6.10 if the references to "Subsidiaries" in Section 6.10 were read to refer to such Person.

"SPC" has the meaning assigned to such term in Section 9.05(e).

"Specified Merger Agreement Representations" means such of the representations and warranties made by or on behalf of the Target, its subsidiaries or their respective businesses in the Merger Agreement as are material to the interests of the Lenders, but only to the extent that Merger Sub (or its applicable affiliate) has the right to terminate its obligations under the Merger Agreement or to decline to consummate the Closing Date Merger as a result of a breach of such representations and warranties.

"Specified Representations" means the representations and warranties set forth in Section 3.01(a)(i) (as it relates to the Loan Parties), Section 3.02 (as it relates to the due authorization, execution, delivery and performance of the Loan Documents and the enforceability thereof), Section 3.03(b)(i), Section 3.08, Section 3.12, Section 3.14 (as it relates to the creation, validity and perfection of the security interests in the Collateral), Section 3.16, Section 3.17(a)(ii), Section 3.17(b) and Section 3.17(c)(ii).

"Sponsor" means, collectively, Advent, its controlled Affiliates and funds managed or advised by any of them or any of their respective controlled Affiliates.

"Spot Rate" means, on any date of determination, the exchange rate, as determined by the Administrative Agent, that is applicable to conversion of one currency into another currency, which is the exchange rate reported by Bloomberg (or other commercially available source designated by the Administrative Agent) as of the end of the preceding Business Day in the financial market for the first currency.

"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 (x) as if any future automatic increases in the maximum available amount provided for in any such Letter of Credit had in fact occurred at such time and (y) without regard to whether any conditions to drawing could then be met but after giving effect to all previous drawings made thereunder.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted Eurocurrency Rate, for Eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D). Such reserve percentages shall include those imposed pursuant to such Regulation D. Adjusted Eurocurrency Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"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, with respect to any Test Period, (a) the Transactions, (b) 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 (x) any Subsidiary the effect of which is to increase the Borrower's or any Subsidiary's respective equity ownership in such Subsidiary or (y) any joint venture for the purpose of increasing the Borrower's or its relevant Subsidiary's ownership interest in such joint venture), in each case that is permitted by this Agreement, (c) any Disposition of all or substantially all of the assets or Capital Stock of any subsidiary (or any business unit, line of business or division of the Borrower, any subsidiary) not prohibited by this Agreement, (d) any incurrence or repayment of Indebtedness (other than revolving Indebtedness), (e) any capital contribution in respect of Qualified Capital Stock or any issuance of Qualified Capital Stock (other than any amount constituting a Cure Amount) and/or (f) 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" or "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 that is not a 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, 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. Notwithstanding the foregoing, the Borrower may elect to cause any Subsidiary that is not otherwise required to be a Subsidiary Guarantor to provide a Loan Guaranty by causing such Subsidiary to execute a joinder to the Loan Guaranty in substantially the form attached as an exhibit thereto, and any such Subsidiary shall be a Loan Party and Subsidiary Guarantor for all purposes hereunder.

"Successor Borrower" has the meaning assigned to such term in Section 6.07(a).

"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.

"Target" has the meaning assigned to such term in the preamble to this Agreement.

"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.

"Termination Date" has the meaning assigned to such term in the lead-in to Article 5.

"Term Commitment" means any Initial Term Loan Commitment, Initial Delayed Draw 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, Initial Delayed Draw Term Lender and any Additional Term Lender.

"Term Loan" means the Initial Loans and, if applicable, any Additional Term Loans.

"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 of Section 5.01(a), "Test Period" means the period of four consecutive Fiscal Quarters most recently ended for which financial statements of the Target are available.

"Threshold Amount" means $7,500,000.

"Total Leverage Ratio" means the ratio, as of any date of determination, of (a) Consolidated Total Debt outstanding as of the last day of the most recently ended Test Period to (b) Consolidated Adjusted EBITDA for the Test Period then most recently ended, in each case of the Borrower, its 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, without limitation, 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 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 transactions contemplated by the Merger Agreement, (c) the Equity Contribution, (d) the Refinancing, (e) the Closing Date Merger and (f) 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 U.S. 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 Adjusted Eurocurrency Rate 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.

"Unit Locations" 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 Persons (including, in the case of the Borrower and its Subsidiaries) and (b) Cash and Cash Equivalents of such Person (including, in the case of the Borrower and its Subsidiaries) 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); provided that such amount shall not exceed $10,000,000.

"U.S." means the United States of America.

"U.S. Lender" means any Lender or Issuing Bank that is a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"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)).

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 2.17(f).

"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 effect 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) shall be 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 the Borrower or any 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, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02. 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.*, an "Adjusted Eurocurrency Rate Loan") or by Class and Type (*e.g.*, an "Adjusted Eurocurrency Rate Term Loan"). Borrowings also may be classified and referred to by Class (*e.g.*, a "Term Loan Borrowing") or by Type (*e.g.*, an "Adjusted Eurocurrency Rate Borrowing") or by Class and Type (*e.g.*, an "Adjusted Eurocurrency Rate Term Loan Borrowing").

Section 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) 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), (b) 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, (c) any reference herein or in any Loan Document to any Person shall be construed to include such Person's successors and permitted assigns, (d) 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, (e) 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, (f) 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" and (g) 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. For purposes of determining compliance at any time with Sections 6.01, 6.02, and/or 6.06 in the event that any Indebtedness, Lien or Investment, as applicable, meets the criteria of more than one of the categories of transactions or items permitted pursuant to any clause of Sections 6.01 (other than Sections 6.01(a)), 6.02 (other than Section 6.02(a)) and 6.06, the Borrower, in its sole discretion, may classify 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. 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 Sections 6.01, 6.02, 6.04, 6.05, 6.06, 6.07 or 6.09, respectively, but may instead be permitted in part under any combination thereof.

Section 1.04. 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 Total Leverage Ratio or Consolidated Adjusted EBITDA 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 (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, 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 such an amendment is requested by the Borrower or the Required Lenders, then 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 1.10, all financial ratios and tests (including the Total Leverage Ratio and the amount of 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 (x) any Subject Transaction has occurred or (y) any Person that subsequently became a Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its 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 (it being understood, for the avoidance of doubt, that solely for purposes of calculating actual compliance with Section 6.15(a), 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," in the event of an accounting change (or any implementation of changes to GAAP contemplated and promulgated as of such date) requiring all leases to be capitalized, only those leases (assuming for purposes hereof that such leases were in existence on the date hereof) that would constitute Capital Leases in conformity with GAAP on the date hereof shall be considered Capital Leases, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

Section 1.05. Effectuation of Transactions. Each of the representations and warranties contained in this Agreement (and all corresponding definitions) is made after giving effect to the Transactions, unless the context otherwise requires.

Section 1.06. Timing of Payment of Performance. When payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or 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 1.07. 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 1.08. Currency Equivalents Generally.

(a) For purposes of any determination under Article 5, Article 6 (other than Section 6.15(a) and the calculation of compliance with any financial ratio for purposes of taking any action hereunder) or Article 7 with respect to the amount of any Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, Investment, Disposition, Sale and Lease-Back Transaction, Affiliate transaction 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 commitments unutilized thereunder and (z) additional amounts 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 6.15(a) 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. Notwithstanding the foregoing or anything to the contrary herein, to the extent that the Borrower would not be in compliance with Section 6.15(a) 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 6.15(a) 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 6.15(a), the Total Leverage Ratio as of the last day of such Test Period shall be calculated on the basis of such average relevant currency exchange rates.

(b) 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 1.09. 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, 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 1.10. Certain Calculations and Tests.

(a) Notwithstanding anything to the contrary herein, in connection with any acquisition or similar Investment, the consummation of which is not conditioned on the availability of debt financing (each, an "LCA Investment") (including with respect to any Indebtedness contemplated or incurred in connection therewith) (other than any Initial Delayed Draw Term Loan), to the extent that the terms of this Agreement require (i) compliance with any financial ratio or test (including, without limitation, Section 6.15(a) hereof and/or any Total Leverage Ratio test) and/or any basket (including any cap expressed as a percentage of Consolidated Adjusted EBITDA) or (ii) the absence of a Default or Event of Default (or any type of Default or Event of Default, but other than any payment or bankruptcy Event of Default) as a condition to making such LCA Investment and/or incurring any Indebtedness or effecting another transaction incurred or contemplated in connection therewith, the determination of whether the relevant condition is satisfied may be made, at the election of the Borrower, at the time of (or on the basis of the financial statements for the most recently ended Test Period at the time of) either (A) the execution of the definitive agreement with respect to the relevant LCA Investment or (B) the consummation of the LCA Investment, in each case, after giving effect, on a Pro Forma Basis to the LCA Investment, any related Indebtedness (including the intended use of proceeds thereof) and all other permitted pro forma adjustments; provided that if the Borrower has made an election under clause (A), in connection with the subsequent calculation of any ratio or basket (other than with respect to any Delayed Draw Term Loan) on or following such date and prior to the earlier of the date on which such LCA Investment is consummated or the definitive agreement for such LCA Investment is terminated, compliance with such ratio or basket shall be calculated on a Pro Forma Basis assuming such LCA Investment and other transactions incurred or contemplated in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated.

(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, without limitation, Section 6.15(a), any Total Leverage Ratio test and/or the amount of Consolidated Adjusted EBITDA), such financial ratio or test shall be calculated at the time such action is taken (subject to clause (a) above), 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 occurring after such calculation.

(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, without limitation, Section 6.15(a) hereof and/or any Total Leverage Ratio test) (any such amount, 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, without limitation, Section 6.15(a) and/or any Total 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 clause (i) above, pro forma effect shall be given to the use of the relevant Fixed Amount in calculating such financial ratio or test applicable to the Incurrence-Based Amount.

(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 granting of a Lien for purposes of Section 6.02.

ARTICLE 2
THE CREDITS

Section 2.01. Commitments.

(a) Subject to the terms and conditions set forth herein,

(i) each Initial Term Lender severally, and not jointly, agrees to make Initial Term Loans to the Borrower on the Closing Date in Dollars in a principal amount not to exceed its Initial Term Loan Commitment;

(ii) each Revolving Lender severally, and not jointly, agrees to make Revolving Loans to the Borrower in Dollars, if applicable, 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; and

(iii) each Initial Delayed Draw Term Lender severally, and not jointly, agrees to make Initial Delayed Draw Term Loans to the Borrower in Dollars in a principal amount not to exceed its Initial Delayed Draw Term Loan Commitment at any time and from time to time on and after the Closing Date, and until the earlier of (i) the Initial Delayed Draw Term Loan Commitment Termination Date and (ii) the termination of the Initial Delayed Draw Term Loan Commitment of such Initial Delayed Draw Term Lender in accordance with the terms hereof. The Initial Delayed Draw Term Loans and Initial Term Loans are the same Class of Term Loans for all purposes under this Agreement. On the Initial Delayed Draw Term Loan Commitment Termination Date, to the extent requested by the Borrower in accordance with Section 2.03, the Initial Delayed Draw Term Loans may be borrowed in an amount not to exceed any unused Initial Delayed Draw Term Loan Commitment as of the date of such Borrowing.

(iv) Within the foregoing limits and subject to the terms, conditions and limitations set forth herein, the Borrower may borrow, pay or prepay and reborrow Revolving Loans. Amounts paid or prepaid in respect of the Initial Loans may not be reborrowed.

(b) Subject to the terms and conditions of this Agreement and any applicable 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 Incremental Facility Amendment.

(c) Administrative Agent may from time to time classify all or any portion of outstanding Initial Delayed Draw Term Loans, in each case in a minimum principal amount of $5,000,000, as a separate tranche of Term Loans, each of which shall be deemed separate and independent tranches of term loans from the other Term Loans hereunder; provided, that once so classified, a separate and independent tranche of Initial Delayed Draw Term Loans shall not be subject to reclassification hereunder. In connection with any such classification (v) the applicable Initial Delayed Draw Term Loans shall be given a numerical designation in ascending order based on the date such Initial Delayed Draw Term Loans are so classified (on an earliest to latest basis, for example, DDTL-1, DDTL-2, DDTL-3, etc.), which numerical designation shall apply to such Initial Delayed Draw Term Loans for all purposes of this Agreement and the other Loan Documents to separately identify that particular tranche of Initial Delayed Draw Term Loans from the other tranches of Initial Delayed Draw Term Loans funded under the Initial Delayed Draw Term Loan Commitment, and each reference herein and in the other Loan Documents to "Initial Delayed Draw Term Loans," "each Initial Delayed Draw Term Loan," "an Initial Delayed Draw Term Loan," "any Initial Delayed Draw Term Loan" or similar reference shall mean a particular tranche of the Initial Delayed Draw Term Loans (applicable to all such tranches equally unless specifically set forth otherwise herein (for example, separate amortization schedules for each such tranche as determined in accordance with the terms of Section 2.10 hereof) or in the applicable Loan Document), (w) the Administrative Agent shall update the Register to reflect any such classification and shall promptly inform the Lenders holding Initial Delayed Draw Term Loans of any such classification, (x) all such tranches of Initial Delayed Draw Term Loans shall rank *pari passu* with one another in right of payment and of security (including, without limitation, with respect to scheduled amortization payments, interest payments, voluntary prepayments, mandatory prepayments and Sections 2.18(b)) and shall share in all payments made on account of the Initial Delayed Draw Term Loans *pro rata* based on the applicable amounts owing in respect of each tranche of Initial Delayed Draw Term Loans, (y) each such tranche of Initial Delayed Draw Term Loans may trade separate from each other tranche of Initial Delayed Draw Term Loans and (z) except for the separate amortization schedules for each such tranche of Initial Delayed Draw Term Loans as determined in accordance with the terms of Section 2.10 hereof, each tranche of Initial Delayed Draw Term Loans shall have terms identical to the other Initial Delayed Draw Term Loans hereunder. Each such separate tranche of Initial Delayed Draw Term Loans shall constitute a separate and distinct Term Loan and a separate and distinct Loan for all purposes of this Agreement and the other Loan Documents. With respect to a particular tranche of Initial Delayed Draw Term Loans, the term "Initial Delayed Draw Term Loan" shall refer to the aggregate amount of such tranche of Initial Delayed Draw Term Loans funded to the Borrower when used in the context of all Initial Delayed Draw Term Lenders collectively and a particular Initial Delayed Draw Term Lender's portion of the aggregate amount of such tranche of Initial Delayed Draw Term Loans when used in the context of an individual Initial Delayed Draw Term Lender.

Section 2.02. Loans and Borrowings.

(a) Each 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.

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or Adjusted Eurocurrency Rate Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate Loan shall be deemed to have been made and held by such Lender, and the obligation of the Borrower to repay such Adjusted Eurocurrency Rate 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 U.S. federal withholding Tax with respect to such Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate Borrowing, such Adjusted Eurocurrency Rate Borrowing shall comprise an aggregate principal amount that is an integral multiple of $50,000 and not less than $250,000. Each ABR Borrowing when made shall be in a minimum principal amount of $50,000 and in an integral multiple of $50,000; 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 Commitments or (y) required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e). 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 15 different Interest Periods in effect for Adjusted Eurocurrency Rate 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.

(e) Each Borrowing in respect of Initial Delayed Draw Term Loan Commitments shall comprise an aggregate principal amount that is not less than $2,000,000 and in an integral multiple of $50,000.

Section 2.03. 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 Adjusted Eurocurrency Rate Loans shall be made upon irrevocable notice by the Borrower to the Administrative Agent (provided that notices in respect of Term Loan Borrowings and/or the Revolving Loan Borrowing (x) to be made on the Closing Date may be conditioned on the closing of the Closing Date Merger and (y) to be made in connection with any permitted acquisition, permitted Investment or irrevocable repayment or redemption of Indebtedness may be conditioned on the closing of such permitted acquisition, permitted Investment or permitted irrevocable repayment or redemption of Indebtedness). Each such notice must be in in the form of a written Borrowing Request, appropriately completed and signed by a Responsible Officer of the Borrower and must be received by the Administrative Agent (by hand delivery, fax or other electronic transmission (including ".pdf" or ".tif")) not later than 12:00 p.m. (i) three Business Days prior to the requested day of any Borrowing of, conversion to or continuation of Adjusted Eurocurrency Rate Loans and (ii) one Business Day prior to the requested day of any Borrowing of or conversion to ABR 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 Adjusted Eurocurrency Rate Loans having an Interest Period of other than one, two, three or six months in duration 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. five Business Days prior to the requested date of the relevant Borrowing (or such later time as is reasonably acceptable to the Administrative Agent), conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the appropriate Lenders of such request and determine whether the requested Interest Period is available to them and (B) the Administrative Agent shall promptly 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 Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate Borrowing, no later than one Business Day following receipt of a Borrowing Request in accordance with this Section.

Section 2.04. [Reserved].

Section 2.05. Letters of Credit.

(a) General.

(i) 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 for the account of the Borrower and/or any of its Subsidiaries (provided that the Borrower will be the applicant) and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.05(b), and (B) to honor drafts under the Letters of Credit, and (ii) the Revolving Lenders severally agree to participate in the Letters of Credit issued pursuant to Section 2.05(d).

(ii) No Issuing Bank shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any Requirement of Law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such Issuing Bank in good faith deems material to it;

(B) the issuance of such Letter of Credit would not violate one or more policies of such Issuing Bank applicable generally to all letters of credit issued by it;

(C) except as otherwise agreed by the Administrative Agent and such Issuing Bank, such Letter of Credit is in an initial stated amount less than $25,000;

(D) such Letter of Credit is to be denominated in a currency other than Dollars; and

(E) such Letter of Credit contains any provision for automatic reinstatement of the stated amount after any drawing thereunder.

(iii) No Issuing Bank shall be under any obligation to amend or extend any Letter of Credit if (A) such Issuing Bank would have no obligation at such time to issue the Letter of Credit in its amended form in accordance with the terms hereof or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment thereto.

(b) 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 five 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, which shall specify whether such Letter of Credit will be denominated in Dollars. 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 (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 together with its Letter of Credit Request. 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 inconsistent herewith 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 inconsistent herewith, 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 on 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 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. Promptly after the delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable Issuing Bank will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) 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 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 103% of the then-available face amount thereof is Cash collateralized or backstopped on or before the date that such Letter of Credit is extended beyond the date referred to in clause (B) above pursuant to arrangements reasonably satisfactory to the relevant Issuing Bank) as long as each of the Borrower and such Issuing Bank have the option to prevent such renewal before the expiration of such term or any such period.

(d) 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 (e) 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.

(e) 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 if the Borrower receives notice of such LC Disbursement under Section 2.05(g) on any Business Day, 1:00 p.m. on the next Business Day immediately following the date on which the Borrower receives notice of such LC Disbursement; provided that the Borrower may, without satisfying 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 (a "Letter of Credit Reimbursement Loan") in an equivalent amount and, to the extent so financed, the obligation of the Borrower to make such payment shall be discharged and replaced by the resulting ABR Revolving Loan Borrowing. 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 amounts owing under this clause (ii) shall be conclusive absent manifest error.

(f) Obligations Absolute. The obligation of the Borrower to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute and unconditional, irrevocable 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 (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) 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 documents presented which appear on their 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 documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) 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. 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.

(h) Interim Interest. If any Issuing Bank makes any LC Disbursement, 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 the Initial Revolving Loans that are ABR Loans of the applicable Class; provided that if the Borrower fails to reimburse such LC Disbursement when due pursuant to Section 2.05(e), 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 (e) 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).

(i) Replacement or Resignation of an Issuing Bank or Designation of New Issuing Banks.

(i) Any Issuing Bank may be replaced with the consent of the Administrative Agent (not to be unreasonably withheld or delayed) 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, the Borrower shall pay all unpaid fees accrued 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. 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, and, with respect to such Letters of Credit, such term shall thereafter apply to the other Issuing Bank and such Revolving Lender.

(ii) Notwithstanding anything to the contrary contained herein, any Issuing Bank may, upon ten 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 ten days after the delivery of such written notice); it being understood that in the event of any such resignation, any Letter of Credit then outstanding shall remain outstanding (irrespective of whether any amounts have been drawn at such time). In the event of any such resignation as an Issuing Bank, the Borrower shall be entitled to appoint any Revolving Lender that accepts such appointment in writing as successor 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.

(j) Cash Collateralization.

(i) If any Event of Default exists and the Loans have been declared due and payable in accordance with Article 7, then on the Business Day 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 deliver to the Administrative Agent, for deposit by the Administrative Agent in an account 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 103% of the LC Exposure as of such date (minus the amount then on deposit from the Borrower in accordance with this Section 2.05(j)(i) and Sections 2.19(b) and 7.01(l) in the LC Collateral Account); provided that the obligation to deliver such Cash collateral shall become effective immediately, and such delivery 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 (j). 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 (or, if the LC Collateral Account is not in the name of the Borrower, in the cash from the Borrower in accordance with Sections 2.05(j)(i), 2.19(b) and 7.01(l) located 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.

Section 2.06. [Reserved].

Section 2.07. Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder not later than (i) 1:00 p.m., in the case of Adjusted Eurocurrency Rate Loans, and (ii) 2:00 p.m., in the case of ABR Loans, 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. 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, (i) 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 or (ii) the Administrative Agent may, on behalf of such Lender, make available to the Borrower a corresponding amount. Such Lender shall reimburse the Administrative Agent on demand for all funds disbursed on its behalf by the Administrative Agent, or if the Administrative Agent so requests, such Lender will remit to the Administrative Agent its share of any Borrowing before the Administrative Agent disburses the same to the Borrower. In the case of any such event set forth in the first sentence of this Section 2.07(b), 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 (x) 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 (y) 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. Nothing in this Section 2.07(b) shall be deemed to require the Administrative Agent, in its capacity as such, to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that the Administrative Agent, any Lender or the Borrower may have against any Lender as a result of any default by such Lender.

Section 2.08. Type; Interest Elections.

(a) Each Borrowing shall initially be of the Type specified in the applicable Borrowing Request and, in the case of any Adjusted Eurocurrency Rate Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert any Borrowing to a Borrowing of a different Type or to continue such Borrowing and, in the case of an Adjusted Eurocurrency Rate 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.

(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 of the applicable election to the Administrative Agent.

(c) If any such Interest Election Request requests an Adjusted Eurocurrency Rate 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.

(d) 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.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to an Adjusted Eurocurrency Rate 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. Notwithstanding anything to the contrary herein, if an Event of Default exists and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as such Event of Default exists (i) no outstanding Borrowing may be converted to or continued as an Adjusted Eurocurrency Rate Borrowing and (ii) unless repaid, each Adjusted Eurocurrency Rate Borrowing shall be converted to an ABR Borrowing at the end of the then-current Interest Period applicable thereto.

(f) It is understood and agreed that any Borrowing may only be made in the form of, or converted into, or continued as, an Adjusted Eurocurrency Rate Revolving Loan or an ABR Revolving Loan. No Loan may be converted into or continued as a Loan denominated in a different currency.

Section 2.09. 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 Delayed Draw Term Loan Commitments shall automatically terminate (A) in the event an Initial Delayed Draw Term Loan is funded, upon the making of such Initial Delayed Draw Term Loan in a corresponding amount and (B) in any event, on the Initial Delayed Draw Term Loan Commitment Termination Date (iii) the Initial Revolving Credit Commitments shall automatically terminate on the Initial Revolving Credit Maturity Date, (iv) 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 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 Incremental Facility Amendment.

(b) (i) 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, 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 Additional Revolving Credit Commitment, 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.

(ii) 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 Initial Delayed Draw Term Loan Commitments of any Class; provided each reduction of the Initial Delayed Draw Term Loan 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.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce any Revolving Credit Commitment or Initial Delayed Draw Term Loan Commitment, as applicable, under Section 2.09(b) 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 or the Initial Delayed Draw Term Lenders, as applicable, of each applicable Class of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.09(c) shall be irrevocable; provided that any such notice may state that it is conditioned upon the effectiveness of other transactions, 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. Any termination or reduction of any Revolving Credit Commitment or Initial Delayed Draw Term Loan Commitment, as applicable, pursuant to this Section 2.09(c) 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 such reduction amount. Upon any reduction of any Initial Delayed Draw Term Loan Commitment, the Initial Delayed Draw Term Loan Commitment of each Initial Delayed Draw Term Lender of the relevant Class shall be reduced by such Delayed Draw Lender's Applicable Initial Delayed Draw Term Loan Percentage of such reduction amount.

Section 2.10. 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 Initial Term Lender (A) commencing with the Fiscal Quarter ending on December 31, 2017, on the last Business Day of each Fiscal Quarter prior to the Initial Term Loan Maturity Date (each such date being referred to as a "Loan Installment Date"), in each case in an amount equal to 0.25% of the original principal amount of the Initial Term Loans (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 in accordance with Section 9.05(g) or increased as a result of any increase in the amount of such Initial Term Loans pursuant to Section 2.22(a)), and (B) on the Initial Term Loan Maturity Date, in an amount equal to the remainder of the principal amount of the 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.

(ii) The Borrower hereby unconditionally promises to repay the outstanding principal amount of each Borrowing of Initial Delayed Draw Term Loans to the Administrative Agent for the account of each Initial Delayed Draw Term Lender (A) commencing with the first Loan Installment Date after the first full Fiscal Quarter after such Borrowing, in each case in an amount equal to 0.25%

of the original principal amount of such Borrowing of Initial Delayed Draw Term Loans (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 in accordance with Section 9.05(g) or increased as a result of any increase in the amount of such Initial Delayed Draw Term Loans pursuant to Section 2.22(a)), and (B) on the Initial Term Loan Maturity Date, in an amount equal to the remainder of the principal amount of the Initial Delayed Draw 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.

(iii) 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 Incremental Facility Agreement 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 (i) 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 and (ii) 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.

(ii) 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 each outstanding Letter of Credit, furnish to the Administrative Agent a Cash deposit (or if reasonably satisfactory to the relevant Issuing Bank, a "backstop" letter of credit) equal to 103% of the amount of the LC Exposure (minus any amount then on deposit in any Cash collateral account established for the benefit of the relevant Issuing Bank) as of such date, 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 shall not exceed the Revolving Credit Commitments of such other Class then in effect, and (B) make payment in full in Cash 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 and Type 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 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; provided, further, that 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.

(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 reasonably satisfactory to the Borrower.

Section 2.11. 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 (A) in the case of Borrowings of Initial Loans only, to Section 2.12(f) and (B) if applicable, to Section 2.16); provided that prepayments of the Initial Loans shall be made on a pro rata basis among the Initial Loans and, to the extent required by the terms of any Additional Term Loans (which may require participation on a pro rata or less than pro rata basis), in accordance with Section 2.22(a)(xi), such Additional Term Loans. 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, in Dollars, any Borrowing of Revolving Loans of any Class, in whole or in part without premium or penalty (but subject to Section 2.16); provided that 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. 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 in writing of any prepayment under this Section 2.11(a) (i) in the case of any prepayment of any Adjusted Eurocurrency Rate Borrowing, not later than 12:00 p.m. three Business Days before the date of prepayment or (ii) in the case of any prepayment of an ABR Borrowing, not later than 11:00 a.m. on the same Business Day of prepayment. 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, 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) No later than the fifth Business Day after the date on which the financial statements with respect to each Fiscal Year of the Borrower are required to be delivered pursuant to Section 5.01(b), commencing with the Fiscal Year ending on December 30, 2018, the Borrower shall prepay the outstanding principal amount of Initial Loans and Additional Term Loans then subject to ratable prepayment requirements in accordance with clause (vi) of this Section 2.11(b) below in an aggregate principal amount (the "ECF Prepayment Amount") equal to (A) the Required Excess Cash Flow Percentage of Excess Cash Flow of the Borrower and its Subsidiaries for the Excess Cash Flow Period then ended, minus (B) at the option of the Borrower, (x) the aggregate principal amount of any Term Loans and/or Revolving Loans prepaid pursuant to Section 2.11(a) prior to such date and (y) the amount of any reduction in the outstanding amount of any Term Loans resulting from any assignment made in accordance with Section 9.05(g) of this Agreement (including in connection with any Dutch Auction) prior to the date such payment is due and, in each case under this clause (z), based upon the actual amount of cash paid in connection with the relevant assignment, in each case, excluding any such optional prepayments made during such Fiscal Year that reduced the amount required to be prepaid pursuant to this Section 2.11(b)(i) in the prior Fiscal Year (in the case of any prepayment of Revolving Loans, to the extent accompanied by a permanent reduction in the relevant commitment, and in the case of all such prepayments, to the extent that such prepayments were not financed with the proceeds of other Indebtedness (other than revolving Indebtedness) of the Borrower or its Subsidiaries); provided that no prepayment under this Section 2.11(b) shall be required unless and to the extent that the amount thereof exceeds $1,000,000; provided, further, that if at the time that any such prepayment would be required, the Borrower (or any Subsidiary of the Borrower) is also required to prepay any Indebtedness that is secured on a *pari passu* basis with any Secured Obligation that is secured on a first lien basis 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") with any portion of the ECF Prepayment Amount, then the Borrower may apply such portion of the ECF Prepayment Amount on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Loans and the relevant Other Applicable Indebtedness at such time; provided, that the portion of such ECF Prepayment Amount allocated to the Other Applicable Indebtedness shall not exceed the amount of such ECF Prepayment Amount required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such ECF Prepayment Amount shall be allocated to the Term Loans in accordance with the terms hereof) to the prepayment of the Term Loans and to the prepayment of the relevant Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.11(b)(i) shall be reduced accordingly; provided, further, that to the extent the holders of Other Applicable Indebtedness decline to have such indebtedness prepaid, the declined amount shall promptly (and in any event within ten Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof.

(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 $3,500,000 in any Fiscal Year, the Borrower shall apply an amount equal to 100% of the Net Proceeds or Net Insurance/Condemnation Proceeds received with respect thereto in excess of such threshold (collectively, the "Subject Proceeds") to prepay the outstanding principal amount of Initial Loans and Additional Term Loans then subject to ratable prepayment requirements (the "Subject Loans") in accordance with clause (vi) below; provided that (A) if prior to the date any such prepayment is required to be made, the Borrower notifies the Administrative Agent of its intention to reinvest the Subject Proceeds in the business of the Borrower and/or any subsidiary (to the extent such Investment is permitted or not restricted under Section 6.06) (other than in Cash or Cash Equivalents), then so long as no Event of Default exists, the Borrower shall not be required to make a mandatory prepayment under this clause (ii) in respect of the Subject Proceeds to the extent (x) the Subject Proceeds are so reinvested within 365 days following receipt thereof, or (y) the Borrower or any of its subsidiaries has committed

to so reinvest the Subject Proceeds during such 365-day period and the Subject Proceeds are so reinvested within 180 days after the expiration of such 365-day period; it being understood that if the 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 Subject Proceeds not so reinvested as set forth above (without regard to the immediately preceding proviso) and (B) if, at the time that any such prepayment would be required hereunder, the Borrower or any of its Subsidiaries is required to repay or repurchase any 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 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 ten Business Days after the date of such rejection) be applied to prepay the Subject Loans in accordance with the terms hereof.

(iii) In the event that the Borrower or any of its Subsidiaries receives Net Proceeds from the issuance or incurrence of Indebtedness by the Borrower or any of its Subsidiaries (other than Indebtedness that is permitted to be incurred under Section 6.01, the Borrower shall, promptly upon (and in any event not later than two Business Days thereafter) the receipt thereof of such Net Proceeds by the Borrower or its applicable Subsidiary, apply 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 any amount that would otherwise be required to be paid pursuant to Sections 2.11(b)(i) or (ii) above to the extent that the relevant Excess Cash Flow is generated by any Foreign Subsidiary, the relevant Prepayment Asset Sale is consummated by any Foreign Subsidiary or the relevant Net Insurance/Condemnation Proceeds are received by any Foreign Subsidiary, as the case may be, for so long as the repatriation to the Borrower of any such amount would violate or conflict with any Requirement of Law or conflict with the fiduciary duties of such Foreign Subsidiary's directors, 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 Foreign Subsidiary (it being understood and agreed that (i) solely within 365 days following the end of the applicable Excess Cash Flow Period or the event giving rise to the relevant Subject Proceeds, the Borrower shall take all commercially reasonable actions required by applicable Requirements of Law to permit such repatriation and (ii) if the repatriation of the relevant affected Excess Cash Flow or Subject Proceeds, as the case may be, is permitted under the applicable Requirement of Law and, to the extent applicable, would no longer conflict with the fiduciary duties of such director, or result in, or be reasonably expected to result in, a material risk of personal or criminal liability for the Persons described above, in either case, within 365 days following the end of the applicable Excess Cash Flow Period or the event giving rise to the relevant Subject Proceeds, the relevant Foreign Subsidiary will promptly repatriate the relevant Excess Cash Flow or Subject Proceeds, as the case may be, and the repatriated Excess Cash Flow or Subject Proceeds, as the case may be, will be promptly (and in any event not later than two Business Days after such repatriation) applied (net of additional Taxes payable or reserved against such Excess Cash Flow or such Subject Proceeds as a result thereof) to the repayment of the Term Loans pursuant to this Section 2.11(b) to the extent required herein (without regard to this clause (iv)),

(B) the Borrower shall not be required to prepay any amount that would otherwise be required to be paid pursuant to Sections 2.11(b)(i) or (ii) to the extent that the relevant Excess Cash Flow is generated by any joint venture or the relevant Subject Proceeds are received by any joint venture, in each case, for so long as the distribution to the Borrower of such Excess Cash Flow or Subject Proceeds would be prohibited under the Organizational Documents governing such joint venture; it being understood that if the relevant prohibition ceases to exist within the 365-day period following the end of the applicable Excess Cash Flow Period or the event giving rise to the relevant Subject Proceeds, the relevant joint venture will promptly distribute the relevant Excess Cash Flow or the relevant Subject Proceeds, as the case may be, and the distributed Excess Cash Flow or Subject Proceeds, as the case may be, will be promptly (and in any event not later than two Business Days after such distribution) applied to the repayment of the Term Loans pursuant to this Section 2.11(b) to the extent required herein (without regard to this clause (iv)),

(C) if the Borrower determines in good faith that the repatriation (or other intercompany distribution) to the Borrower, directly or indirectly, from a Foreign Subsidiary as a distribution or dividend of any amounts required to mandatorily prepay the Term Loans pursuant to Sections 2.11(b)(i) or (ii) above would result in a material and adverse Tax liability (including any withholding Tax) (such amount, a "Restricted Amount"), the amount that the Borrower shall be required to mandatorily prepay pursuant to Sections 2.11(b)(i) or (ii) above, as applicable, shall be reduced by the Restricted Amount; provided that to the extent that the repatriation (or other intercompany distribution) of the relevant Subject Proceeds or Excess Cash Flow, directly or indirectly, from the relevant Foreign Subsidiary would no longer have a material adverse tax consequence within the 365-day period following the event giving rise to the relevant Subject Proceeds or the end of the applicable Excess Cash Flow Period, as the case may be, an amount equal to the Subject Proceeds or Excess Cash Flow, as applicable and to the extent available, not previously applied pursuant to this clause (C), shall be promptly applied to the repayment of the Term Loans pursuant to Section 2.11(b) as otherwise required above; and

(D) the Borrower shall not be required to prepay any amount that would otherwise be required to be paid pursuant to Sections 2.11(b)(i) or (ii) to the extent that such prepayment would violate the terms of any material contract binding on the Borrower or any of its Subsidiaries; it being understood that if the relevant prohibition in such contract ceases to exist, the relevant Person will promptly distribute such prepayment to be applied to the Term Loans pursuant to Section 2.11(b) to the extent required herein (without regard to this clause (iv)).

(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"), in which case such Declined Proceeds may be retained by the Borrower. If any Lender fails to deliver a 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 Incremental Facility Amendment or any Extension Amendment (provided, that such Incremental Facility Amendment or Extension Amendment may not provide that the applicable Class of Term Loans receive a greater than pro rata portion of mandatory prepayments 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 applied ratably to each Class of Term Loans then outstanding which is *pari passu* with the Initial Loans in right of payment and with respect to security. With respect to each relevant Class of Term Loans, all accepted prepayments under this Section 2.11(b) shall be applied against the remaining scheduled installments of principal due in respect of such 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 such Term Loans 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 waive 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 that are ABR Loans to the full extent thereof and then to the then outstanding Term Loans that are Adjusted Eurocurrency Rate Loans in a manner that minimizes the amount of any payments required to be made by the Borrower pursuant to Section 2.16.

(vii) (A) In the event that the Revolving Credit Exposure of any Class exceeds the amount of the 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 and/or reduce LC Exposure in an aggregate amount sufficient to reduce such Revolving Credit Exposure as of the date of such payment to an amount not to exceed 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: (x) prepaying Revolving Loans or (y) with respect to any excess LC Exposure, depositing Cash in a Cash collateral account established for the benefit of the relevant Issuing Bank or "backstopping" or replacing the relevant Letters of Credit, in each case, in an amount equal to 103% of such excess LC Exposure (minus any amount then on deposit in any Cash collateral account established for the benefit of the relevant Issuing Bank).

(B) 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, (B) subject to Section 2.16 and (C) in the case of prepayments of Initial Loans under clause (iii) above, subject to Section 2.12(f) (but shall otherwise be without premium or penalty).

Section 2.12. Fees.

(a) (i) 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 Revolving Commitment Fee Rate applicable to the Revolving Credit Commitments of such Class on the average 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 the last Business Day of each Fiscal Quarter (commencing with the Fiscal Quarter ending on September 24, 2017) for the quarterly period then ended (or, in the case of the payment made on September 24, 2017, 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 only, the Revolving Credit Commitment of any Class of any Revolving Lender shall be deemed to be used to the extent of Revolving Loans of such Class of such Revolving Lender and the LC Exposure of such Revolving Lender attributable to its Revolving Credit Commitment of such Class.

(ii) The Borrower agrees to pay to the Administrative Agent for the account of each Initial Delayed Draw Term Lender of any Class (other than any Defaulting Lender) a commitment fee, which shall accrue at a rate equal to the Initial Delayed Draw Term Loan Commitment Fee Rate applicable to the Initial Delayed Draw Term Loan Commitments of such Class on the average daily amount of the unused Initial Delayed Draw Term Loan Commitments of such Class of such Initial Delayed Draw Term Lender during the period from and including the Closing Date to the date on which such Lender's Initial Delayed Draw Term Loan Commitment of such Class terminates. Accrued commitment fees shall be payable in arrears on the last Business Day of each Fiscal Quarter (commencing with the Fiscal Quarter ending on September 24, 2017) for the quarterly period then ended (or, in the case of the payment made on September 24, 2017, for the period from the Closing Date to such date) and the Initial Delayed Draw Term Loan Commitment Termination Date.

(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 participations in Letters of Credit, which shall accrue at the Applicable Rate used to determine the interest rate applicable to Revolving Loans of such Class that are Adjusted Eurocurrency Rate Loans on the daily face amount of such Lender's LC Exposure attributable to its Revolving Credit Commitment of such Class (excluding any portion thereof that is attributable to unreimbursed LC Disbursements), 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 customary fronting fee, in respect of each Letter of Credit issued by such Issuing Bank for the period from the date of issuance of such Letter of Credit to the earlier of (A) the expiration date of such Letter of Credit, (B) the date on which such Letter of Credit terminates or (C) the Termination Date), computed at a rate equal to an amount per annum of the daily face amount of such Letter of Credit to be agreed by the Borrower and the applicable Issuing Bank (which rate shall be customary and in no event greater than the prevailing rate charged by such Issuing Bank to similarly situated borrowers), as well as such Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees shall accrue to but excluding the last Business Day of each Fiscal Quarter and be payable in arrears for the quarterly period then ended (or, in the case of the payment made on September 24, 2017, for the period from the Closing Date to such date) on the last Business Day of each Fiscal Quarter (commencing, if applicable, with the Fiscal Quarter ending on September 24, 2017); 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 shall be payable on demand. Any other fees 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 dates 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 circumstances 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) In the event that, prior to the second anniversary of the Closing Date, the Borrower (i) prepays pursuant to Section 2.11(a)(i) or (ii) prepays or refinances any Initial Loans pursuant to Section 2.11(b)(iii) (it being understood and agreed for the avoidance of doubt that (x) prepayments as a result of assignments made to Affiliated Lenders pursuant to Section 9.05(g) and (y) terminations or reductions of the Delayed Draw Term Loan Commitments pursuant to Section 2.09(b)(ii), in each case, shall not be subject to this Section 2.12(f)), the Borrower shall pay to the Administrative Agent, for the ratable account of each of the applicable Term Lenders (including any Non-Consenting Lender whose Initial Loans are repaid or replaced pursuant to Section 2.19(b)(iv)) a premium of (A) prior to the first anniversary of the Closing Date, 2.00% of the aggregate principal amount of the Initial Loans so prepaid, repaid or replaced and (B) on or after the first anniversary of the Closing Date and prior to the second anniversary of the Closing Date, 1.00% of the aggregate principal amount of the Initial Loans so prepaid, repaid or replaced. All such amounts shall be due and payable on the date of the relevant prepayment pursuant to Sections 2.11(a)(i) or 2.11(b)(iii). For the avoidance of doubt, no prepayment premium shall be payable hereunder in connection with any prepayment with respect to, Initial Loans on or after the second anniversary of the Closing Date.

(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 a fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.13. Interest.

(a) The Term Loans and Revolving Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Term Loans and Revolving Loans comprising each Adjusted Eurocurrency Rate Borrowing shall bear interest at the applicable Adjusted Eurocurrency Rate 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), (i) if any principal of or interest on any Term Loan or Revolving Loan, any LC Disbursement or any premium or fee payable by the Borrower hereunder is not, in each case, paid or reimbursed when due, whether at stated maturity, upon acceleration or otherwise, or an Event of Default or Default under Section 7.01(f) or 7.01(g) has occurred and is continuing, 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 (A) in the case of (x) any overdue principal or interest of any Term Loan, Revolving Loan or unreimbursed LC Disbursement or (y) any Term Loan, Revolving Loan or unreimbursed LC Disbursement when an Event of Default or Default under Section 7.01(f) or 7.01(g) has occurred and is continuing, in each case, 2.00% plus the rate otherwise applicable to such Term Loan, Revolving Loan or LC Disbursement as provided in the preceding paragraphs of this Section or (B) in the case of any other amount, 2.00% plus the rate applicable to Revolving Loans that are ABR Loans as provided in Section 2.13(a); 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 payable to a Defaulting Lender so long as such Lender is a Defaulting Lender.

(e) Accrued interest on each Term Loan and Revolving Loan shall be payable in arrears on each Interest Payment Date for such Term Loan and Revolving Loan and (i) on the Maturity Date applicable to such Loan and (ii) in the case of a Revolving Loan of any Class, upon termination of the Revolving Credit Commitments of such Class; provided that (A) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (B) in the event of any repayment or prepayment of any Term Loan or Revolving Loan, (other than an ABR Revolving Loan of any Class prior to the termination of the Revolving Credit Commitments of such Class), 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 Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate 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 2.14. Alternate Rate of Interest. If at least two Business Days prior to the commencement of any Interest Period for an Adjusted Eurocurrency Rate Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted Eurocurrency Rate for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted Eurocurrency 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 promptly give notice thereof to the Borrower and the Lenders by telephone or facsimile as promptly as practicable thereafter 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, an Adjusted Eurocurrency Rate Borrowing shall be ineffective and such Borrowing shall be converted to an ABR Borrowing on the last day of the Interest Period applicable thereto, and (ii) if any Borrowing Request requests an Adjusted Eurocurrency Rate Borrowing, such Borrowing shall be made as an ABR Borrowing.

Section 2.15. 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 Adjusted Eurocurrency Rate) or Issuing Bank;

(ii) subject 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 market any other condition (other than Taxes) affecting this Agreement or Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate 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, the Borrower will pay 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 other than due to Taxes (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 capital adequacy or liquidity), then within 30 days of receipt by the Borrower of the certificate contemplated by paragraph (c) of this Section the Borrower will pay 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 a Lender or an Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days 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 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.16. Break Funding Payments. Subject to Section 9.05(f), in the event of (a) the conversion or prepayment of any principal of any Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate Loan on the date or in the amount specified in any notice delivered pursuant hereto or (c) the assignment of any Adjusted Eurocurrency Rate 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 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 Adjusted Eurocurrency Rate Loans, but excluding loss of anticipated profit) that such Lender may incur or sustain 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 2.17. Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction for any Taxes, except as required by applicable Requirements of Law. If any applicable Requirement of Law 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 all required deductions or withholdings have been made (including 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 make such deductions and (iii) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(b) In addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(c) 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 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)) 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 such Loan Party 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, the Borrower shall not 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) 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 payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation 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 Sections 2.17(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if, in the applicable 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 U.S. Lender shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such U.S. 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 original copies of IRS Form W-9 certifying that such Lender is not subject to U.S. federal backup withholding;

(B) each Foreign Lender shall 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 U.S. is a party, two executed original copies of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing any available exemption from, or reduction of, U.S. federal withholding Tax;

(2) two executed original 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 original copies of a certificate substantially in the form of Exhibit N-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" 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 U.S. trade or business (a "U.S. Tax Compliance Certificate") and (y) two executed original 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 original 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 U.S. Tax Compliance Certificate substantially in the form of Exhibit N-2, Exhibit N-3 or Exhibit N-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 U.S. Tax Compliance Certificate substantially in the form of Exhibit N-2 on behalf of each such direct or indirect partner(s);

(C) each Foreign Lender shall 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 original copies of any other form prescribed by applicable Requirements of Law as a basis for claiming exemption from or a reduction in U.S. 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 U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in 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) and 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 paragraph (D), "FATCA" shall include any amendments made to Section 1471 through 1474 of the Code after the date of this Agreement.

For the avoidance of doubt, if a Lender is an entity disregarded from its owner for U.S. 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 (including any specific documentation required above in this Section 2.17(f)) it previously delivered expires or becomes obsolete or inaccurate in any respect, 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.

Notwithstanding anything to the contrary in this Section 2.17(f), no Lender shall be required to provide any documentation that such Lender is not legally eligible to deliver.

(g) 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 the Borrower has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower 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 Borrower, 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 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.

(j) Certain Documentation. On or before the date the Administrative Agent becomes a party to this Agreement, the Administrative Agent shall deliver to Borrower whichever of the following is applicable: (i) if the Administrative Agent is a "United States person" within the meaning of Section 7701(a)(30) of the Code, two executed original copies of IRS Form W-9 certifying that such Administrative Agent is exempt from U.S. federal backup withholding or (ii) if the Administrative Agent is not a "United States person" within the meaning of Section 7701(a)(30) of the Code, (A) with respect to payments received for its own account, two executed original copies of IRS Form W-8ECI and (ii) with respect to payments received on account of any Lender, two executed original copies of IRS Form W-8IMY (together with all required accompanying documentation) certifying that the Administrative Agent is a U.S. branch and may be treated as a United States person for purposes of applicable U.S. federal withholding Tax. At any time thereafter, 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 eligible to deliver as a result of a Change in Law after the Closing Date.

Section 2.18. 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 1:00 p.m. on the date when due, in immediately available funds, 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 any payment made pursuant to Sections 2.15, 2.16, 2.17 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) and 2.20, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest in respect of

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 (including accrued interest) hereunder shall be made in Dollars. 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 each applicable Acceptable 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, 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, second, on a pro rata basis, to pay any fees, indemnities or expense reimbursements then due to the Administrative Agent (other than those covered in clause first above) or to any Issuing Bank from the Borrower constituting Secured Obligations, 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 from the Borrower in accordance with Sections 2.05(j)(i), 2.19(b) and 7.01 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, fourth, as provided in any applicable Acceptable Intercreditor Agreement, and 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 of its Loans of any Class or participations in LC Disbursements 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 and accrued interest thereon than the proportion received by any other Lender with Loans of such Class and participations in LC Disbursements, 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 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; provided that (i) if any such participations are 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 (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by any Lender as consideration for the assignment of or sale of a participation in any of its Loans to any permitted assignee or participant, including any payment made or deemed made in connection with Sections 2.22, 2.23 and/or Section 9.05. If any Lender obtains payment (whether voluntary, involuntary, through exercise of any right of set-off or otherwise) in respect of any principal of or interest on any of its Loans of any Class that is junior in right of payment to any other Class of Loans that has not been repaid in full, and such payment is made in violation of the relevant subordination provisions applicable to such junior Class of Loans, such Lender shall

promptly remit such payment to the Administrative Agent for application is accordance with clause (b). 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 against the Borrower rights of set-off and counterclaim 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 purchases or repayments. 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. For purposes of subclause (c) of the definition of "Excluded Taxes", any Lender that acquires a participation pursuant to this Section 2.18(c) shall be treated as having acquired such participation on the earlier date(s) on which such Lender acquired the applicable interest(s) in the Commitment(s) and/or Loan(s) to which such participation relates.

(d) Unless the Administrative Agent has received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of any Lender 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 applicable Lender or Issuing Bank the amount due. In such event, if the Borrower has not in fact made such payment, then each Lender or the applicable Issuing Bank severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank 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 (i) the Federal Funds Effective Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(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 amounts 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 2.19. Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15 or determines it can no longer make or maintain Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate 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", "each Initial Delayed Draw Term Lender", "each Initial 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, Required

Initial Lender, Required Delayed Draw 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 (each such Lender described in this clause (iv), 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, 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 and delegation); 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, 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 payments required to be made pursuant to Section 2.17, such assignment would result in a reduction in such compensation or payments 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, in each case, 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 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 2.20. 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 Adjusted Eurocurrency Rate, or to determine or charge interest rates based upon the Adjusted Eurocurrency Rate, 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 Adjusted Eurocurrency Rate Loans or to convert ABR Loans to Adjusted Eurocurrency Rate 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 Eurocurrency Rate 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 Eurocurrency Rate 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), prepay or convert all of such Lender's Adjusted Eurocurrency Rate Loans to ABR Revolving Loans (the interest rate on which ABR Revolving Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Alternate Base Rate) and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate, the Administrative Agent shall during the period of such suspension compute the Alternate Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. 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 2.21. 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 provisions of this Agreement or other Loan Document.

(b) 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 Delayed Draw Lenders, the Required Initial 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 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 amounts 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 amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any applicable Issuing Bank 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 amounts owing to the non-Defaulting Lenders or Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any non-Defaulting Lender or any Issuing Bank 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 amounts 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 Loans of, or LC Exposure owed to, such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to any Defaulting Lender that are applied (or held) to pay amounts 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 LC Exposure exists at the time any Lender becomes a Defaulting Lender then:

(i) the 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. No reallocation pursuant to this clause (i) shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a 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 103% of such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to paragraph (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 with respect to such LC Exposure and obligations to fund participations. 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 LC Exposure among non-Defaulting Lender 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 Revolving 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, no Issuing Bank shall be required to issue, extend, create, incur, amend or increase any Letter of Credit unless it is reasonably satisfied that the related exposure will be 100% covered by the Revolving Credit Commitments of the non-Defaulting Lenders, Cash collateral provided pursuant to Section 2.21(c) and/or Cash collateral provided in accordance with Section 2.21(d), and participating interests in any such or newly issued, extended or created Letter of Credit 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 Lender to be a Defaulting Lender, then the Applicable Revolving Credit Percentage of LC Exposure of the Revolving Lenders shall be readjusted to reflect the inclusion of such Lender'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 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 Lender to be a Defaulting Lender, (x) no adjustments 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 Lender's having been a Defaulting Lender.

Section 2.22. Incremental Credit Extensions.

(a) The Borrower may, at any time, on one or more occasions pursuant to an Incremental Facility Amendment (i) 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 loans made pursuant to an Incremental Term Facility, "Incremental Term Loans") and/or (ii) 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, "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 margin, pricing, maturity and fees), (A) the terms of any Incremental Term Facility, if not substantially consistent with those applicable to any then-existing Term Loans, must be reasonably acceptable to the Administrative Agent (it being agreed that any terms contained in such Incremental Term Facility (x) which are applicable only after the then-existing Latest Term Loan Maturity Date and/or (y) that 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 the Administrative Agent, as applicable, pursuant to the applicable Incremental Facility Amendment shall be deemed satisfactory to the Administrative Agent) and (B) the terms of any Incremental Revolving Facility shall be identical (including with respect to pricing, maturity and fees) to the terms of the then-existing Class of Revolving Facility such Incremental Revolving Facility increases,

(v) the Effective Yield (and the components thereof) applicable to any Incremental Facility shall be determined by the Borrower and the lender or lenders providing such Incremental Facility; provided that the Effective Yield applicable to any Incremental Facility may not be more than 0.50% higher than the Effective Yield applicable to the Initial Loans and Initial Revolving Loans unless the Applicable Rate (and/or, as provided in the proviso below, the Alternate Base Rate floor or Adjusted Eurocurrency Rate floor) with respect to the Initial Loans or Initial Revolving Loans, as applicable, is adjusted such that the Effective Yield on such Initial Loans or Initial Revolving Loans is not more than 0.50% per annum less than the Effective Yield with respect to such Incremental Facility; provided, further, that any increase in Effective Yield applicable to any Initial Loan due to the application or imposition of an Alternate Base Rate floor or Adjusted Eurocurrency Rate floor on any Incremental Term Loan may, at the election of the Borrower, be effected through an increase in the Alternate Base Rate floor or Adjusted Eurocurrency Rate floor applicable to such Initial Loan,

(vi) (A) the final maturity date with respect to any Incremental Term Loans shall be no earlier than the Latest Term Loan Maturity Date and (B) no Incremental Revolving Facility may have a final maturity date earlier than (or require scheduled amortization or mandatory commitment reductions prior to) the Latest Revolving Credit Maturity Date,

(vii) 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),

(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 fees payable in connection with any Incremental Facility shall be determined by the Borrower and the arrangers and/or lenders providing such Incremental Facility,

(x) each Incremental Facility shall (A) rank *pari passu* with the Initial Term Loans and Initial Revolving Loans in right of payment and security, (B) be guaranteed only by the Loan Parties and (C) be secured only by the Collateral,

(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) no Event of Default under Section 7.01(a), (f) or (g) shall exist immediately prior to or after giving effect to such Incremental Facility,

(xiii) the proceeds of any Incremental Facility may be used for working capital and/or purchase price adjustments and other general corporate purposes (including capital expenditures, acquisitions, Investments, Restricted Payments, Restricted Debt Payments and related fees and expenses) and any other use not prohibited by this Agreement, and

(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 Interest Periods (the duration of which may be less than one month) that begin during an Interest Period then applicable to outstanding Adjusted Eurocurrency Rate Loans of the relevant Class and which end on the last day of such Interest Period.

(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, any Issuing Bank) shall have a right to consent (such consent not to be unreasonably withheld 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 such 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 Loans, (i) upon its request, the Administrative Agent shall be entitled to receive customary written opinions of counsel, as well as such reaffirmation agreements, supplements and/or amendments as it shall reasonably require, (ii) the Administrative Agent shall be entitled to receive, from each Incremental Lender, an Administrative Questionnaire and such other documents as it shall reasonably require from such Incremental Lender, (iii) the Administrative Agent shall have received, on behalf of the Incremental Lenders, the amount of any fees payable to the Incremental Lenders in respect of such Incremental Facility or Incremental Loans, (iv) 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 additional condition precedent to the availability of the relevant Incremental Loans) and (v) the Administrative Agent shall be entitled to receive a certificate of the Borrower signed by a Responsible Officer thereof:

(A) 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, and

(B) to the extent applicable, certifying that the condition set forth in clause (a)(xii) above has been satisfied.

(e) 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 such that, after giving effect to each deemed assignment and assumption of participations, all of the Revolving Lenders' (including each Incremental Revolving Facility Lender) (A) participations hereunder in Letters of Credit shall 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 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 (e).

(f) On the date of effectiveness of any Incremental Revolving Facility, the maximum amount of LC Exposure permitted hereunder shall increase by an amount, if any, agreed upon by the Borrower, the Administrative Agent and the relevant Issuing Bank.

(g) The Lenders hereby irrevocably authorize the Administrative Agent to enter into any Incremental Facility Amendment and/or any amendment to this Agreement or any other Loan Document as may be necessary in order to establish new Classes or sub-Classes in respect of Loans or commitments pursuant to this Section 2.22 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 Incremental Facility and the loans and/or commitments thereunder, in each case on terms consistent with this Section 2.22.

(h) Notwithstanding anything to the contrary in this Section 2.22 or in any other provision of any Loan Document, (i) any conditions to availability of funding of any Incremental Facility shall be determined by the relevant Incremental Lenders providing such Incremental Facility and (ii) if the proceeds of any Incremental Facility are intended to be applied to finance an acquisition or other Investment and the lenders providing such Incremental Facility so agree, the availability thereof shall be subject to customary “SunGard” or “certain funds” conditionality (including the making and accuracy of the Specified Representations as conformed for such acquisition).

(i) This Section 2.22 shall supersede any provision in Sections 2.18 or 9.02 to the contrary.

Section 2.23. Extensions of Loans and Revolving 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) interest rates, fees and final maturity (which shall, subject to 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 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 pursuant to the applicable Extension Amendment, and (C) any covenants or other provisions applicable only to periods 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 (x) to the extent more than one Revolving Facility exists after giving effect to any such Extension, (1) the borrowing and repayment (except for (A) payments of interest and fees at different rates on the Revolving Facilities (and related outstandings), (B) repayments required upon the Maturity Date of any Revolving Facility and (C) repayments made in connection with a permanent repayment and termination of Revolving Credit Commitments under any Revolving Facility (subject to clause (3) below)) 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 with all other Revolving Facilities, (2) all Letters of Credit shall be participated on a pro rata basis by all Revolving Lenders and (3) 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 with respect to such Extended Revolving Loans on a pro rata basis or less than pro rata basis with all other Revolving Facilities, except that the Borrower shall be permitted to permanently repay Revolving Loans and terminate Revolving Credit Commitments of any Revolving Facility on a greater than pro rata basis as compared to any other Revolving Facilities with a later Maturity Date than such Revolving Facility and (y) at no time shall there be Revolving Credit Commitments hereunder (including the Initial Revolving Credit Commitments, Incremental Revolving Commitments and Extended Revolving Credit Commitments) which have more than two (2) different maturity dates;

(ii) except as to (A) interest rates, fees, amortization, final maturity date, 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 more favorable to the lenders or the agent of such Extended Term Loans 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 pursuant to the applicable Extension Amendment and (C) any covenants or other provisions applicable only to periods 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 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 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 $2,000,000;

(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 any Issuing Bank with respect to Letters of Credit without the consent of such Issuing Bank (or, in the case of an Issuing Bank that is a financial institution selected by the Administrative Agent as provided in the definition thereof, the Administrative Agent) (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 Issuing Bank 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 amendments 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 ten 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 Section 4.01 or 4.02, as applicable, Holdings (solely with respect to Sections 3.01, 3.02, 3.03, 3.07, 3.08, 3.09, 3.13, 3.14, 3.16 and 3.17) and the Borrower hereby represent and warrant to the Lenders that:

Section 3.01. Organization; Powers. Holdings, the Borrower and each of its Subsidiaries (a) is (i) duly organized 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) with respect to the Borrower and clause (b) with respect to the Borrower and its Subsidiaries) where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 3.02. Authorization; Enforceability. The execution, delivery and performance of each Loan Document are within each applicable Loan Party's corporate or other organizational power and 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 3.03. Governmental Approvals; No Conflicts. The execution and delivery of each Loan Document by each Loan Party thereto and the performance by such Loan Party thereof (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 could 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), could reasonably be expected to have a Material Adverse Effect and (c) will not violate or result in a default under any other material Contractual Obligation to which such Loan Party is a party which violation, in the case of this clause (c), could reasonably be expected to result in a Material Adverse Effect.

Section 3.04. Financial Condition; No Material Adverse Effect.

(a) After the Closing Date, 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, (x) except as otherwise expressly noted therein, (y) subject, in the case of quarterly financial statements, to the absence of footnotes and normal year-end adjustments and (z) except as may be necessary to reflect any differing entity 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 could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.05. Properties.

(a) As of the Closing Date, Schedule 3.05 sets forth the address of each Material Real Estate Asset (or each set of such assets that collectively comprise one operating property) that is owned in fee simple by any Loan Party.

(b) The Borrower and each of its 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 title to their personal property and assets, 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 or (ii) where the failure to have such title would not reasonably be expected to have a Material Adverse Effect.

(c) The Borrower and its 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") used 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 3.06. Litigation and Environmental Matters.

(a) There are no actions, suits, investigations, audits 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 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 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 Subsidiaries and (ii) neither the Borrower nor any of its 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 the Borrower nor any of its 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 3.07. Compliance with Laws. Each of Holdings, the Borrower and each of its 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 below.

Section 3.08. 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 3.09. Taxes. Each of Holdings, the Borrower and each of its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed 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 (or any requirement to file Tax returns with respect thereto) that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (b) 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 3.10. 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 or is reasonably expected to occur 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 3.11. Disclosure.

(a) As of the Closing Date, with respect to information relating to the Target and its subsidiaries, to the knowledge of the Borrower, all written information (other than the Projections, financial estimates, other forward-looking information and/or projected information and information of a general economic or industry-specific nature) concerning Holdings, the Borrower and their respective subsidiaries that was made available by or on behalf of Holdings, the Borrower or its subsidiaries and made available to any Initial Lender, any Arranger or the Administrative Agent in connection with the Transactions on or before the Closing Date (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 are made (after giving effect to all supplements and updates thereto from time to time).

(b) 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 3.12. Solvency. As of the Closing Date and after giving effect to the Transactions and the incurrence of the Indebtedness and obligations being incurred in connection with this Agreement and the Transactions, (i) the sum of the debt (including contingent liabilities) of the Borrower and its Subsidiaries, taken as a whole, does not exceed the fair value of the assets of the Borrower and its Subsidiaries, taken as a whole, (ii) the present fair saleable value of the assets (on a going concern basis) of the Borrower and its Subsidiaries, taken as a whole, is not less than the amount that will be required to pay the probable liabilities of the Borrower

and its Subsidiaries, taken as a whole, on their debts as they become absolute and matured in accordance with their terms; (iii) the capital of the Borrower and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Borrower and its Subsidiaries, taken as a whole, contemplated as of the Closing Date; and (iv) the Borrower and its 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 debt as they mature in accordance with their terms. For purposes of this Section 3.12, it is assumed that the Indebtedness and other obligations under the Credit Facilities will come due at their respective maturities.

Section 3.13. Capitalization and Subsidiaries. Schedule 3.13 sets forth, in each case as of the Closing Date, (a) a correct and complete list of the name of each subsidiary of Holdings and the ownership interest therein held by Holdings or its applicable subsidiary, and (b) the type of entity of Holdings and each of its subsidiaries.

Section 3.14. Security Interest in Collateral. Subject to the terms of the last 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, 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 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 effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Capital Stock of any Foreign Subsidiary, or as to the rights and remedies of the Administrative Agent or any Lender with respect thereto, under foreign Requirements of Law, (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 or the last paragraph of Section 4.01(a), 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 pursuant to the final paragraph of Section 4.01(a).

Section 3.15. 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, slowdowns, work stoppages, boycotts, pickets, job actions, material grievances, unfair labor practice charges, or other material labor disputes against the Borrower or any of its Subsidiaries pending or, to the knowledge of the Borrower or any of its Subsidiaries, threatened, (b) the hours worked by and payments made to employees of the Borrower and its Subsidiaries have not been in violation of the Fair Labor Standards Act ("FLSA") or any other applicable Requirements of Law dealing with such matters, (c) all employees of Borrower and its Subsidiaries are properly classified under the FLSA and all similar Requirements of Law, and (d) all independent contractors of Borrower and its Subsidiaries are properly classified as such.

Section 3.16. 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, incidentally or ultimately, for any purpose that results in a violation of the provisions of Regulation U.

Section 3.17. OFAC; PATRIOT ACT and FCPA.

(a) (i) None of Holdings, the Borrower nor any of its Subsidiaries nor, to the knowledge of the Borrower, any director, officer or employee of any of the foregoing is the target of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"); 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 target of any U.S. sanctions administered by OFAC, except to the extent licensed or otherwise approved by OFAC or in compliance with applicable exemptions 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) Except to the extent that the relevant violation could not reasonably be expected to have a Material Adverse Effect, (i) neither the Borrower nor any of its Subsidiaries nor, to the knowledge of the Borrower, any director, officer, agent (solely to the extent acting in its capacity as an agent for Holdings or any of its subsidiaries) or employee of the Borrower or any Subsidiary, has taken any action, directly or 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, without limitation, 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 any applicable anti-corruption Requirement of Law of any Governmental Authority; and (ii) the Borrower has not directly or, to its knowledge, indirectly, used the proceeds of the Loans or Letters of Credit or otherwise made 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 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 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 4.01. Closing Date. The obligations of (i) each Lender to make Loans and (ii) any Issuing Bank to issue Letters of Credit 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 each Loan Party, to the extent party thereto, (i) a counterpart signed by 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, (B) the Security Agreement, (C) any Intellectual Property Security Agreement, (D) the Loan Guaranty, and (E) 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, (i) a customary written opinion of Weil, Gotshal & Manges LLP, in its capacity as special counsel for the Loan Parties and (ii) customary written opinions of local counsel to the Loan Parties organized in Colorado, each dated the Closing Date and addressed to the Administrative Agent, the Lenders and each Issuing Bank.

(c) Financial Statements and Pro Forma Financial Statements. The Administrative Agent shall have received:

(i) the audited consolidated balance sheets of the Target as of the Fiscal Years ended December 27, 2015 and December 25, 2016, together with the audited consolidated statements of operations and comprehensive income (loss), cash flows and stockholders' equity of the Target for the Fiscal Years then ended;

(ii) the unaudited consolidated balance sheet of the Target as of June 25, 2017, together with the related unaudited consolidated statement of operations and comprehensive income (loss), cash flows and stockholders' equity of the Target for the four-month period then ended; and

(iii) a pro forma consolidated balance sheet of the Target as of June 25, 2017 and a related consolidated statement of operations and comprehensive income (loss) of the Target for the 12-month period then ended, in each case prepared in good faith after giving effect to the Transactions as if the Transactions had occurred as of June 25, 2017 in the case of the balance sheet or the first date of such 12-month period then ended in the case of the statement of operations and comprehensive income (loss);

provided that, it is understood and agreed that no financial statements or pro forma financial statements required by this clause (c) shall be required to include any adjustments for purchase accounting (including adjustments of the type contemplated by Financial Accounting Standards Board Accounting Standard Codification 805, Business Combinations (formerly SFAS 141R)).

(d) Secretary's Certificate and Good Standing Certificates. The Administrative Agent (or its counsel) shall have received (i) a certificate of each Loan Party, dated the Closing Date and executed by a secretary, assistant secretary or other Responsible Officer thereof, which shall (A) certify that (w) attached thereto is a true and complete copy of the certificate or articles of incorporation, formation or organization of such Loan Party, certified by the relevant authority of its jurisdiction of organization, (x) the certificate or articles of incorporation, formation or organization of such Loan Party attached thereto has not been amended (except as attached thereto) since the date reflected thereon, (y) attached thereto is a true and correct copy of the by-laws or operating, management, partnership or similar agreement of such Loan Party, together with all amendments thereto as of the Closing Date and such by-laws or operating, management, partnership or similar agreement are in full force and effect and (z) attached thereto is a true and complete copy of the resolutions or written consent, as applicable, of its board of directors, board of managers, sole member or other applicable governing body authorizing the execution and delivery of the Loan Documents, which resolutions or consent have not been modified, rescinded or amended (other than as attached thereto) and are in full force and effect, and (B) identify by name and title and bear the signatures of the officers, managers, directors or other authorized signatories of such Loan Party who are authorized to sign the Loan Documents to which such Loan Party is a party on the Closing Date and (ii) a good standing (or equivalent) certificate for such Loan Party from the relevant authority of its jurisdiction of organization, dated as of a recent date.

(e) Representations and Warranties. (i) The Specified Merger Agreement Representations shall be true and correct to the extent required by the terms of the definition thereof and (ii) the Specified Representations shall be true and correct in all material respects on and as of the Closing Date; provided that (A) in the case of any Specified Representation which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects as of the respective date or for the respective period, as the case may be and (B) if any Specified Representation is qualified by or subject to a "material adverse effect", "material adverse change" or similar term or qualification, (1) the definition thereof shall be the definition of "Closing Date Material Adverse Effect" for purposes of the making or deemed making of such Specified Representation on, or as of, the Closing Date (or any date prior thereto) and (2) such Specified Representation 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 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) Equity Contribution. Prior to or substantially concurrently with the initial funding of the Loans hereunder, the Equity Contribution shall be consummated.

(h) Refinancing. Substantially concurrently with the initial funding of the Loans hereunder, including by use of the proceeds thereof, the Refinancing shall be consummated.

(i) [Reserved].

(j) Solvency. The Administrative Agent (or its counsel) shall have received a certificate in substantially the form of Exhibit O from the chief financial officer (or other officer with reasonably equivalent responsibilities) of the Borrower dated as of the Closing Date and certifying as to the matters set forth therein.

(k) 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 each Loan Party, together with all attachments contemplated thereby.

(l) Pledged Stock and Pledged Notes. Subject to the final paragraph of this Section 4.01, the Administrative Agent (or its counsel) shall have received (i) the certificates representing the Capital Stock required to be pledged pursuant to the Security Agreement, together with an undated stock power or similar instrument of transfer for each such certificate endorsed in blank by a duly authorized officer of the pledgor thereof, and (ii) each Material Debt Instrument (if any) endorsed (without recourse) in blank (or accompanied by an transfer form endorsed in blank) by the pledgor thereof.

(m) Filings Registrations and Recordings. Subject to the final paragraph of this Section 4.01, each document (including any UCC (or similar) financing statement) required by any Collateral Document or under applicable Requirements of Law to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral required to be delivered pursuant to such Collateral Document, shall be in proper form for filing, registration or recordation.

(n) Closing Date Merger. Substantially concurrently with the initial funding of the Loans hereunder, the Closing Date Merger shall be consummated in accordance with the terms of the Merger Agreement, but without giving effect to any amendment, waiver or consent by Holdings or the Merger Sub that is materially adverse to the interests of the Arrangers or the Initial Lenders in their respective capacities as such without the consent of the Initial Lenders, such consent not to be unreasonably withheld, delayed or conditioned.

(o) Closing Date Material Adverse Effect. Since the date of the Merger Agreement, there shall not have occurred, and the Target has not incurred or suffered, any Closing Date Material Adverse Effect.

(p) 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 ten 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.

(q) Officer's Certificate. The Administrative Agent shall have received a certificate from a Responsible Officer of the Borrower certifying satisfaction of the conditions precedent set forth in Sections 4.01(e), (n) and (o).

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, (a) 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 and (b) a pledge of the Capital Stock of the Borrower and any material Subsidiary Guarantor with respect to which a Lien may be perfected on the Closing Date by the delivery of a stock or equivalent certificate (together with a stock power or similar instrument endorsed in blank for the relevant certificate) (other than the Capital Stock of any subsidiary of the Target with respect to which the certificate evidencing such Capital Stock has not been delivered to Merger Sub at least two Business Days prior to the Closing Date, to the extent Merger Sub has used commercially reasonable efforts to procure delivery thereof, which Capital Stock may instead be delivered within two Business Days after the Closing Date (or such later date as the Administrative Agent may reasonably agree))), in each case after Merger Sub's use of commercially reasonably efforts to do so without undue burden or expense, 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.

Section 4.02. Each Credit Extension. After the Closing Date, the obligation of each Revolving Lender 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 or (ii) in the case of the issuance of any Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance of such Letter of Credit as required by Section 2.05(b).

(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, however, that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates or for such periods.

(c) At the time of and immediately after giving effect to the applicable Credit Extension, no Event of Default or 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 the conditions set forth in this Section 4.02 shall not apply to (A) any Incremental Loan made in connection with any acquisition, other Investment or irrevocable repayment or redemption of Indebtedness and/or (B) any Credit Extension under any Incremental Amendment and/or Extension Amendment unless in each case the lenders in respect thereof have required satisfaction of the same in the applicable Incremental Amendment or Extension Amendment, as applicable.

Section 4.03. Each Initial Delayed Draw Term Loan Extension. The obligation of each Initial Delayed Draw Lender to make any Initial Delayed Draw Term Loan Extension is subject to the satisfaction of the following conditions:

(a) The Administrative Agent shall have received (i) a Borrowing Request as required by Section 2.03 and (ii) at least 10 days' (or such shorter number of days as may reasonably agreed with the Administrative Agent) prior notice from the Borrower of its intention to request Initial Delayed Draw Term Loans.

(b) The Total Leverage Ratio, calculated on a Pro Forma Basis, would not exceed (i) until the date that is twelve months after the Closing Date, 5.50:1.00 and (ii) thereafter, 5.25:1.00.

(c) At the time of and immediately after giving effect to the applicable Initial Delayed Draw Term Loan Extension, no Event of Default has occurred and is continuing.

(d) 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 Initial Delayed Draw Lender Term Loan Extension with the same effect as though such representations and warranties had been made on and as of the date of such Initial Delayed Draw Lender Term Loan 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, however, that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates or for such periods.

Each Initial Delayed Draw Term Loan Extension shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in clauses (b), (c) and (d) of this Section; provided, however, notwithstanding anything to the contrary in this Section 4.03 or in any other provision of any Loan Document, if the proceeds of any Initial Delayed Draw Term Loan Extension are intended to be applied to finance an acquisition or other Investment, the conditions in paragraph (b) above shall, at the Borrower's option, be satisfied as of the date of the related acquisition agreement or the date of the relevant Borrowing.

ARTICLE 5

AFFIRMATIVE COVENANTS

From the Closing Date until the date on which all 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 contingent indemnification obligations for which no claim or demand has been made) have been paid in full in Cash and all Letters of Credit have expired or have been terminated (or have been (x) collateralized or back-stopped by a letter of credit or otherwise in a manner reasonably satisfactory to the relevant Issuing Bank or (y) deemed reissued under another agreement in a manner reasonably acceptable to the applicable Issuing Bank and the Administrative Agent) and all LC Disbursements have been reimbursed (such date, the "Termination Date"), Holdings (solely with respect to Sections 5.02, 5.03, 5.12, and 5.14) and the Borrower hereby covenant and agree with the Lenders that:

Section 5.01. 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. As soon as available, and in any event within 45 days (or, in the case of the first three full Fiscal Quarters ending after the Closing Date, 75 days) after the end of each Fiscal Quarter of each Fiscal Year (commencing with the Fiscal Quarter ending on December 31, 2017) (or, in each case, such later date as the Administrative Agent may reasonably agree from time to time), the consolidated balance sheet of the Borrower as at the end of such Fiscal Quarter and the related consolidated statements of

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, together with a Responsible Officer Certification (which may be included in the applicable Compliance Certificate) with respect thereto; provided, however, that such financial statements shall only be required to reflect the Borrower's good faith estimate of any purchase accounting adjustments relating to (A) the Closing Date Merger for any Fiscal Quarter ending on or prior to December 31, 2017 and/or (B) any acquisition or similar Investment consummated after the Closing Date until the Fiscal Quarter ending on or about March 31 of the Fiscal Year following the Fiscal Year in which the relevant acquisition or similar Investment was consummated;

(b) Annual Financial Statements. As soon as available, and in any event within 120 days (or, in the case of the Fiscal Year ending on December 31, 2017, 150 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 operations, stockholders' equity and cash flows of the Borrower for such Fiscal Year and, commencing after the completion of the second full Fiscal Year ended after the Closing Date, setting forth, in reasonable detail, in comparative form the corresponding figures for the previous Fiscal Year 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 "going concern" explanatory paragraph or like statement (except as resulting from (A) the impending maturity of any Indebtedness prior to the end of the fourth Fiscal Quarter following the relevant audit date and/or (B) any breach or anticipated breach of any financial covenant) or 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 income and cash flows for the periods indicated in conformity with GAAP;

(c) Compliance Certificate. Together with each delivery of financial statements of the Borrower pursuant to Sections 5.01(a) and (b), a duly executed and completed Compliance Certificate;

(d) Together with each delivery of the financial statements of the Borrower pursuant to Section 5.01(a), a Narrative Report;

(e) Notice of Default. 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 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), could 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 could reasonably be expected to have a Material Adverse Effect, a written notice specifying the nature thereof;

(h) Financial Plan. As soon as available and in any event no later than 90 days after the beginning of each Fiscal Year, commencing with the Fiscal Year beginning on January 1, 2018, an annual operating budget for such Fiscal Year prepared by management of the Borrower;

(i) Information Regarding Collateral. Prompt (and, in any event, within 90 days of the relevant change) written notice of any change (i) in any Loan Party's legal name, (ii) in any Loan Party's type of organization, (iii) in any Loan Party's jurisdiction of organization or (iv) in any 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;

(j) Lender Calls. To the extent reasonably requested by the Administrative Agent following the delivery of financial statements pursuant to Section 5.01(b) for any Fiscal Year (provided, that such request shall be made by the Administrative Agent within 30 days of such delivery), the Borrower will host a conference call with the Lenders at a time to be mutually agreed between the Borrower and the Administrative Agent, to review the financial information presented therein, provided that the Administrative Agent shall not request, and the Borrower shall not be required to host, a conference call more than once during any Fiscal Year;

(k) Certain Reports. Promptly upon their becoming available and without duplication of any obligations with respect to any such information that is otherwise required to be delivered under the provisions of any Loan Document, copies of (i) following a Qualifying IPO, all financial statements, reports, notices and proxy statements sent or made available generally by Holdings or its applicable Parent Company to 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, filed by 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; and

(l) Other Information. Such other certificates, reports and information (financial or otherwise) as the Administrative Agent may reasonably request from time to time regarding the financial condition or business of the Borrower and its Subsidiaries; provided, however, that none of Holdings, the Borrower nor any Subsidiary shall be required to disclose or provide any information (a) that constitutes non-financial trade secrets or non-financial proprietary information of Holdings, the Borrower or any of its subsidiaries or any of their respective customers and/or suppliers, (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 or (d) in respect of which Holdings, the Borrower or any Subsidiary owes confidentiality obligations to any third party (provided such confidentiality obligations were not entered into in contemplation of the requirements of this Section 5.01(l)).

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 date (i) on which the Borrower (or a representative thereof) (x) posts such documents or (y) provides a link thereto at the website address listed on Schedule 9.01; provided that, other than with respect to items required to be delivered pursuant to Section 5.01(k) above, the Borrower shall promptly notify (which notice may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents at the website address listed on Schedule 9.01 and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents; (ii) 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); (iii) on which such documents are faxed to the Administrative Agent (or electronically mailed to an address provided by the Administrative Agent); or (iv) in respect of the items required to be delivered pursuant to Section 5.01(k) above in respect of information filed by Holdings or its applicable Parent Company with any securities exchange or with the SEC or any analogous governmental or private regulatory authority with jurisdiction over matters relating to securities (other than Form 10-Q Reports and Form 10-K reports described in Sections 5.01(a) and (b), respectively), 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.

Notwithstanding the foregoing, the obligations in paragraphs (a), (b) and (h) of this Section 5.01 may be satisfied with respect to any financial statements of the Borrower by furnishing (A) the applicable financial statements of Holdings (or any other Parent Company) or (B) Holdings' (or any other Parent Company's), 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; provided that, with respect to each of clauses (A) and (B), (i) to the extent such financial statements relate to any Parent Company, such financial statements shall be accompanied by consolidating information that summarizes in reasonable detail the differences between the information relating to such Parent Company, on the one hand, and the information relating to the Borrower and its consolidated subsidiaries on a standalone basis, on the other hand, which consolidating information shall be certified by a Responsible Officer of the Borrower as having been fairly presented in all material respects and (ii) to the extent such 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 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) as if the references to "the Borrower" therein were references to such Parent Company.

No financial statement required to be delivered pursuant to Section 5.01(a) or (b) shall be required to include acquisition accounting adjustments relating to the Transactions or any Permitted Acquisition or other Investment to the extent it is not practicable to include any such adjustments in such financial statement.

Section 5.02. Existence. Except as otherwise permitted under Section 6.07, Holdings and the Borrower will, and the Borrower will cause each of its 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 nor the Borrower nor any of the Borrower's Subsidiaries shall be required to preserve any such existence (other than with respect to the preservation of existence of 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 5.03. Payment of Taxes. Holdings and the Borrower will, and the Borrower will cause each of its 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, however, that no such Tax need be paid if (a) 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 or (b) 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 5.04. Maintenance of Properties. The Borrower will, and will cause each of its 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 Subsidiaries and from time to time will make or cause to be made all needed and appropriate repairs, renewals and replacements thereof 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 5.05. Insurance. 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 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, including flood insurance with respect to each Flood Hazard Property, in each case in compliance with the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 (where applicable). 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) (A) to the extent available from the relevant insurance carrier in the case of each casualty insurance policy (excluding any business interruption insurance policy), contain a loss payable clause or endorsement that names the Administrative Agent, on behalf of the Secured Parties as the loss payee thereunder and (B) to the extent available from the relevant insurance carrier after submission of a request by the applicable Loan Party to obtain the same, 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 premiums thereunder).

Section 5.06. Inspections. The Borrower will, and will cause each of its 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 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) at the expense of the Borrower, 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 and (b) except as expressly set forth in the proviso below during the continuance of an Event of Default, the Administrative Agent shall not exercise such rights more often than one time during any calendar year; provided, further, that when an Event of Default 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; provided, further, that notwithstanding anything to the contrary herein, neither the Borrower nor any Subsidiary shall be required to disclose, permit the inspection, examination or making of copies of or taking abstracts from, or discuss any document, information, or other matter (A) that constitutes non-financial trade secrets or non-financial proprietary information of the Borrower and its subsidiaries and/or any of its customers and/or suppliers, (B) in respect of which disclosure to the Administrative Agent or any Lender (or any of their respective representatives or contractors) is prohibited by applicable Requirements of Law, (C) that is subject to attorney-client or similar privilege or constitutes attorney work product or (D) in respect of which Holdings, the Borrower or any Subsidiary owes confidentiality obligations to any third party (provided such confidentiality obligations were not entered into in contemplation of the requirements of this Section 5.06).

Section 5.07. Maintenance of Book and Records. The Borrower will, and will cause its 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 Subsidiaries that are full, true and correct in all material respects and permit the preparation of consolidated financial statements in accordance with GAAP.

Section 5.08. Compliance with Laws. The Borrower will comply, and will cause each of its Subsidiaries to comply, (a) with the requirements of all applicable Requirements of Law (including applicable ERISA and all Environmental Laws), except to the extent the failure of the Borrower or the relevant Subsidiary to comply could not reasonably be expected to have a Material Adverse Effect and (b) in all material respects with the requirements of OFAC, the USA PATRIOT Act and the FCPA; provided that the requirements set forth in this Section 5.08, as they pertain to compliance by any Foreign Subsidiary with OFAC, 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.

Section 5.09. 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 Subsidiaries, a copy of any and all written communications with respect to (A) any Environmental Claim that, individually or in the aggregate, has a reasonable possibility of giving rise to a Material Adverse Effect, (B) any Release required to be reported by the Borrower or any of its Subsidiaries to any federal, state or local governmental or regulatory agency or other Governmental Authority that reasonably could be expected to have a Material Adverse Effect, (C) any request made to the Borrower or any of its Subsidiaries for information from any governmental agency that suggests such agency is investigating whether the Borrower or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity which is reasonably expected to have a Material Adverse Effect and (D) subject to the limitations set forth in the proviso to Section 5.01(l), 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 Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by the Borrower or its 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 could 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 Subsidiaries and discharge any obligations it may have to any Person thereunder, in each case, where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.10. Cash Management. The Loan Parties shall use commercially reasonable efforts to maintain cash management arrangements consistent with past practice, including arrangements for their deposit accounts that are operating accounts to be swept to one or more concentration accounts on a daily or other periodic basis.

Section 5.11. Use of Proceeds. The Borrower shall use the proceeds of the Revolving Loans (a) on the Closing Date, (i) to finance the payment of Transaction Costs in an aggregate principal amount not to exceed $5,000,000 in the aggregate and/or (ii) for working capital needs and (b) after the Closing Date, to finance Transaction Costs, working capital needs and other general corporate purposes of the Borrower and its subsidiaries (including for capital expenditures, acquisitions, Investments, working capital and/or purchase price adjustments (including in connection with the Closing Date Merger), Restricted Payments, Restricted Debt Payments and related fees and expenses) and any other purpose not prohibited by the terms of the Loan Documents. The Borrower shall use the proceeds of the Initial Term Loans solely to finance a portion of the Transactions (including working capital and/or purchase price adjustments under the Merger Agreement and the payment of Transaction Costs). Letters of Credit may be issued (i) on the Closing Date to replace or provide credit support for any letter of credit, bank guarantee and/or surety, customs, performance or similar bond of the Target and its subsidiaries or any of their respective 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. The Borrower shall use the proceeds of the Initial Delayed Draw Term Loans solely (i) to finance growth-related capital expenditures, (ii) for expenditures related to remodeling, refurbishing, rebuilding and/or conversions of restaurants or other Unit Locations, (iii) in connection with acquisitions and other similar Investments, (iv) to repay any Revolving Loans and/or Cash collateralize any Letters of Credit, or replenish Cash on the balance sheet, in each case to the extent, in the case of outstanding Revolving Loans, Cash collateral and Cash replenishment, such proceeds of such Borrowings or such Cash, as applicable, were used for the purposes described in the foregoing clauses (i), (ii) and/or (iii) of this sentence, and (v) for working capital.

Section 5.12. Covenant to Guarantee Obligations and Give Security.

(a) Upon (i) the formation or acquisition after the Closing Date of any Subsidiary that is a Domestic Subsidiary, (ii) any Subsidiary that is a Domestic Subsidiary ceasing to be an Immaterial Subsidiary or (iii) any Subsidiary that was an Excluded Subsidiary ceasing to be an Excluded Subsidiary, on or before the date on which financial statements are required to be delivered pursuant to Section 5.01(a) 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 Subsidiary (other than any Excluded Subsidiary) to comply with the requirements set forth in clause (a) of the definition of "Collateral and Guarantee Requirement" and (B) upon the reasonable request of the Administrative Agent, cause the relevant Subsidiary (other than any Excluded Subsidiary) to deliver to the Administrative Agent a signed copy of a customary opinion of counsel for such Subsidiary, addressed to the Administrative Agent and the other relevant Secured Parties.

(b) Within 90 days after the acquisition by any Loan Party of any Material Real Estate Asset other than any Excluded Asset (or such longer period as the Administrative Agent may reasonably agree), the Borrower shall cause such Loan Party to comply with the requirements set forth in clause (b) of the definition of "Collateral and Guarantee Requirement"; it being understood and agreed that, with respect to any Material Real Estate Asset owned by any Subsidiary at the time such Subsidiary is required to become a Loan Party under Section 5.12(a) above, such Material Real Estate Asset shall be deemed to have been acquired by such Subsidiary on the first day of the time period within which such Subsidiary is required to become a Loan Party under Section 5.12(a).

(c) 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 apply retroactively) for the creation and perfection of security interests in, or obtaining of title insurance, legal opinions, surveys or other deliverables with respect to, particular assets or the provision of any Loan Guaranty by any Subsidiary (in connection with assets acquired, or Subsidiaries formed or acquired, after the Closing Date), 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" shall be subject to the exceptions and limitations set forth in the Collateral Documents;

(iii) perfection by control shall not be required with respect to assets requiring perfection through control agreements or other control arrangements (other than, in each case to the extent the same otherwise constitute Collateral, control of pledged Capital Stock, Material Debt Instruments, and deposit accounts of the Loan Parties that are concentration accounts);

(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, other than, subject to the terms of the last paragraph of Section 4.01, as expressly set forth on Schedule 5.15;

(v) no Loan Party will be required to (A) take any action outside of the U.S. in order to create or perfect any security interest in any asset located outside of the U.S., (B) execute any foreign law security agreement, pledge agreement, mortgage, deed or charge or (C) make any foreign intellectual property filing, conduct any foreign intellectual property search or prepare any foreign intellectual property schedule, in each case other than with respect to a Foreign Subsidiary designated as a Subsidiary Guarantor pursuant to the last sentence of the definition of "Subsidiary Guarantor";

(vi) in no event will the Collateral include any Excluded Asset;

(vii) no action shall be required to perfect any Lien with respect to (1) any vehicle or other asset subject to a certificate of title, (2) Letter-of-Credit Rights, (3) the Capital Stock of any Immaterial Subsidiary and/or (4) the Capital Stock of any Person that is not a subsidiary, which Person, if a subsidiary, would constitute an Immaterial Subsidiary, 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;

(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 (1) 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), (2) 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 law or (3) 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 Requirements of Law notwithstanding the relevant prohibition, violation or termination right;

(ix) (A) no Loan Party shall be required to perfect a security interest 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) the Administrative Agent and the Secured Parties shall not enforce any security interest (including foreclosure, taking possession, storage, sale, distribution or otherwise), or right or remedy with respect to any Collateral that may be limited or restricted by any Requirement of Law in violation of such Requirement of Law, or requires any consent, authorization approval or license under any Requirement of Law that has not been obtained;

(x) any joinder or supplement to any Loan Guaranty, any Collateral Document and/or any other Loan Document executed by any Subsidiary that is required to become 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) (A) no Loan Party shall be required to take any action required under the Federal Assignment of Claims Act and (B) no Secured Party will be permitted to exercise any right of setoff in respect of any account maintained solely for the purpose of receiving and holding government receivables;

(xii) for the avoidance of doubt, in no event shall any person that is not a subsidiary or that constitutes an Excluded Subsidiary be required to provide a Guaranty of any Secured Obligation or comply with any other requirement of this Section 5.12;

(xiii) no Loan Party shall be required to provide any leasehold Mortgages; and

(xiv) the Administrative Agent shall not require the taking of a Lien on, or require the perfection of any Lien granted in, those assets 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.

Section 5.13. [Reserved].

Section 5.14. Further Assurances. Promptly upon request of the Administrative Agent and subject to the limitations described in Section 5.12:

(a) Holdings and the Borrower will, and will cause each other Loan Party to, execute any and all further documents, financing statements, agreements, instruments, certificates, notices and acknowledgments and take all such further actions (including the filing and recordation of financing statements, fixture filings, Mortgages and/or amendments thereto and other documents), that may be required under any applicable Requirements 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.

(b) Holdings and the Borrower will, and will cause each other 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, certificates, 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 5.15. Post-Closing Covenant. Prior to the date that is set forth on Schedule 5.15 (or such longer period as the Administrative Agent may reasonably agree), the Borrower shall complete the items specified on Schedule 5.15.

ARTICLE 6

NEGATIVE COVENANTS

From the Closing Date and until the Termination Date, Holdings (solely with respect to Section 6.14) and the Borrower covenant and agree with the Lenders that:

Section 6.01. Indebtedness. The Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or otherwise become or remain liable with respect to any Indebtedness, except:

(a) the Secured Obligations (including any Additional Term Loans and any Additional Revolving Loans);

(b) Indebtedness of the Borrower to Holdings and/or any Subsidiary and/or of any Subsidiary to Holdings, the Borrower and/or any other Subsidiary; provided that in the case of any Indebtedness of any Subsidiary that is not a Loan Party owing to any Subsidiary that is a Loan Party, such Indebtedness shall be permitted as an Investment under Section 6.06; provided, further, that any Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party must be unsecured and expressly subordinated to the Obligations of such Loan Party on terms that are reasonably acceptable to the Administrative Agent (including pursuant to any Intercompany Note);

(c) [Reserved];

(d) Indebtedness arising from any agreement providing for indemnification, adjustment of purchase price or similar obligations (including contingent earn-out obligations) incurred in connection with any Disposition permitted hereunder, any acquisition permitted hereunder or consummated prior to the Closing Date or any other purchase of assets or Capital Stock, and 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 Subsidiary pursuant to any such agreement;

(e) Indebtedness of the Borrower and/or any Subsidiary (i) 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 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 Subsidiary in respect of 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 and any arrangements or services similar to any of the foregoing and/or otherwise in connection with Cash management and Deposit Accounts, including Banking Services Obligations and incentive, supplier finance or similar programs;

(g) (i) guaranties by the Borrower and/or any Subsidiary of the lease obligations of suppliers, customers, franchisees and licensees in the ordinary course of business and in an aggregate outstanding principal amount not to exceed $2,500,000, (ii) guaranties by the Borrower and/or any Subsidiary of leases (other than Capital Leases) or other obligations not constituting Indebtedness, (iii) Indebtedness incurred in the ordinary course of business in respect of obligations of the Borrower and/or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services and (iv) 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 Subsidiary of Indebtedness or other obligations of the Borrower, any 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 Subsidiary existing, or pursuant to commitments existing, on the Closing Date and described on Schedule 6.01;

(j) Indebtedness of Subsidiaries that are not Loan Parties; provided that the aggregate outstanding principal amount of such Indebtedness incurred pursuant to this clause 6.01(j), together with the aggregate amount of Investments made pursuant to Section 6.06(b)(iii) and the aggregate amount of Investments made in reliance on clause (b) of the proviso to the definition of "Permitted Acquisition" shall not exceed $12,500,000 in the aggregate;

(k) Indebtedness of the Borrower and/or any 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 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 Subsidiary with respect to Capital Leases and purchase money Indebtedness in an aggregate outstanding principal amount not to exceed the greater of $7,500,000 and 25% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(n) Indebtedness of any Person that becomes a Subsidiary or Indebtedness assumed in connection with an acquisition permitted hereunder after the Closing Date; provided that (i) such Indebtedness was not created or incurred in anticipation thereof, (ii) no Event of Default under Section 7.01(a), (f) or (g) exists and (iii) such Indebtedness does not exceed $7,500,000 in the aggregate;

(o) Indebtedness consisting of promissory notes issued by the Borrower or any 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 (i), (m), (n), (r), (u) and (y) 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 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) the terms of any Refinancing Indebtedness with an original principal amount in excess of the Threshold Amount (excluding, to the extent applicable, pricing, fees, premiums, rate floors, optional prepayment, redemption terms or subordination terms and, with respect to Refinancing Indebtedness incurred in respect of Indebtedness permitted under clause (a) above, security), are not, taken as a whole (as reasonably determined by the Borrower), more favorable to the lenders providing such Indebtedness than those applicable to the Indebtedness being refinanced, refunded or replaced (other than (A) any covenants or other provisions applicable only to periods after the applicable maturity date of the debt then-being refinanced as of such date or (B) any covenants or provisions which are then-current market terms for the applicable type of Indebtedness,

(iii) in the case of Refinancing Indebtedness with respect to Indebtedness permitted under clauses (j), (m), (n), (r), (u) and (y) of this Section 6.01, the incurrence thereof shall be without duplication of any amounts 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, and

(iv) (A) 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 if the Liens securing such Indebtedness were originally contractually subordinated to the Liens on the Collateral securing the Initial Loans, the Liens securing such Indebtedness are subordinated to the Liens on the Collateral securing the Initial Loans on terms not materially less favorable (as reasonably determined by the Borrower), taken as a whole, to the Lenders than those (x) applicable to the Liens securing the Indebtedness being refinanced, refunded or replaced, taken as a whole, or (y) set forth in an Acceptable Intercreditor Agreement, (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 (x) Holdings may not be the primary obligor in respect of the applicable Refinancing Indebtedness if Holdings was not the primary obligor in respect of the relevant refinanced Indebtedness and (y) 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), (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 (D) as of the date of the incurrence of such Indebtedness and after giving effect thereto, no Event of Default exists

(q) [Reserved];

(r) Indebtedness of the Borrower and/or any Subsidiary in an aggregate outstanding principal amount not to exceed 100% of the amount of Net Proceeds received by the Borrower from (i) the issuance or sale of Qualified Capital Stock or (ii) any cash contribution to its common equity with the Net Proceeds from the issuance and sale by any Parent Company of its Qualified Capital Stock or a contribution to the common equity of any Parent Company, in each case, (A) other than any Net Proceeds received from the sale of Capital Stock to, or contributions from, the Borrower or any of its Subsidiaries, (B) to the extent the relevant Net Proceeds have not otherwise been applied to make Investments, Restricted Payments or Restricted Debt Payments hereunder and (C) other than any Cure Amount; provided that, immediately before and after giving effect to the incurrence of such Indebtedness, no Event of Default under Section 7.01(a), (f) or (g) exists (the amount of any Net Proceeds or contribution utilized to incur Indebtedness in reliance on this clause (r), a "Contribution Indebtedness Amount");

(s) Indebtedness of the Borrower and/or any Subsidiary under any Derivative Transaction not entered into for speculative purposes;

(t) Indebtedness of the Borrower and/or any 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 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 Subsidiary in an aggregate outstanding principal amount not to exceed the greater of $10,000,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(v) to the extent constituting Indebtedness, obligations arising under the Merger Agreement;

(w) [Reserved];

(x) [Reserved];

(y) Indebtedness of the Borrower and/or any Subsidiary incurred in connection with Sale and Lease-Back Transactions permitted pursuant to Section 6.08;

(z) [Reserved];

(aa) Indebtedness (including obligations in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments with respect to such Indebtedness) incurred by the Borrower and/or any Subsidiary in respect of workers compensation claims, unemployment insurance (including premiums related thereto), other types of social security, pension obligations, vacation pay, health, disability or other employee benefits;

(bb) [Reserved];

(cc) Indebtedness of the Borrower and/or any Subsidiary in respect of any letter of credit or bank guarantee issued in favor of any Issuing Bank to support any Defaulting Lender's participation in Letters of Credit issued hereunder;

(dd) Indebtedness of the Borrower or any Subsidiary supported by any Letter of Credit;

(ee) unfunded pension fund and other employee benefit plan obligations and liabilities incurred by the Borrower and/or any 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);

(ff) 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; and

(gg) 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 Subsidiary hereunder.

Section 6.02. Liens. The Borrower shall not, nor shall it permit any of its 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 created pursuant to the Loan Documents;

(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 30 days, (ii) for amounts that are overdue by more than 30 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) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

(d) Liens incurred (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 (x) any liability for reimbursement or indemnification obligations of insurance carriers providing property, casualty, liability or other insurance to Holdings, the Borrower and its subsidiaries or (y) 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 easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not, in the aggregate, materially interfere with the ordinary conduct of the business of the Borrower and/or its Subsidiaries, taken as a whole, or the use of the affected property for its intended purpose;

(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 (including as part of any escrow arrangement) made by the Borrower and/or any of its 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 relating solely to operating leases or consignment or bailee arrangements entered into in the ordinary course of business, and (ii) Liens arising from precautionary UCC financing statements or similar filings;

(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 or similar Requirement of Law or right reserved to or vested in any Governmental Authority to control or regulate the use of any or dimensions of real property or the structure 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 (x) Indebtedness permitted pursuant to Sections 6.01(i), (m), (n), (u) and (y) and (y) 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 of the applicable Lien granted in reliance on this clause (y))); provided that (i) no such Lien extends to any asset not covered by the Lien securing the Indebtedness that is being refinanced and (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 Acceptable Intercreditor Agreement and (iii) no such Lien shall be senior in priority as compared to the Lien securing the Indebtedness being refinanced; provided, further, that no Liens shall be granted to any Person (other than the Administrative Agent or any Secured Party) pursuant to this clause (k) on Deposit Accounts or Securities Accounts unless the Borrower or its Subsidiary, as applicable, grants a first priority Lien on such Deposit Accounts or Securities Accounts, as applicable, in favor of the Administrative Agent, for the benefit of the Secured Parties;

(l) Liens described on Schedule 6.02 and any modification, replacement, refinancing, renewal or extension thereof; provided 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, 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 6.08;

(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 Subsidiary; provided that no such Lien (x) extends to or covers any other assets (other than the proceeds or products thereof, replacements, accessions or additions thereto and improvements thereon) or (y) was created in contemplation of the applicable acquisition of assets or Capital Stock; provided, further, that no Liens shall be granted to any Person (other than the Administrative Agent or any Secured Party) pursuant to this clause (o) on Deposit Accounts or Securities Accounts to secure Indebtedness in an aggregate outstanding principal amount in excess of $5,000,000 unless the Borrower or its Subsidiary, as applicable, grants a first priority Lien on such Deposit Accounts or Securities Accounts, as applicable, in favor of the Administrative Agent, for the benefit of the Secured Parties;

(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 Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Subsidiary, (C) purchase orders and other agreements entered into with customers of the Borrower or any 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 and (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;

(q) Liens on assets and Capital Stock of Subsidiaries that are not Loan Parties (including Capital Stock owned by such Persons) securing Indebtedness of 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 (i) operating, reciprocal easement or similar agreements entered into in the ordinary course of business of the Borrower and/or its Subsidiaries and (ii) any other agreement or arrangement that is customary in the operation of the business of the Borrower and/or its Subsidiaries;

(s) [Reserved];

(t) [Reserved];

(u) Liens on assets securing Indebtedness or other obligations in an aggregate principal amount not to exceed the greater of $10,000,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period; provided, that any Lien on any Collateral granted in reliance on this clause (u) that is pari passu with or junior to the Lien on the Collateral securing the Secured Obligations shall be subject to an Acceptable Intercreditor Agreement; provided, further, that no Liens shall be granted pursuant to this clause (u) on Deposit Accounts or Securities Accounts of Loan Parties unless the applicable Loan Party grants a first priority Lien on such Deposit Accounts or Securities Accounts, as applicable, in favor of the Administrative Agent, for the benefit of the Secured Parties;

(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) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not secure any Indebtedness;

(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 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 Subsidiary that is not a Loan Party, in the case of clauses (i) and (ii), securing intercompany Indebtedness permitted (or not restricted) under Section 6.01 or Section 6.09; provided that no Liens shall be granted pursuant to this clause (aa) on Deposit Accounts or Securities Accounts;

(bb) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(cc) 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;

(dd) 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);

(ee) (i) Liens on Capital Stock of joint ventures securing capital contributions to, or obligations of, such Persons 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;

(ff) Liens on cash or Cash Equivalents arising in connection with the defeasance, discharge or redemption of Indebtedness;

(gg) Liens consisting of the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business; and

(hh) Liens disclosed in any Mortgage Policy delivered pursuant to Section 5.12 with respect to any Material Real Estate Asset and any replacement, extension or renewal thereof; provided that no such replacement, extension or renewal Lien shall cover any property other than the property that was subject to such Lien prior to such replacement, extension or renewal (and additions thereto, improvements thereon and the proceeds thereof).

Section 6.03. [Reserved].

Section 6.04. Restricted Payments; Restricted Debt Payments.

(a) The Borrower shall not pay or make, directly or indirectly, any Restricted Payment, except that:

(i) the Borrower may make Restricted Payments to the extent necessary to permit any Parent Company:

(A) to pay general administrative costs and expenses (including corporate overhead, legal or similar expenses and customary salary, bonus and other benefits payable to directors, officers, employees, members of management, managers and/or consultants of any Parent Company) and franchise Taxes, and similar fees and expenses, required to maintain the organizational existence of such Parent Company, in each case, which are reasonable and customary and incurred in the ordinary course of business, plus any reasonable and customary indemnification claims made by directors, officers, members of management, managers, employees or consultants of any Parent Company, in each case, to the extent attributable to the ownership or operations of any Parent Company (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 the Borrower and/or its subsidiaries), and/or its subsidiaries;

(B) (x) for any taxable period for which the Borrower is a member of a consolidated, combined, unitary or similar tax group for U.S. federal and/or applicable state or local tax purposes of which such Parent Company is the common parent, to discharge the consolidated, combined, unitary or similar Tax liabilities of such Parent Company and its subsidiaries when and as due, to the extent such liabilities are attributable to the income of the Borrower and/or any subsidiary of the Borrower; provided that the amount of such payments in respect of any taxable year do not exceed the amount of such Tax liabilities that the Borrower and/or its applicable subsidiaries would have paid had such Tax liabilities been paid as standalone companies or as a standalone group and (y) for any taxable period for which the Borrower is a partnership or disregarded entity for U.S. federal income tax purposes that is wholly-owned (directly or indirectly) by a C corporation for U.S. federal and/or applicable state or local tax purposes, distributions to any direct or indirect parent of the Borrower in an amount not to exceed the amount of any Tax that the Borrower and/or its applicable subsidiaries would have paid had such Tax been paid as standalone companies or as a standalone group (and assuming for purposes of such calculation that the Borrower is classified as a domestic corporation for U.S. federal income tax purposes);

(C) to pay audit and other accounting and reporting expenses of such Parent Company to the extent attributable to any Parent Company (but excluding, for the avoidance of doubt, the portion of any such expenses, 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 its subsidiaries;

(D) for the payment of insurance premiums to the extent attributable to any Parent Company (but excluding, for the avoidance of doubt, the portion of any such premiums, 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 its subsidiaries;

(E) to pay (x) fees and expenses related to debt or equity offerings, investments or acquisitions (whether or not consummated) and expenses and indemnities of any trustee, agent, arranger, underwriter or similar role, and (y) after the consummation of an initial public offering or an offering of public debt securities, Public Company Costs;

(F) to finance any Investment permitted under Section 6.06 (provided that (x) any Restricted Payment under this clause (a)(i)(F) shall be made substantially concurrently with 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 Subsidiaries, or (II) the merger, consolidation or amalgamation of the Person formed or acquired into the Borrower or one or more of its Subsidiaries, in each case, in order to consummate such Investment in compliance with the applicable requirements of Section 6.06 as if undertaken as a direct Investment by the Borrower or the relevant 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 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) so long as no Event of Default under Sections 7.01(a), 7.01(f) or 7.01(g) exists at the time of the payment thereof or would result therefrom, 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 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 $2,000,000 in any Fiscal Year, which, if not used in such Fiscal Year, shall be carried forward to succeeding Fiscal Years;

(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 (to the extent such proceeds are contributed in respect of Qualified Capital Stock to the Borrower or any Subsidiary) in each case, (1) other than any Net Proceeds received from the sale of Capital Stock to, or contributions from, the Borrower or any of its Subsidiaries, (2) to the extent the relevant Net Proceeds have not otherwise been applied to make Investments, Restricted Payments or Restricted Debt Payments hereunder and (3) other than any Cure Amount; or

(C) with the net proceeds of any key-man life insurance policies;

(iii) the Borrower may make Restricted Payments in an amount not to exceed the portion, if any, of the Available Amount on such date that the Borrower elects to apply to this clause (iii)(A);

(iv) the Borrower may make Restricted Payments (i) to any Parent Company to enable such Parent Company to make Cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of such Parent Company and (ii) consisting of (A) 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 or any Parent Company or any of their respective Immediate Family Members and/or (B) repurchases of Capital Stock in consideration of the payments described in subclause (A) above, including demand repurchases in connection with the exercise of stock options;

(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 (i) on the Closing Date, solely to effect the consummation of the Transactions, (ii) on and after the Closing Date, to satisfy any payment obligations owing under the Merger Agreement (including payment of working capital and/or purchase price adjustments) and to pay Transaction Costs, in each case, with respect to the Transactions and (iii) to direct or indirect holders of Capital Stock of the Borrower (immediately prior to giving effect to the Transactions) in connection with, or as a result of any working capital and purchase price adjustments, in each case, with respect to the Transactions;

(vii) so long as no Event of Default under Sections 7.01(a), 7.01(f) or 7.01(g) exists at the time of payment thereof or would result therefrom, following the consummation of the first Qualifying IPO, the Borrower may (or may make Restricted Payments to any Parent Company to enable it to) make Restricted Payments with respect to any Capital Stock in an amount of 6.00% per annum of the net Cash proceeds received by or contributed to the Borrower from any Qualifying IPO;

(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 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 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 Subsidiary in respect of Qualified Capital Stock ("Refunding Capital Stock") 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 Subsidiary) of any Refunding Capital Stock;

(ix) to the extent constituting a Restricted Payment, the Borrower may consummate any transaction permitted by Section 6.06 (other than Sections 6.06(j) and (t)), Section 6.07 (other than Section 6.07(g)) and Section 6.09 (other than Sections 6.09(d) and (j));

(x) so long as no Event of Default exists at the time of the payment thereof or would result therefrom, the Borrower may make Restricted Payments in an aggregate amount not to exceed (A) $5,000,000, minus (B) the outstanding amount of Investments made by the Borrower or any Subsidiary in reliance on Section 6.06(q)(i)(B) minus (C) the amount of Restricted Debt Payments made by the Borrower or any Subsidiary in reliance on Section 6.04(b)(iv)(B); and

(xi) the Borrower may make Restricted Payments so long as (i) no Event of Default exists at the time of the payment thereof or would result therefrom and (ii) the Total Leverage Ratio, calculated on a Pro Forma Basis for the Test Period then most recently ended, would not exceed 3.75:1.00.

(b) The Borrower shall not, nor shall it permit any Subsidiary to, make any prepayment in Cash in respect of principal of or interest on any Junior Indebtedness (other than Indebtedness among Holdings, the Borrower and/or its subsidiaries), Junior Lien Indebtedness or Junior Unsecured Indebtedness (such Indebtedness, the "Restricted Debt"), including any sinking fund or similar deposit, on account of the 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) [Reserved];

(ii) as part of an applicable high yield discount obligation catch-up payment;

(iii) payments of regularly scheduled interest (including any penalty interest, if applicable) and payments of fees, expenses and indemnification obligations as and when due (other than payments with respect to Junior Indebtedness that are prohibited by the subordination provisions thereof);

(iv) so long as no Event of Default exists at the time of the payment thereof or would result therefrom, Restricted Debt Payments in an aggregate amount not to exceed (A) $7,500,000, plus (B) at the election of the Borrower, the amount of any Restricted Payments then permitted to be made by the Borrower in reliance on Section 6.04(a)(x)(A) minus (C) the outstanding amount of Investments made by the Borrower or any Subsidiary in reliance on Section 6.06(q)(i)(C);

(v) (A) Restricted Debt Payments in exchange for, or with proceeds of any issuance of, Qualified Capital Stock of the Borrower and/or any capital contribution in respect of Qualified Capital Stock of the Borrower, (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 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 the portion, if any, of the Available Amount on such date that the Borrower elects to apply to this clause (vi)(A);

(vii) Restricted Debt Payments in an unlimited amount; provided that (A) no Event of Default exists at the time of the payment thereof or would result therefrom and (B) the Total Leverage Ratio, calculated on a Pro Forma Basis, would not exceed 3.75:1.00; and

(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)(viii) of the definition of "Available Amount" to the extent so applied).

Section 6.05. Burdensome Agreements. Except as provided herein or in any other Loan Document and/or in any agreement with respect to any refinancing, renewal or replacement of such Indebtedness that is permitted by Section 6.01, the Borrower shall not, nor shall it permit any of its Subsidiaries to, enter into or cause to exist any agreement restricting the ability of (x) any Subsidiary of the Borrower that is not a Loan Party to pay dividends or other distributions to the Borrower or any Loan Party, (y) any Subsidiary that is not a Loan Party to make cash loans or advances to the Borrower or any Loan Party or (z) any Loan Party to create, permit or grant a Lien on any of its properties or assets to secure the Secured Obligations, except restrictions:

(a) set forth in any agreement evidencing (i) Indebtedness of a 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 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), (q), (r), (u), (w) and/or (y) of Section 6.01), (q), (r), (u), (w) and/or (y) 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 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 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 and were not created in contemplation thereof;

(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 relating to any Banking Services Obligation (and/or any other obligation of the type described in 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 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;

(n) set forth in any agreement relating to any Permitted Lien that limit the right of the Borrower or any Subsidiary to Dispose of or encumber the assets subject thereto; and/or

(o) 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 (n) 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 6.06. Investments. The Borrower shall not, nor shall it permit any of its 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) Investments:

(i) existing on the Closing Date in the Borrower or in any subsidiary,

(ii) made after the Closing Date among the Borrower and/or one or more Subsidiaries that are Loan Parties,

(iii) made after the Closing Date by any Loan Party in any Subsidiary that is not a Loan Party in an aggregate outstanding amount, together with the aggregate amount of Indebtedness incurred pursuant to Section 6.01(j) and the aggregate amount of Investments made in reliance on clause (b) of the proviso to the definition of "Permitted Acquisition" made in reliance of Section 6.06(e), shall not exceed $12,500,000 in the aggregate,

(iv) made by any Subsidiary that is not a Loan Party in any Loan Party and/or any other Subsidiary that is not a Loan Party, and/or

(v) made by any Loan Party and/or any Subsidiary that is not a Loan Party in the form of any contribution or Disposition of the Capital Stock of any Person that is not a Loan Party;

(c) Investments (i) constituting deposits, prepayments and/or other credits to suppliers, (ii) made in connection with obtaining, maintaining or renewing client and customer contracts and/or (iii) in the form of advances made to 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 Subsidiary;

(d) Investments in any Similar Business (including any joint venture) in an aggregate outstanding amount not to exceed the greater of $5,000,000 and 17.5% 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 Subsidiary that is not a Loan Party in an amount required to permit such Subsidiary to consummate a Permitted Acquisition (in compliance, if applicable, with any cap on Investments in non-Loan Parties that is set forth in the relevant carve-out from this Section 6.06), which amount is actually applied by such Subsidiary to consummate such Permitted Acquisition;

(f) Investments (i) existing on, or contractually committed to or contemplated as of, the Closing Date and 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, either (i) in an aggregate principal amount not to exceed $1,000,000 at any one time outstanding or (ii) so long as the proceeds of such loan or advance are substantially contemporaneously 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)(y) of the proviso thereto), Section 6.07(b) (if made in reliance on clause (ii) therein), Section 6.07(c)(ii) (if made in reliance on clause (B) therein) and Section 6.07(g));

(k) Investments in the ordinary course of business (i) consisting of endorsements for collection or deposit and customary trade arrangements with customers and (ii) to secure performance of operating leases and other contractual obligations that do not constitute Indebtedness;

(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 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 solely with Capital Stock of any Parent Company or Qualified Capital Stock of the Borrower or any Subsidiary, in each case, to the extent not resulting in a Change of Control;

(o) (i) Investments of any Subsidiary acquired after the Closing Date, or of any Person acquired by, or merged into or consolidated or amalgamated with, the Borrower or any 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 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 Subsidiaries in an aggregate amount at any time outstanding not to exceed:

(i) (A) the greater of $10,000,000 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 or any Subsidiary in reliance on Section 6.04(a)(x)(A), plus (C) at the election of the Borrower, the amount of Restricted Debt Payments then permitted to be made by the Borrower or any Subsidiary in reliance on Section 6.04(b)(iv)(A), plus

(ii) in the event that (A) the Borrower or any of its Subsidiaries makes any Investment after the Closing Date in any Person that is not a Subsidiary and (B) such Person subsequently becomes a Subsidiary, an amount equal to 100% of the fair market value of such Investment as of the date on which such Person becomes a Subsidiary;

(r) Investments made after the Closing Date by the Borrower and/or any of its Subsidiaries in an aggregate outstanding amount not to exceed the portion, if any, of the Available Amount on such date that the Borrower elects to apply to this clause (r);

(s) (i) Guarantees of leases (other than Capital Leases) or of other obligations not constituting Indebtedness and (ii) Guarantees of the lease obligations of suppliers, customers, franchisees and licensees of Holdings and/or its Subsidiaries, in each case of this clause (ii), in the ordinary course of business and in an aggregate outstanding principal amount not to exceed $2,500,000;

(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); 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 made by any Subsidiary that is not a Loan Party with the proceeds received by such Subsidiary from an Investment made by any Loan Party in such Subsidiary pursuant to this Section 6.06 (other than Investments made pursuant to Section 6.06(e)(ii));

(v) Investments in subsidiaries in connection with internal reorganizations and/or restructurings and activities related to tax planning; provided that, after giving effect to any such reorganization, restructuring or activity, 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 any Derivative Transaction of the type permitted under Section 6.01(s);

(x) Investments to acquire and hold accounts receivable and/or notes receivable from franchisees in the ordinary course of business to prevent or limit loss in an aggregate amount not to exceed $1,000,000;

(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 Subsidiary and/or joint venture in connection with intercompany cash management arrangements and related activities in the ordinary course of business;

(bb) Investments so long as, after giving effect thereto on a Pro Forma Basis, the Total Leverage Ratio as of the most recently ended Test Period does not exceed 4.25:1.00;

(cc) Investments in franchisees in an aggregate amount not to exceed $2,000,000 in any Fiscal Year; and

(dd) Investments consisting of the licensing or contribution of IP Rights pursuant to joint marketing arrangements with other Persons.

Section 6.07. Fundamental Changes; Disposition of Assets. Other than the Closing Date Merger and the other Transactions, the Borrower shall not, nor shall it permit any of its Subsidiaries to, enter into any transaction of merger, consolidation or amalgamation, or liquidate, wind up or dissolve themselves (or suffer any liquidation or dissolution), or make any Disposition of any assets having a fair market value in excess of $1,750,000 in a single transaction or a series of related transactions and in excess of $7,500,000 in the aggregate for all such transactions, except:

(a) any Subsidiary may be merged, consolidated or amalgamated with or into the Borrower or any other Subsidiary; provided that (i) in the case of any such merger, consolidation or amalgamation with or into 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 or amalgamation is not the Borrower (any such Person, the "Successor Borrower"), (x) the Successor Borrower shall be an entity organized or existing under the law of the U.S., any state thereof or the District of Columbia, (y) the Successor Borrower shall expressly assume the Obligations of the Borrower in a manner reasonably satisfactory to the Administrative Agent and (z) 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 (x) through (z) 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, either (A) the Borrower or a Subsidiary Guarantor shall be the continuing or surviving Person or the continuing or surviving Person 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 Subsidiary (upon voluntary liquidation or otherwise); provided that any such Disposition made by any Loan Party to any Person that is not a Loan Party shall be (i) for fair market value (as reasonably determined by such Person) with at least 75% of the consideration for such Disposition consisting of Cash or Cash Equivalents at the time of such Disposition or (ii) treated as an Investment and otherwise made in compliance with Section 6.06 (other than in reliance on clause (j) thereof);

(c) (i) the liquidation or dissolution of any Subsidiary if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower, is not materially disadvantageous to the Lenders, and the Borrower or any Subsidiary receives any assets of the relevant dissolved or liquidated Subsidiary; provided that in the case of any liquidation or dissolution of any Loan Party that results in a distribution of assets to any 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 or consolidation, 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 and (iii) the conversion of the Borrower or any Subsidiary into another form of entity, so long as such conversion does not 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 reasonable judgment of the Borrower, is (A) no longer useful in its business (or in the business of any Subsidiary of the Borrower) or (B) otherwise economically impracticable to maintain;

(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 (w) Investments permitted by Section 6.06 (other than Section 6.06(j)), (x) Permitted Liens, (y) Restricted Payments permitted by Section 6.04(a) (other than Section 6.04(a)(ix)) and (z) Sale and Lease-Back Transactions permitted by Section 6.08;

(h) so long as no Event of Default under Sections 7.01(a), 7.01(f) or 7.01(g) exists on the date on which the agreement governing the relevant Disposition is executed, Dispositions for fair market value; provided that with respect to any such Disposition with a purchase price in excess of $2,500,000, at least 75% of the consideration for such Disposition shall consist of Cash or Cash Equivalents (provided that for purposes of the 75% Cash consideration requirement, (i) 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 Subsidiary) of the Borrower or any 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 and for which the Borrower and/or its applicable Subsidiary have been validly released by all relevant creditors in writing, (ii) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection with such Disposition, (iii) any Security received by the Borrower or any Subsidiary from such transferee that is 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 (iv) 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 (iv) and Section 6.08(B)(1) that is at that time outstanding, not in excess of $2,500,000, in each case, shall be deemed to be Cash); provided, further, that the Net Proceeds of such Disposition shall be applied and/or reinvested as (and to the extent) required by Section 2.11(b)(ii);

(i) 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 of notes receivable or accounts receivable in the ordinary course of business (including any discount and/or forgiveness thereof) or in connection with the collection or compromise thereof;

(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 Subsidiaries 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) to the extent constituting a Disposition, the consummation of the other Transactions;

(q) Dispositions of non-core assets acquired in connection with any acquisition permitted hereunder and sales of Real Estate Assets acquired in any acquisition permitted hereunder which, within 90 days of the date of such acquisition, are designated in writing to the Administrative Agent as being held for sale and not for the continued operation of the Borrower or any of its Subsidiaries or any of their respective businesses; provided that no Event of Default 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 reasonably determined by the Borrower) for like assets; provided that upon the consummation of any such exchange or swap by any Loan Party, to the extent the assets received do not constitute an Excluded Asset, the Administrative Agent has a perfected Lien with the same priority as the Lien held on the assets so exchanged or swapped;

(s) Dispositions of assets that do not constitute Collateral for fair market value; provided that the Net Proceeds of such Disposition shall be applied and/or reinvested as (and to the extent) required by Section 2.11(b)(ii);

(t) (i) licensing and cross-licensing arrangements involving any technology, intellectual property or IP Rights of the Borrower or any Subsidiary (including pursuant to any franchise agreement) in the ordinary course of business and (ii) Dispositions, abandonments, cancellations or lapses of IP Rights, or issuances or registrations, or applications for issuances or registrations, of IP Rights, which, in the reasonable good faith determination of the Borrower, are not material to the conduct of the business of the Borrower or its Subsidiaries, or are no longer economical to maintain in light of its use;

(u) terminations or unwinds of Derivative Transactions;

(v) the granting of any franchise with respect to any facility, store, restaurant or other Unit Location (and any Dispositions of property in connection therewith) to any franchisee meeting the reasonable qualifications of the Borrower and/or its Subsidiaries; provided that (i) such Disposition is made for fair market value and (ii) such Disposition is on terms that are no less favorable to the Borrower or the applicable Subsidiary than might be obtained at the time in a comparable arm's length transaction; provided, further, that if the granting of a franchise relates to a facility, store, restaurant or other Unit Location then owned by a Loan Party, (A) no Event of Default shall exist on the date on which the agreement governing the relevant Disposition is executed, (B) the Total Leverage Ratio calculated on a Pro Forma Basis after giving effect thereto shall be less than or equal to 6.00:1.00 and (C) the number of Unit Locations then owned by the Loan Parties immediately after giving effect to such Disposition shall be greater than or equal to 75% of the number of facilities, stores, restaurants or other Unit Locations owned by the Loan Parties immediately prior to giving effect to such Disposition (or series of related Dispositions);

(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 Subsidiary;

(x) Dispositions made to comply with any order of any Governmental Authority or any applicable Requirement of Law;

(y) any merger, consolidation, Disposition or conveyance the sole purpose of which is to reincorporate or reorganize (i) any Domestic Subsidiary in another jurisdiction in the U.S. and/or (ii) any Foreign Subsidiary in the U.S. 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; and

(aa) Dispositions involving assets having a fair market value (as reasonably determined by the Borrower at the time of the relevant Disposition) of not more than $7,500,000 in any Fiscal Year, which, if not used in such Fiscal Year, shall be carried forward to the next succeeding Fiscal Year.

To the extent that any Collateral is Disposed of as expressly permitted by this Section 6.07 to any Person other than a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, which Liens shall be automatically released upon the consummation of such Disposition; it being understood and agreed that the Administrative Agent shall be authorized to take, and shall take, any actions deemed appropriate in order to effect the foregoing in accordance with Article 8.

Section 6.08. Sale and Lease-Back Transactions. The Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which the Borrower or the relevant Subsidiary (a) has sold or transferred or is to sell or to transfer to any other Person (other than the Borrower or any of its Subsidiaries) and (b) intends to use for substantially the same purpose as the property which has been or is to be sold or transferred by the Borrower or such Subsidiary to any Person (other than the Borrower or any of its Subsidiaries) in connection with such lease (such a transaction, a "Sale and Lease-Back Transaction"); provided that any other Sale and Lease-Back Transaction shall be permitted so long as (1) the relevant Sale and Lease-Back Transaction is consummated in exchange for cash consideration (provided that for purposes of the foregoing cash consideration requirement, (w) 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 Subsidiary) of the Borrower or any 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 and for which the Borrower and/or its applicable Subsidiary have been validly released by all relevant creditors in writing, (x) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection with such Disposition, (y) any Securities received by the Borrower or any Subsidiary from such transferee that are 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 (z) any Designated Non-Cash Consideration received in respect of the relevant Sale and Lease-Back Transaction having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (z) and Section 6.07(h) that is at that time outstanding, not in excess of $5,000,000, shall be deemed to be Cash), (2) the Borrower or its applicable Subsidiary would otherwise be permitted to enter into, and remain liable under, the applicable underlying lease and (3) the aggregate fair market value of the assets sold subject to all Sale and Lease-Back Transactions under this Section 6.08 shall not exceed the greater of $7,500,000 and 25% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period.

Section 6.09. Transactions with Affiliates. The Borrower shall not, nor shall it permit any of its Subsidiaries to, enter into any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) involving payment in excess of $1,000,000 in any individual transaction with any of their respective Affiliates on terms that are less favorable to the Borrower or such Subsidiary, as the case may be (as reasonably determined by the Borrower), than those that might be obtained at the time in a comparable arm's-length transaction from a Person who is not an Affiliate; provided that the foregoing restriction shall not apply to:

(a) any transaction between or among the Borrower and/or one or more Loan Parties (or any entity that becomes a Loan Party as a result of such transaction) to the extent permitted or not restricted by this Agreement;

(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 Subsidiary;

(c) (i) any collective bargaining, employment or severance agreement or compensatory (including profit sharing) arrangement entered into by the Borrower or any of its 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) transactions 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 6.01(d), (o) and (ee), 6.04 and 6.06(h), (m), (o), (t), (v), (y) and (aa) and (ii) issuances of Capital Stock and issuances and incurrences of Indebtedness not 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 to the Lenders than the relevant transaction in existence on the Closing Date;

(f) (i) so long as no Event of Default exists or would result therefrom, the payment of management, monitoring, consulting, advisory and similar fees to any Investor in an amount not to exceed the greater of $500,000 and 2% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period in each case, per Fiscal Year; provided that, if any Event of Default exists at the time of, or would result from, any payment of such fees, such fees may continue to accrue and become payable upon the waiver, termination or cure of such 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, including the payment of Transaction Costs and payments required under the Merger Agreement;

(h) ordinary course compensation to 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 and/or Section 6.06;

(j) transactions among Holdings, the Borrower and/or its Subsidiaries that are otherwise permitted (or not restricted) under this 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 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 Subsidiary in the good faith determination of the board of directors (or similar governing body) of the Borrower or the senior management thereof 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 Holdings to the Borrower and/or any Subsidiary; and/or

(o) any transaction 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 is on terms that are no less favorable to the Borrower or the applicable Subsidiary than might be obtained at the time in a comparable arm's length transaction from a Person who is not an Affiliate.

Section 6.10. Conduct of Business. From and after the Closing Date, the Borrower shall not, nor shall it permit any of its Subsidiaries to, engage in any material line of business other than (a) the businesses engaged in by the Borrower or any Subsidiary on the Closing Date and similar, incidental, complementary, ancillary or related businesses and (b) such other lines of business to which the Administrative Agent may consent.

Section 6.11. Amendments or Waivers of Certain Documents. The Borrower shall not, nor shall it permit any Subsidiary Guarantor to, amend or modify their respective Organizational Documents, in each case in a manner that is materially adverse to the Lenders (in their capacities as such), taken as a whole, without obtaining the prior written consent of the Administrative Agent; provided that, for purposes of clarity, it is understood and agreed that the Borrower and/or any Subsidiary Guarantor may effect a change to its organizational form and/or consummate any other transaction that is permitted under Section 6.07.

Section 6.12. Amendments of or Waivers with Respect to Restricted Debt. The Borrower shall not, nor shall it permit any of its Subsidiaries to, amend or otherwise modify the terms of any Restricted Debt (or the documentation governing any Restricted Debt) (a) if the effect of such amendment or modification, together with all other amendments or modifications made, is materially adverse to the interests of the Lenders (in their capacities as such), taken as a whole, or (b) in violation of any Acceptable Intercreditor Agreement or the subordination terms set forth in the definitive documentation governing any Restricted Debt; provided that, for purposes of clarity, it is understood and agreed that the foregoing limitation shall not otherwise prohibit any other replacement, refinancing, amendment, supplement, modification, extension, renewal, restatement or refunding of any Restricted Debt that is permitted under this Agreement in respect thereof.

Section 6.13. Fiscal Year. The Borrower shall not change its Fiscal Year-end to a date other than the last Sunday of the calendar year; provided that the Borrower may, upon written notice to the Administrative Agent, change the Fiscal Year-end of the Borrower to another date, in which case the Borrower and the Administrative Agent will, and are hereby authorized to, make any adjustments to this Agreement that are necessary to reflect such change in Fiscal Year.

Section 6.14. Permitted Activities of Holdings. Holdings shall not:

(a) incur any Indebtedness for borrowed money other than (i) the Indebtedness permitted to be incurred by Holdings under the Loan Documents or otherwise in connection with the Transactions and (ii) Guarantees of Indebtedness or other obligations of the Borrower and/or any Subsidiary that are otherwise permitted hereunder;

(b) 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, in each case, to which it is a party, (ii) any other Lien created in connection with the Transactions, (iii) Permitted Liens on the Collateral that are secured on a *pari passu* or junior basis with the Secured Obligations, so long as such Permitted Liens secure Guarantees permitted under clause (a)(ii) above and the underlying Indebtedness subject to such Guarantee is 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 debt for borrowed money); or

(c) consolidate or amalgamate with, or merge with or into, or convey, sell or otherwise transfer all or substantially all of its assets to, any Person; provided that, so long as no Default or Event of Default exists or would result therefrom, Holdings may consolidate or amalgamate with, or merge with or into, any other Person (other than the Borrower or any of its subsidiaries) so long as Holdings is the continuing or surviving Person.

Section 6.15. Financial Covenant.

(a) Total Leverage Ratio. On the last day of any Test Period (it being understood and agreed that this Section 6.15(a) shall not apply earlier than the last day of the first full Fiscal Quarter ending after the Closing Date), the Borrower shall not permit the Total Leverage Ratio to be greater than the applicable ratio set forth opposite the relevant period below (the "Financial Covenant Level"):

Fiscal Quarter Ending On:	**Total Leverage Ratio:**
December 31, 2017 to and including September 29, 2019	7.75:1.00
December 29, 2019 to and including December 27, 2020	7.25:1.00
March 28, 2021 to and including December 26, 2021	7.00:1.00
March 27, 2022 and thereafter	6.00:1.00

(b) Financial Cure. Notwithstanding anything to the contrary in this Agreement (including Article 7), upon the occurrence of an Event of Default as a result of the Borrower's failure to comply with Section 6.15(a) above for 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 (the "Cure Amount"), and thereupon the Borrower's compliance with Section 6.15(a) shall be recalculated giving effect to a pro forma increase in the amount of Consolidated Adjusted EBITDA by 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 6.15(a) 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 6.15(a) would be satisfied, then the requirements of Section 6.15(a) shall be deemed satisfied as of the end of the relevant Fiscal Quarter with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of Section 6.15(a) that had occurred (or would have occurred) shall be deemed cured for the purposes of this Agreement. Notwithstanding anything herein to the contrary, (i) in each four consecutive Fiscal Quarter period there shall be at least two Fiscal Quarters (which may, but are not required to be, consecutive) in which the Cure Right is not exercised, (ii) during the term of this Agreement, the Cure Right shall not be exercised more than five times, (iii) the Cure Amount shall be no greater than the amount required for the purpose of complying with Section 6.15(a), (iv) upon the Administrative Agent's receipt of a written notice from the Borrower that the Borrower intends to exercise the Cure Right (a "Notice of Intent to Cure") until the 15th Business Day following the date on which financial statements for the Fiscal Quarter to which such Notice of Intent to Cure relates are required to be delivered pursuant to Section 5.01(a) or (b), as applicable, neither the Administrative Agent (nor any sub-agent therefor) nor any Lender shall exercise any right to accelerate the Loans or terminate the Commitments, and none of the Administrative Agent (nor any sub-agent therefor) nor any Lender or Secured Party shall exercise any right to foreclose on or take possession of the Collateral or any other right or remedy under the Loan Documents solely on the basis of the relevant Event of Default under Section 6.15(a), (v) 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 6.15(a) 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 repay Indebtedness), (vi) during any Test Period in which any Cure Amount is included in the calculation of Consolidated Adjusted EBITDA as a result of any exercise of the Cure Right, such Cure Amount shall be disregarded for purposes of determining whether any financial ratio-based condition to the availability of any carve-out set forth in Article 6 of this Agreement has been satisfied and (vii) no Revolving Lender, Issuing Bank or Initial Delayed Draw Term Lender under the Initial Delayed Draw Term Facility shall be required to make any Revolving Loan, issue any Letter of Credit or fund any Initial Delayed Draw Term Loan, as applicable, from and after such time as the Administrative Agent has received the Notice of Intent to Cure unless and until the Cure Amount is actually received.

ARTICLE 7

EVENTS OF DEFAULT

Section 7.01. 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 of its Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in clause (a) above) with an aggregate 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 of its Subsidiaries with respect to any other term of (A) one or more items of Indebtedness with an aggregate 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 any Loan Party or any 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 clause (ii) of this paragraph (b) shall not apply to any 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; provided, further, that 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 Article 7; or

(c) Breach of Certain Covenants. Failure of any Loan Party, as required by the relevant provision, to perform or comply with any term or condition contained in Section 5.01(e)(i); provided that the delivery of any notice of Default or Event of Default at any time will cure any Event of Default arising from the failure to timely comply with Section 5.01(e)(i), Section 5.02 (as it applies to the preservation of the existence of the Borrower) or Article 6; it being understood and agreed that any breach of Section 6.15(a) is subject to cure as provided in Section 6.15(b), and no Event of Default may arise under Section 6.15(a) until (i) the 15th Business Day after the day 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 been exercised five times over the life of this Agreement and/or the Cure Right has been exercised twice in the applicable four consecutive Fiscal Quarter period), and then only to the extent the Notice of Intent to Cure has not been received on or prior to such 15th Business Day after the day on which financial statements are required to be delivered for the relevant Fiscal Quarter under Sections 5.01(a) or (b), as applicable and (ii) the 15th Business Day after the day 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 been exercised five times over the life of this Agreement and/or the Cure Right has been exercised twice in the applicable four consecutive Fiscal Quarter period) if the applicable Notice of Cure has been timely received but the applicable Cure Amount has not been received on or prior to the 15th Business Day after the day on which financial statements are required to be delivered for the relevant Fiscal Quarter under Sections 5.01(a) or (b), as applicable; 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 any breach of any representation, warranty or certification resulting from the failure of the Administrative Agent to file any Uniform Commercial Code continuation statement shall not result in an Event of Default under this Section 7.01(d) or any other provision of any Loan Document; or

(e) Other Defaults Under Loan Documents. Default by any Loan Party in the performance of or compliance with (i) Section 5.01(a) or (b), which default has not been remedied or waived within 10 Business Days or (ii) any other 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 the earlier of (A) receipt by the Borrower of written notice thereof from the Administrative Agent or (B) the date on which a Responsible Officer of any Loan Parties becomes aware of such Default; 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 of its Subsidiaries (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 shall be granted under any applicable federal, state or local Requirements of Law, which relief is not stayed; or (ii) the commencement of an involuntary case against Holdings, the Borrower or any of its Subsidiaries (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 of its Subsidiaries (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 of its Subsidiaries (other than any Immaterial Subsidiary) for all or a material part of its property, which remains, in any case under this clause (f), undismissed, unvacated, unbounded or unstayed pending appeal for 60 consecutive days; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) The entry against Holdings, the Borrower or any of its Subsidiaries (other than any Immaterial Subsidiary) of an order for relief, the commencement by Holdings, the Borrower or any of its Subsidiaries (other than any Immaterial Subsidiary) of a voluntary case under any Debtor Relief Law, or the consent by Holdings, the Borrower or any of its Subsidiaries (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 of its Subsidiaries (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 its property; (ii) the making by Holdings, the Borrower or any of its Subsidiaries (other than any Immaterial Subsidiary) of a general assignment for the benefit of creditors; or (iii) the admission by Holdings, the Borrower or any of its Subsidiaries (other than any Immaterial Subsidiary) in writing of their inability to pay their respective debts as such debts become due; 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 Holdings, the Borrower or any of its Subsidiaries or any of their respective 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, by self-insurance (if applicable) or by insurance as to which the relevant third party insurance company has been notified and not denied coverage), which judgment, writ, warrant or similar process remains unpaid, undischarged, unvacated, unbonded or unstayed pending appeal for a period of 60 consecutive days; or

(i) Employee Benefit Plans. The occurrence of one or more ERISA Events, which individually or in the aggregate result in liability of Holdings, the Borrower or any of its Subsidiaries 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 Collateral created under any Collateral Document ceases to be perfected with respect to a material portion of the Collateral (other than (A) Collateral consisting of Material Real Estate Assets to the extent that the relevant losses are covered by a lender's title insurance policy and such insurer has not denied coverage or (B) solely by reason of (w) such perfection not being required pursuant to the Collateral and Guarantee Requirement, the Collateral Documents, this Agreement or otherwise, (x) 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 continuation statements, (y) a release of Collateral in accordance with the terms hereof or thereof or (z) 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 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 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; or

(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 Junior Lien Indebtedness in excess of the Threshold Amount 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 (x) an event with respect to the Borrower described in clause (f) or (g) of this Article or (y) any Event of Default arising under Section 6.15(a)), and 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 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 from the Borrower in accordance with Section 2.05(j)(i), Section 2.19(b) and this Section 7.01 in the LC Collateral Account); provided that upon the occurrence of an event with respect to the Borrower described in clauses (f) or (g) of this Article, 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

Each of the Lenders and the Issuing Banks, each, on behalf of itself and its applicable Affiliates and in their respective capacities as such and as Hedge Banks and/or Cash Management Banks, as applicable, hereby irrevocably appoints Golub Capital (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.

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. The Administrative Agent and its Affiliates may accept fees and other consideration from any Loan Party in its sole discretion for services in connection with this Agreement or otherwise without having to account for same to Lenders.

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 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 to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity and (d) the Administrative Agent (solely in its capacity as such) shall not have any liability for, or have any duty to ascertain, inquire into, monitor or enforce compliance with the provisions hereof relating to compliance by Affiliated Lenders with the terms hereof relating to Affiliated Lenders. 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. Without limitation of the generality of the foregoing, the Administrative Agent and its Affiliates and their respective directors, officers, agents or employees: (a) may treat the payee of any note as the holder thereof until it receives written notice of the assignment or transfer thereof signed by such payee and in form satisfactory to the Administrative Agent and (b) make no warranty or representation to any Lender. 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 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.

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 (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Loan Guaranty; it being understood that any right 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 , and (ii) 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 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.

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.

Each of the Lenders hereby irrevocably authorizes (and by entering into a Hedge Agreement with respect to any Secured Hedging Obligation or by entering into documentation in connection with any Banking Services Obligation, each of the other Secured Parties hereby authorizes and shall be deemed to authorize) the Administrative Agent, on behalf of all Secured Parties to take any of the following actions upon the instruction of the Required Lenders:

(a) consent to the Disposition of all or any portion of the Collateral free and clear of the Liens securing the Secured Obligations in connection with any Disposition pursuant to the applicable provisions of the Bankruptcy Code, including Section 363 thereof;

(b) credit bid all or any portion of the Secured Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any Disposition of all or any portion of the Collateral pursuant to the applicable provisions of the Bankruptcy Code, including under Section 363 thereof;

(c) credit bid all or any portion of the Secured Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any Disposition of all or any portion of the Collateral pursuant to the applicable provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC;

(d) credit bid all or any portion of the Secured Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any foreclosure or other Disposition conducted in accordance with applicable law following the occurrence of an Event of Default, including by power of sale, judicial action or otherwise; or

(e) estimate the amount of any contingent or unliquidated Secured Obligations of such Lender or other Secured Party;

it being understood that no Lender shall be required to fund any amount in connection with any purchase of all or any portion of the Collateral by the Administrative Agent pursuant to the foregoing clause (b), (c) or (d) without its prior written consent.

Each Secured Party agrees that the Administrative Agent 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; provided that, in connection with any credit bid or purchase described under clause (b), (c) or (d) of the preceding paragraph, the Secured Obligations owed to all of the Secured Parties (other than with respect to contingent or unliquidated liabilities as set forth in the next succeeding paragraph) may be, and shall be, credit bid by the Administrative Agent on a ratable basis.

With respect to each contingent or unliquidated claim that is a Secured Obligation, the Administrative Agent is hereby authorized, but is not required, to estimate the amount thereof for purposes of any credit bid or purchase described in the second preceding paragraph so long as the estimation of the amount or liquidation of such claim would not unduly delay the ability of the Administrative Agent to credit bid the Secured Obligations or purchase the Collateral in the relevant Disposition. In the event that the Administrative Agent, in its sole and absolute discretion, elects not to estimate any such contingent or unliquidated claim or any such claim cannot be estimated without unduly delaying the ability of the Administrative Agent to consummate any credit bid or purchase in accordance with the second preceding paragraph, then any contingent or unliquidated claims not so estimated shall be disregarded, shall not be credit bid, and shall not be entitled to any interest in the portion or the entirety of the Collateral purchased by means of such credit bid.

Each Secured Party whose Secured Obligations are credit bid under clauses (b), (c) or (d) of the third preceding paragraph shall be entitled to receive interests in the Collateral or any other asset acquired in connection with such credit bid (or in the Capital Stock of the acquisition vehicle or vehicles that are used to consummate such acquisition) on a ratable basis in accordance with the percentage obtained by dividing (x) the amount of the Secured Obligations of such Secured Party that were credit bid in such credit bid or other Disposition, by (y) the aggregate amount of all Secured Obligations that were credit bid in such credit bid or other Disposition.

In addition, in case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, each Secured Party agrees that the Administrative Agent (irrespective of whether the principal of any Loan or LC Exposure is then due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans or LC Exposure and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts to the extent due to the Lenders and the Administrative Agent under Sections 2.12 and 9.03) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same.

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 consents 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 amount due to the Administrative Agent under Sections 2.12 and 9.03.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or any Issuing Bank in any such proceeding.

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.

None of Administrative Agent and its Related Parties shall be liable to any Secured Party for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Secured Party hereby waives and shall not assert any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence or willful misconduct of Administrative Agent or, as the case may be, such Related Party (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein and each Secured Party hereby waives and shall not assert to the extent permitted by applicable Requirement of Law, any claim against the Administrative Agent and its Related Parties, 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.

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. The Administrative Agent and any such sub-agent 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 and to the Related Parties of the Administrative Agent and any such sub-agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent.

The Administrative Agent may resign at any time by giving ten days' 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 ten-day period, the Administrative Agent's resignation shall not be effective until the earlier to occur of (x) the date of the appointment of the successor agent or (y) the date that is 20 days after the last day of such ten-day period. 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 ten-day period, the Administrative Agent's removal shall, at the option of the Borrower, not be effective until the earlier to occur of (x) the date of the appointment of the successor agent or (y) the date that is 20 days after the last day of such ten-day period. 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 an Arranger or a commercial bank, trust company or other Person reasonably acceptable to the Borrower with offices in the U.S. 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. If no successor has been appointed as provided above and accepted such appointment within ten days after the retiring Administrative Agent gives notice of its resignation or the Administrative Agent receives notice of removal, then (a) in the case of a retirement, the retiring 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 (b) 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 (x) in the case of a retirement, if the Administrative Agent notifies the Borrower, the Lenders and the Issuing Banks that no qualifying Person has accepted such appointment or (y) 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 this paragraph and (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent 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 retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) 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. 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 retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder (other than its obligations under Section 9.13 hereof). The fees payable by the Borrower to any successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor Administrative Agent. 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 retiring 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 while the relevant Person was acting as Administrative Agent (including for this purpose holding any collateral security following the retirement or removal of the Administrative Agent). Notwithstanding anything to the contrary herein, no Disqualified Institution (nor any Affiliate thereof) may be appointed as a successor Administrative Agent.

Each of each Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each of each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent 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 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.

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.

Each Secured Party irrevocably authorizes and instructs the Administrative Agent to, and the Administrative Agent shall:

(a) release 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 to be sold or transferred as part of or in connection with any Disposition permitted under the Loan Documents to a Person that is not a Loan Party, (iii) that does not constitute (or ceases to constitute) Collateral, (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 or (vi) if approved, authorized or ratified in writing by the Required Lenders in accordance with, and without modifying the requirements of Section 9.02;

(b) subject to Section 9.22, release any Subsidiary Guarantor from its obligations under the Loan Guaranty if such Person ceases to be a Subsidiary (or becomes an Excluded Subsidiary as a result of a single transaction or series of related transactions permitted hereunder and the Borrower has requested that such Subsidiary Guarantor cease to be a Subsidiary Guarantor); provided that the release of any Subsidiary Guarantor from its obligations under the Loan Guaranty if such Subsidiary Guarantor becomes an Excluded Subsidiary of the type described in clause (a) of the definition thereof shall only be permitted if at the time such Guarantor becomes an Excluded Subsidiary of such type (1) after giving pro forma effect to such release and the consummation of the transaction that causes such Person to be an Excluded Subsidiary of such type, the Borrower (or its applicable Subsidiary) is deemed to have made a new Investment in such Person for purposes of Section 6.06 (as if such Person were then newly acquired) in an amount equal to the portion of the fair market value of the net assets of such Person attributable to the Borrower's (or its applicable Subsidiary's) Capital Stock therein as reasonably estimated by the Borrower and such Investment is permitted by this Agreement at such time and (2) a Responsible Officer of the Borrower certifies to the Administrative Agent compliance with the preceding clause (1);

(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)(i) (other than any Lien on the Capital Stock of any Subsidiary Guarantor), 6.02(q), 6.02(r), 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 (i.e., the exceptions other than Section 6.02(u)) 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), to the extent the relevant Lien covers cash collateral posted to secure the relevant obligation), 6.02(ee), 6.02(ff), 6.02(gg) and/or 6.02(hh); provided, that the subordination of any Lien on any property granted to or held by the Administrative Agent shall only be required with respect to any Lien on such property that is permitted by Sections 6.02(l), 6.02(o), 6.02(q), 6.02(r), 6.02(u), 6.02(bb) and/or 6.02(hh) to the extent that the Lien of the Administrative Agent with respect to such property is required to be subordinated to the relevant Permitted Lien in accordance with the documentation governing the Indebtedness that is secured by such Permitted Lien; and

(d) enter into subordination, intercreditor, collateral trust and/or similar agreements with respect to Indebtedness (including any Acceptable Intercreditor Agreement and/or any amendment to any Acceptable Intercreditor Agreement) 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.

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), 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.

The Administrative Agent is authorized to enter into any Acceptable 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 to be subordinated hereunder 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 Acceptable Intercreditor Agreement and any other Additional Agreement, including any purchase option(s) contained therein, is binding upon them. Each Secured Party party hereto hereby (a) agrees that they will be bound by, and will not take any action contrary to, the provisions of any Acceptable Intercreditor Agreement or any other Additional Agreement and (b) authorizes and instructs the Administrative Agent to enter into any Acceptable 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 Secured Parties to extend credit to the Borrower, and the Secured Parties are intended third-party beneficiaries of such provisions and the provisions of any Acceptable Intercreditor Agreement and/or any other Additional Agreement.

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 which may be imposed on, asserted against or incurred by the Administrative Agent (or any Affiliate thereof) 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 (or such affiliate's) gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

To the extent required by any applicable Requirement 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 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, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this 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.

ARTICLE 9

MISCELLANEOUS

Section 9.01. 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 facsimile or 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.
8027 Cooper Creek Blvd
University Park, FL 34201
Attention: Chris Olson, SVP Finance
Email: colson@firstwatch.com
Telephone: 941-907-9800

with a copy to (which shall not constitute notice to any Loan Party):

Advent International Corporation
12 E. 49th Street, 45th Floor
New York, New York 10152
Attention: Ken Prince
Email: kprince@AdventInternational.com

and

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Allison R. Liff
Email: allison.liff@weil.com
Facsimile: (212) 310-8007

(ii) if to the Administrative Agent, at:

Golub Capital Markets LLC
150 South Wacker Drive
Chicago, Illinois 60606
Attention: Jocelyn Gay
Email: Loan_admin@golubcapital.com

Golub Capital Markets LLC
666 Fifth Avenue
New York, New York 10103
Attention: Evan Schepps
Email: eschepps@golubcapital.com

(iii) if to any Issuing Bank, at such address as may be specified in the documentation pursuant to which such Issuing Bank is appointed in its capacity as such.

(iv) if to any Lender, to it at its address or facsimile number 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).

(a) 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.

(b) 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, each Issuing Bank and each Lender.

(c) Each of Holdings and the Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders and the Issuing Bank 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 United States federal securities laws with respect to Holdings, the Borrower or their respective securities) (each, a "Public Lender"). At the request of the Administrative Agent, each of Holdings and 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," Holdings and 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 would (A) customarily be made publicly available, as determined in good faith by the Borrower, if Holdings or the Borrower were to become public reporting companies 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 United States 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, the following Borrower Materials 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): (1) the Loan Documents, (2) any amendment to any Loan Document, (3) any information delivered pursuant to Section 5.01(a) or (b) and (4) the list of Disqualified Institutions (provided that the distribution thereof is subject in all respects to the requirements of Section 9.05(f)).

Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States Federal and state securities laws, to make reference to 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 United States 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 9.02. 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, the Issuing Banks and the Lenders 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) Subject to this Sections 9.02(b) and (d) below and to Section 9.05(f), 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:

(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 (i) 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 and (ii) only the consent of the relevant Initial Delayed Draw Term Lender (but not the consent of the Required Lenders or the Administrative Agent) shall be required to increase such Initial Delayed Draw Term Lender's Initial Delayed Draw Term Loan Commitment as provided in the definition thereof;

(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 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 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 Section 2.11(a), 2.18(b) or 2.18(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 and/or 9.05(g) or as otherwise provided in this Section 9.02);

(B) no such agreement shall:

(1) change (w) any of the provisions of Section 9.02(a) or Section 9.02(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, (x) the definition of "Required Revolving Lenders" 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"), (y) the definition of "Required Delayed Draw Lenders" without the prior written consent of each Initial Delayed Draw 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 Delayed Draw Lenders") or (z) the definition of "Required Initial Lender" without the prior written consent of each Initial 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 Initial Lenders");

(2) release all or substantially all of the Collateral from the Lien granted pursuant to the Loan 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

(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) (1) 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 Additional Revolving Loan;

(2) solely with the consent of the Required Delayed Draw 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 4.03 as it pertains to any Initial Delayed Draw Term Loan;

(D) solely with the consent of the relevant Issuing Bank (or, in the case of an Issuing Bank that is a financial institution selected by the Administrative Agent as provided in the definition thereof, the Administrative Agent) and, in the case of clause (x), the Administrative Agent, any such agreement may (x) increase or decrease the Letter of Credit Sublimit or (y) waive, amend or modify any condition precedent set forth in Section 4.02 hereof as it pertains to the issuance of any Letter of Credit; and

(E) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or any Issuing Bank hereunder without the prior written consent of the Administrative Agent or such Issuing Bank (or, in the case of an Issuing Bank that is a financial institution selected by the Administrative Agent as provided in the definition thereof, the Administrative Agent), as the case may be.

(c) [Reserved].

(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 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 (including Incremental Lenders) providing Loans under such Sections), effect amendments to this Agreement and the other Loan Documents as may be necessary in the reasonable opinion of the Borrower and the Administrative Agent to (A) effect the provisions of Sections 2.22, 2.23, 5.12 or 6.13, or any other provision 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), in connection with the addition of any Loan or Commitment hereunder 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 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 acting jointly,

(iv) the Administrative Agent and the Borrower may amend, restate, amend and restate or otherwise modify any Acceptable 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 or 2.23 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) and except that the Commitment of any Defaulting Lender may not be increased without the consent of such Defaulting Lender (it being understood that any Commitment or Loan held or deemed held by any Defaulting Lender shall be excluded from any vote hereunder that requires the consent of any Lender, except as expressly provided in 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 (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders, Required Revolving Lenders and/or Required Delayed Draw Lenders on substantially the same basis as the Lenders prior to such inclusion and

(viii) any amendment, waiver or modification of any term or provision that directly affects Lenders under one or more Classes and does not directly affect Lenders under one or more other Classes may be effected with the consent of Lenders owning 50% of the aggregate commitments or Loans of such directly affected Class in lieu of the consent of the Required Lenders.

Section 9.03. 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 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), but excluding solely in connection with any underwriting of commitments to provide the Credit Facilities on the Closing Date (with any expense reimbursement in connection therewith to be governed by the Commitment Letter, dated as of July 28, 2017, by and among, *inter alios*, Merger Sub and the Arrangers) and (ii) 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, 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 jurisdiction to all such Persons, taken as a whole) 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 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 jurisdiction to all Indemnitees, taken as a whole and solely in the case of an actual or perceived 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 Subsidiaries or any other Loan Party or any Environmental Liability related to the Borrower, any of its 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 a third party or by 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 material breach of the Loan Documents 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. All amounts due under this paragraph (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 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 the written consent of the Borrower (which consent shall not be unreasonably withheld, delayed or conditioned), 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 9.04. Waiver of Claim. To the extent permitted by applicable Requirements of Law, no party to this Agreement shall assert, and each hereby waives, any claim against any other party hereto, any Arranger, 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 the terms of Section 9.03.

Section 9.05. 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 provided 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 and, with respect to any attempted assignment or transfer to any Disqualified Institution, 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 paragraph (e) of this Section, 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 or 2.23 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 or Term Commitments (other than any such assignment to a Disqualified Institution) unless it has objected thereto by written notice to the Administrative Agent within 15 Business Days after receipt of written notice thereof and (y) the consent of the Borrower shall not be required for any assignment of Term Loans or Term Commitments (1) to any Lender or any Affiliate of any Lender or an Approved Fund or (2) at any time when an Event of Default under Section 7.01(a) or Sections 7.01(f) or (g) (with respect to the Borrower) exists; it being understood and agreed that the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed) shall always be required for any assignment of Revolving Commitments and/or Revolving Loans; provided, further, that notwithstanding the foregoing, the Borrower may withhold its consent to any assignment to any Person (other than a Bona Fide Debt Fund) that is not a Disqualified Institution but is known by the Borrower to be an Affiliate of a Disqualified Institution regardless of whether such Person is identifiable as an Affiliate of a Disqualified Institution on the basis of such Affiliate's name;

(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 of any Term Loan or Initial Delayed Draw Term Loan to another Lender, any Affiliate of a Lender or any Approved Fund; and

(C) in the case of any Revolving Facility, each Issuing Bank (or, in the case of an Issuing Bank that is a financial institution selected by the Administrative Agent as provided in the definition thereof, the Administrative Agent), in each case, not to be unreasonably withheld, conditioned or delayed.

(ii) 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 and (y) $2,500,000 in the case of Revolving Loans and Revolving Credit Commitments, 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, including (except with respect to Initial Delayed Draw Term Loans that have been classified as a separate tranche of Term Loans by the Administrative Agent pursuant to Section 2.01(c)) unfunded Initial Delayed Draw Term Loan Commitments and funded Initial Delayed Draw Term Loans thereunder;

(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 Internal Revenue Service forms required under Section 2.17.

(iii) 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.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices 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.

(v) 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.

(vi) 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 Subsidiary or the performance or observance by the Borrower or any 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 an Eligible Assignee, legally authorized to enter into such Assignment Agreement; (D) the assignee confirms that it has received a copy of this Agreement and each applicable Acceptable 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 other than with respect to any participation to any Debt Fund Affiliate (any such participation to a Debt Fund Affiliate being subject to the limitation set forth in the first proviso of the last paragraph set forth in Section 9.05(g), as if the limitation applied to such participation), 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). Subject to paragraph (c)(ii) of this Section, the Borrower agree 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.

(ii) 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 sale of the participation to such Participant is made with the Borrower's prior written consent (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 participation.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and their respective successors and registered assigns, and the principal and interest amounts of each Participant's interest in the Loans or other obligations under the Loan Documents (a "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of any Participant Register (including the identity of any Participant or any information relating to any Participant'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) of the Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant 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) 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.

(ii) 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 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 U.S. 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 or participation by a Lender without the Borrower's consent (A) to any Disqualified Institution or any Affiliate thereof or (B) to the extent the Borrower's consent is required under this Section 9.05 (and not deemed to have been given pursuant to Section 9.05(b)(i)(A)), to any other Person, shall be null and void, and the Borrower shall be entitled to seek specific performance to unwind any such assignment or participation 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 remedies available to the Borrower at law or in equity; it being understood and agreed that Holdings, the Borrower and its subsidiaries will suffer irreparable harm if any Lender breaches any obligation under this Section 9.05 as it relates to any assignment, participation or pledge of any Loan or Commitment to any Disqualified Institution or any Affiliate thereof or any other 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. Upon the request of any Lender, the Administrative Agent may, and the Borrower will, make the list of Disqualified Institutions (other than any Disqualified Institution that is a reasonably identifiable Affiliate of another Disqualified Institution on the basis of such Person's name) available to such Lender so long as such Lender agrees to keep the list of Disqualified Institutions confidential in accordance with the terms hereof.

(ii) If any assignment or participation under this Section 9.05 is made to any Affiliate of any Disqualified Institution (other than any Bona Fide Debt Fund) 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 Loans, held by such Disqualified Person, purchase such Term Loans by paying the lesser of (x) par and (y) the amount that such Disqualified Person paid to acquire such Term Loans, 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, 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 Adjusted Eurocurrency Rate 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, then such excess amount shall either be (x) contributed to Holdings, 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 set forth in Section 2.13(d). Further, any Disqualified Person identified by the Borrower to the Administrative

Agent (A) shall not be permitted to (x) receive information or reporting 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) shall not 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, the Required Revolving Lenders, Required Delayed Draw Lenders, majority Lenders under any Class or all Lenders have taken any action, and (y) shall be deemed to vote in the same proportion as Lenders that are not Disqualified Persons in any proceeding under any Debtor Relief Law commenced by or against the Borrower or any other Loan Party 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.

(iii) Notwithstanding anything to the contrary herein, each of Holdings, the Borrower and each Lender acknowledges and agrees that the Administrative Agent (solely in its capacity as such, and not in its (or any of its Affiliates') capacity as an Arranger, Lender, Issuing Bank or otherwise) shall not have any responsibility or obligation to ascertain, monitor, inquire as to or determine whether any Lender or participant or potential Lender is a Disqualified Institution or Disqualified Person, and the Administrative Agent (solely in its capacity as such, and not in its (or any of its Affiliates') capacity as an Arranger, Lender, Issuing Bank or otherwise) shall have no liability with respect to any assignment, participation or disclosure of confidential information made by any Person (other than the Administrative Agent) to any Disqualified Institution or Disqualified Person (regardless of whether the consent of the Administrative Agent is required thereto), and none of the Borrower, any Lender or their respective Affiliates will bring any claim to such 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 through Dutch Auctions open to all Lenders holding the relevant Term Loans on a pro rata basis, in each case, without the consent of the Administrative Agent; provided that:

(i) any Term Loans acquired by Holdings, the Borrower or any of its Subsidiaries shall 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 Loans acquired by any Non-Debt Fund Affiliate 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 be retired and cancelled promptly upon such contribution or exchanged for debt or equity securities that are otherwise permitted to be issued pursuant to this Agreement at the relevant time); provided that upon any such cancellation or exchange, 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 or exchanged, 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 Term Loans so contributed and cancelled or exchanged;

(iii) the relevant Affiliated Lender and assigning Lender shall have executed an Affiliated Lender Assignment Agreement;

(iv) after giving effect to the relevant assignment and to all other assignments to all Affiliated Lenders, the aggregate principal amount of all Term Loans and all other Indebtedness for borrowed money that is *pari passu* with the Initial Loans in right of payment and with respect to security then held by all Affiliated Lenders shall not exceed 25% of the aggregate principal amount of the Term Loans and such other Indebtedness then outstanding (after giving effect to any substantially simultaneous cancellations 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 Loans 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;

(v) in connection with any assignment effected pursuant to a Dutch Auction conducted by Holdings, the Borrower or any of its Subsidiaries, (A) the relevant Person may not use the proceeds of any Revolving Loans to fund such assignment and (B) no Default or Event of Default exists at the time of acceptance of bids for the Dutch Auction; 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 payments 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, the Borrower 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 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 on a non-pro rata basis through Dutch Auctions open to all applicable Lenders 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, Required Delayed Draw 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 action shall be deemed to be voted pro rata along with other Lenders that are not Debt Fund Affiliates. Any Loans acquired by any Debt Fund Affiliate may (but shall not be required to) be contributed to the Borrower or any of its subsidiaries for purposes of cancelling such Indebtedness or exchanging such Indebtedness for debt or equity securities that are otherwise permitted to be issued pursuant to this Agreement at the relevant time (it being understood that any Loans so contributed shall be retired and cancelled promptly upon thereof); provided, further, that upon any such cancellation or exchange, 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 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 Loans so contributed and cancelled.

Section 9.06. 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 9.07. 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 Acceptable Intercreditor Agreement (if any) and the Fee Letter and any separate letter agreements 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.

Section 9.08. 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 9.09. Right of Setoff. At any time when an Event of Default exists, upon the written consent of the Administrative Agent and 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 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. Any applicable Lender or Issuing Bank shall promptly notify the Borrower and the Administrative Agent of such set-off or application; 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.

Section 9.10. 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), SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK; PROVIDED, THAT (I) THE INTERPRETATION OF THE DEFINITION OF "CLOSING DATE MATERIAL ADVERSE EFFECT" AND THE DETERMINATION OF WHETHER A CLOSING DATE MATERIAL ADVERSE EFFECT HAS OCCURRED, (II) THE DETERMINATION OF THE ACCURACY OF ANY SPECIFIED MERGER AGREEMENT REPRESENTATION AND WHETHER AS A RESULT OF ANY INACCURACY THEREOF MERGER SUB OR ITS APPLICABLE AFFILIATE HAS A RIGHT TO TERMINATE ITS OBLIGATIONS UNDER THE MERGER AGREEMENT OR DECLINE TO CONSUMMATE THE CLOSING DATE MERGER AND (III) THE DETERMINATION OF WHETHER THE CLOSING DATE MERGER HAS BEEN CONSUMMATED IN ACCORDANCE WITH THE TERMS OF THE MERGER AGREEMENT AND, IN ANY CASE, ANY CLAIM OR DISPUTE ARISING OUT OF ANY SUCH INTERPRETATION OR DETERMINATION OR ANY ASPECT THEREOF, SHALL IN EACH CASE BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF ANY U.S. 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 9.11. 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 9.12. 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 9.13. 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 Affiliates and/or funding and financing sources and its and their respective members, partners, directors, officers, managers, employees, 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 funding and financing sources' 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 or by any subpoena or similar legal process (in which case such Person shall (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 regulatory or Governmental Authority (including any self-regulatory body, such as the National Association of Insurance Commissioners) 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) 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 any other party to this Agreement, (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), (ii) any pledgee referred to in Section 9.05, (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 and (iv) subject to the Borrower's prior approval of the information to be disclosed, on a confidential basis, market data collectors and service providers to the Administrative Agent in connection with the administration and management of this Agreement and the Loan Documents, (f) with the prior written consent of the Borrower, (g) to the extent the Confidential Information (i) becomes publicly available other than as a result of a breach of this Section by such Person, its Affiliates or their respective Representatives or (ii) becomes available to such Person on a non-confidential basis from a source other than a Loan Party or a Person who provided such information on behalf of a Loan Party and not in violation of any confidentiality agreement or obligation owed to any Person, (h) to insurers, the CUSIP Service Bureau or any similar agency or settlement services providers or any nationally recognized rating agency 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 any disclosure made in reliance on this clause (h) is limited to the general terms of this Credit Agreement and shall not include financial or other information relating to Holdings, any Borrower or any of their respective subsidiaries and (i) in connection with the exercise of any remedy or enforcement of any right under the Loan Documents. 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, the Borrower or any of its subsidiaries. For the avoidance of doubt, in no event shall any disclosure of any Confidential Information be made to Person that is a Disqualified Institution at the time of disclosure.

Section 9.14. 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 "Lenders"), 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 Lender, 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 Lenders, on the one hand, and the Loan Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender, 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 Lender 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 Lender, 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. To the fullest extent permitted by applicable Requirements of Law, each Loan Party waives any claim that it may have against any Lender with respect to any breach or alleged breach of fiduciary duty arising solely by virtue of this Agreement. 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 9.15. 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 9.16. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name 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.

Section 9.17. 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 9.18. 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 such 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 9.19. 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 9.20. Acceptable Intercreditor Agreement. REFERENCE IS MADE TO EACH ACCEPTABLE INTERCREDITOR AGREEMENT. EACH LENDER AND EACH ISSUING BANK HEREUNDER AGREES THAT IT WILL BE BOUND BY AND WILL TAKE NO ACTIONS CONTRARY TO THE PROVISIONS OF ANY ACCEPTABLE INTERCREDITOR AGREEMENT AND AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT TO ENTER INTO EACH ACCEPTABLE INTERCREDITOR AGREEMENT AS "FIRST LIEN AGENT" (OR OTHER APPLICABLE TITLE) AND ON BEHALF OF SUCH LENDER OR ISSUING BANK. THE PROVISIONS OF THIS SECTION 9.20 ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF ANY ACCEPTABLE INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO THE EACH ACCEPTABLE APPLICABLE INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER AND EACH ISSUING BANK IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF EACH ACCEPTABLE INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION TO ANY LENDER OR ISSUING BANK AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN ANY ACCEPTABLE INTERCREDITOR AGREEMENT.

Section 9.21. 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. In the case of any conflict or inconsistency between any Acceptable Intercreditor Agreement and any Loan Document, the terms of such Acceptable Intercreditor Agreement shall govern and control.

Section 9.22. 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 shall be automatically released) (i) upon the consummation of any permitted transaction or series of related transactions if as a result thereof such Subsidiary Guarantor ceases to be a Subsidiary (or becomes an Excluded Subsidiary as a result of a single transaction or series of related transactions permitted hereunder)) and/or (ii) upon the occurrence of the Termination Date and (b) any Subsidiary Guarantor that qualified as an "Excluded Subsidiary" shall be released by the Administrative Agent promptly following the request therefor

by the Borrower; provided that the release of any Subsidiary Guarantor from its obligations under the Loan Guaranty if such Subsidiary Guarantor becomes an Excluded Subsidiary of the type described in clause (a) of the definition thereof shall only be permitted if at the time such Guarantor becomes an Excluded Subsidiary of such type after giving pro forma effect to such release and the consummation of the transaction that causes such Person to be an Excluded Subsidiary of such type, the Borrower (or its applicable Subsidiary) is deemed to have made a new Investment in such Person for purposes of Section 6.06 (as if such Person were then newly acquired) in an amount equal to the portion of the fair market value of the net assets of such Person attributable to the Borrower's (or its applicable Subsidiary's) Capital Stock therein as reasonably estimated by the Borrower and such Investment is a permitted under this Agreement at such time. 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 9.23. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding of the parties hereto, each such party acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[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.

AI FRESH MERGER SUB, INC., as Merger Sub and, prior to the Closing Date Merger, as the Borrower

By: /s/ Kenneth L. Pendery, Jr.
Name: Kenneth L. Pendery, Jr.
Title: Vice President

AI FRESH PARENT, INC., as Holdings

By: /s/ Kenneth L. Pendery, Jr.
Name: Kenneth L. Pendery, Jr.
Title: Vice President

FWR HOLDING CORPORATION, following the Closing Date Merger, as the Borrower

By: /s/ Paul Hineman
Name: Paul Hineman
Title: Chief Financial Officer

GOLUB CAPITAL MARKETS LLC, individually, as the Administrative Agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Goldman Sachs Private Middle Market Credit LLC, individually, as a Lender

By: /s/ Brendan McGovern
Name: Brendan McGovern
Title: Authorized Signatory

Goldman Sachs Middle Market Lending Corp., individually, as a Lender

By: /s/ Brendan McGovern
Name: Brendan McGovern
Title: Authorized Signatory

TCG BDC, INC., as Joint Lead Arranger, Joint Bookrunner, and a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Vice President

TCG BDC SPV LLC, as a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Vice President

Golub Capital Finance Funding LLC
By: GC Advisors LLC, its Manager,
individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GC Finance Operations LLC
By: GC Advisors LLC, its Manager,
individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital BDC CLO 2014 LLC
By: GC Advisors LLC, its Collateral Manager,
individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital BDC Holdings LLC
By: GC Advisors LLC, its Manager,
individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital PEARLS Direct Lending Program, L.P.
By: GC Advisors LLC, its Manager,
individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

PEARLS X, L.P.
By: GC Advisors LLC, its Manager,
individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Investment Corporation CLO 2016(M) LLC
By: GC Advisors LLC, its Collateral Manager,
individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GCIC Holdings LLC
By: Golub Capital Investment Corporation, its sole member
By: GC Advisors LLC, its Manager,
individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Peach Funding Corporation
By: GC Advisors LLC, its Manager,
individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

AO MIDDLE MARKET CREDIT L.P., as a Lender
by its general partner, OCM Middle Market Credit G.P. Inc.

By: K. Patel
Name: K. Patel
Title: Director

By: Jeremy Ehrlich
Name: Jeremy Ehrlich
Title: Director

GREAT AMERICAN INSURANCE COMPANY,
individually, as a Lender
By: Ares Capital Management LLC, its investment manager

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

GREAT AMERICAN LIFE INSURANCE COMPANY,
individually, as a Lender
By: Ares Capital Management LIM, its investment manager

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

ARES CREDIT STRATEGIES INSURANCE DEDICATED FUND
Series of SALI Multi-Series Fund, L.P.,
individually, as a Lender
By: Ares Management LLC, its Investment Subadvisor
By: Ares Capital Management LLC, its Subadvisor

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

ARES JASPER FUND, L.P.,
individually, as a Lender
By: Ares Capital Management LLC, its investment manager

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

CION ARES DIVERSIFIED CREDIT FUND, individually, as a Lender

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

CION INVESTMENT CORPORATION

By: /s/ Stephen Roman
Name: Stephen Roman
Title: Chief Compliance Officer

ARES CAPITAL CORPORATION, individually, as a Lender

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

ARES CENTRE STREET PARTNERSHIP, L.P.,
individually, as a Lender
By: Ares Centre Street GP, Inc., as general partner

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

AC AMERICAN FIXED INCOME IV, L.P.,
individually, as a Lender
By: Ares Capital Management LLC, its investment manager

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

FEDERAL INSURANCE COMPANY,
individually, as a Lender
By: Ares Capital Management LLC, its investment manager

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

SC ACM PRIVATE DEBT FUND L.P., individually, as a Lender
By: Ares Capital Management LLC, its investment advisor

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

NATIONWIDE LIFE INSURANCE COMPANY,
individually, as a Lender
By: Ares Capital Management LLC, its investment manager

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

NATIONWIDE MUTUAL INSURANCE COMPANY,
individually, as a Lender
By: Ares Capital Management LLC, its investment manager

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

AO MIDDLE MARKET CREDIT FINANCING L.P.,
By: AO Middle Market Credit Financing GP Ltd.,
its general partner

By: /s/ K. Patel
Name: K. Patel
Title: Director

By: /s/ Jeremy Ehrlich
Name: Jeremy Ehrlich
Title: Director

MC UNI SUBSIDIARY LLC, as a Lender

By: /s/ Christopher Fazekas
Name: Christopher Fazekas
Title: General Counsel

Exhibit 10.1(b)

FIRST AMENDMENT TO CREDIT AGREEMENT

THIS FIRST AMENDMENT TO CREDIT AGREEMENT (this "Amendment") is entered into as of February 28, 2019 by and among FWR Holding Corporation, a Delaware corporation (the "Borrower"), AI Fresh Parent, Inc., a Delaware corporation ("Holdings"), the other Loan Parties party hereto, the lenders holding the New Delayed Draw Term Commitments (as defined below) party hereto (the "New Delayed Draw Term Lenders"), the other Lenders party hereto and Golub Capital Markets LLC ("Golub Capital"), in its capacities as administrative agent and collateral agent for the Secured Parties (in such capacities and together with its successors and assigns, the "Administrative Agent").

W I T N E S S E T H:

WHEREAS, the Borrower (successor by merger to AI Fresh Merger Sub, Inc., a Delaware corporation), Holdings, the Administrative Agent and the Lenders from time to time party thereto are parties to that certain Credit Agreement, dated as of August 21, 2017 (as may be amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Credit Agreement");

WHEREAS, the Borrower has requested new delayed draw term loan commitments in an aggregate principal amount of $50,000,000 (the "New Delayed Draw Term Commitments"), which will be made available on the First Amendment Effective Date (as defined below), and which New Delayed Draw Term Commitments shall constitute Initial Delayed Draw Term Loan Commitments under the Credit Agreement and the loans thereunder (the "New Delayed Draw Term Loans") shall constitute Initial Delayed Draw Term Loans under the Credit Agreement;

WHEREAS, the Borrower has requested, and the Lenders party hereto have agreed, to amend the Credit Agreement in certain respects on the terms and subject to the conditions set forth herein; and

WHEREAS, each Loan Party party hereto (collectively, the "Reaffirming Parties" and each, a "Reaffirming Party") expects to realize substantial direct and indirect benefits as a result of this Amendment becoming effective and the consummation of the transactions contemplated hereby and agrees to reaffirm its obligations pursuant to the Credit Agreement, the Collateral Documents and the other Loan Documents to which it is a party.

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

1. Defined Terms. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Credit Agreement.

2. Amendments to Credit Agreement. Effective as of the First Amendment Effective Date:

a. Section 1.01 of the Credit Agreement is hereby amended by inserting in appropriate alphabetical order the following new definitions:

"First Amendment" means that certain First Amendment to Credit Agreement, dated as of the First Amendment Effective Date, among the Borrower, Holdings, the other Loan Parties party thereto, the Administrative Agent and the Lenders party thereto.

"First Amendment Effective Date" means February 28, 2019.

b. The definition of "Applicable Rate" contained in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety as follows:

"Applicable Rate" means:

(a) prior to the First Amendment Effective Date, (i) with respect to any Initial Revolving Loan, the rate per annum applicable to the relevant Class of Revolving Loans set forth below under the caption "ABR Spread" or "Adjusted Eurocurrency Rate Spread," as the case may be, opposite the applicable level of Total Leverage Ratio, and (ii) with respect to any Initial Term Loan and any Initial Delayed Draw Term Loan, the rate per annum applicable to the relevant Class of Initial Loans set forth below under the caption "ABR Spread" or "Adjusted Eurocurrency Rate Spread," as the case may be, opposite the applicable level of Total Leverage Ratio; provided that until the first Adjustment Date following the first full Fiscal Quarter ended after the Closing Date for which the Borrower has delivered financial statements pursuant to Section 5.01(a) or (b), the "Applicable Rate" for any Revolving Loan, any Initial Term Loan and any Initial Delayed Draw Term Loan shall be 6.00% per annum for Adjusted Eurocurrency Rate Loans and 5.00% per annum for ABR Loans:

		Initial Revolving Loans		Initial Term Loans		Initial Delayed Draw Term Loans	
Level	Total Leverage Ratio	ABR Spread	Adjusted Eurocurrency Rate Spread	ABR Spread	Adjusted Eurocurrency Rate Spread	ABR Spread	Adjusted Eurocurrency Rate Spread
I	Greater than 4.25:1.00	5.00%	6.00%	5.00%	6.00%	5.00%	6.00%
II	Less than or equal to 4.25:1.00	4.75%	5.75%	4.75%	5.75%	4.75%	5.75%

and

(b) on and after the First Amendment Effective Date, (i) with respect to any Initial Revolving Loan, the rate per annum applicable to the relevant Class of Revolving Loans set forth below under the caption "ABR Spread" or "Adjusted Eurocurrency Rate Spread," as the case may be, opposite the applicable level of Total Leverage Ratio, and (ii) with respect to any Initial Term Loan and any Initial Delayed Draw Term Loan, the rate per annum applicable to the relevant Class of Initial Loans set forth below under the caption "ABR Spread" or "Adjusted Eurocurrency Rate Spread," as the case may be, opposite the applicable level of Total Leverage Ratio; provided that until the first Adjustment Date following the first full Fiscal Quarter ended after the First Amendment Effective Date for which the Borrower has delivered financial statements pursuant to Section 5.01(a) or (b), the "Applicable Rate" for any Revolving Loan, any Initial Term Loan and any Initial Delayed Draw Term Loan shall be 5.50% per annum for Adjusted Eurocurrency Rate Loans and 4.50% per annum for ABR Loans:

Level	Total Leverage Ratio	Initial Revolving Loans		Initial Term Loans		Initial Delayed Draw Term Loans	
		ABR Spread	Adjusted Eurocurrency Rate Spread	ABR Spread	Adjusted Eurocurrency Rate Spread	ABR Spread	Adjusted Eurocurrency Rate Spread
I	Greater than 4.25:1.00	4.50%	5.50%	4.50%	5.50%	4.50%	5.50%
II	Less than or equal to 4.25:1.00	4.25%	5.25%	4.25%	5.25%	4.25%	5.25%

The Applicable Rate shall be adjusted from time to time upon delivery to the Administrative Agent of the financial statements for each Fiscal Quarter required to be delivered pursuant to Section 5.01(a) or (b), as applicable, accompanied by a written calculation of the Total Leverage Ratio pursuant to a properly completed Compliance Certificate delivered to Administrative Agent with such financial statements pursuant to Section 5.01(c) hereof. If such calculation indicates that any of the rates per annum applicable to any Class of Revolving Loans, the Initial Term Loans or any Delayed Draw Term Loans shall increase or decrease, then on the first day of the month following the month in which such financial statements and Compliance Certificate are delivered to Administrative Agent (the "Adjustment Date"), the "Applicable Rate" shall be adjusted in accordance therewith; provided, however, that if Borrower shall fail to deliver any such financial statements or Compliance Certificate for any such Fiscal Quarter by the date required pursuant to the applicable clause of Section 5.01(a) or (b), as applicable, then, effective as of the first day of the month following the end of the month during which such financial statements were to have been delivered, and continuing through the last day of the month in which such financial statements and such written calculation are finally delivered (if ever), the "Applicable Rate" for any Initial Revolving Loan or Initial Loan shall be the rate per annum set forth in the applicable pricing grid above in Level I until such financial statements are delivered in compliance with Section 5.01(a) or (b), as applicable; provided further, however, that during the existence of any Default or Event of Default, at the election of Administrative Agent or Required Lenders, the "Applicable Rate" shall not decrease with respect to any Loan as otherwise set forth above.

c. The definition of "Initial Delayed Draw Term Loan Commitment" contained in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety as follows:

"Initial Delayed Draw Term Loan Commitment" means, with respect to each Term Lender, the commitment of such Term Lender to make Initial Delayed Draw Term Loans hereunder in an aggregate amount not to exceed the amount set forth opposite such Initial Delayed Draw Term Lender's name on the Commitment Schedule, as the same may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Term Lender pursuant to Section 9.05. The aggregate amount of the Term Lenders' Initial Delayed Draw Term Loan Commitments (i) on the Closing Date was $50,000,000, all of which was funded prior to the First Amendment Effective Date and (ii) on the First Amendment Effective Date is $50,000,000.

d. The definition of "Initial Delayed Draw Term Loan Commitment Termination Date" contained in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety as follows:

"Initial Delayed Draw Term Loan Commitment Termination Date" means the earlier of (a) date that is two years after the First Amendment Effective Date and (b) the date the Initial Delayed Draw Term Loan Commitment is wholly terminated pursuant to Section 2.09(a)(ii)(A) or Section 2.09(b)(ii).

e. Section 2.12(f) of the Credit Agreement is hereby amended and restated in its entirety as follows:

In the event that, after the First Amendment Effective Date and prior to December 31, 2019, the Borrower (i) prepays pursuant to Section 2.11(a)(i) or (ii) prepays or refinances any Initial Loans pursuant to Section 2.11(b)(iii) (it being understood and agreed for the avoidance of doubt that (x) prepayments as a result of assignments made to Affiliated Lenders pursuant to Section 9.05(g) and (y) terminations or reductions of the Delayed Draw Term Loan Commitments pursuant to Section 2.09(b)(ii), in each case, shall not be subject to this Section 2.12(f)), the Borrower shall pay to the Administrative Agent, for the ratable account of each of the applicable Term Lenders (including any Non-Consenting Lender whose Initial Loans are repaid or replaced pursuant to Section 2.19(b)(iv)) a premium of 1.00% of the aggregate principal amount of the Initial Loans so prepaid, repaid or replaced. All such amounts shall be due and payable on the date of the relevant prepayment pursuant to Sections 2.11(a)(i) or 2.11(b)(iii). For the avoidance of doubt, no prepayment premium shall be payable hereunder in connection with any prepayment with respect to Initial Loans on or after December 31, 2019.

f. Section 4.03(b) of the Credit Agreement is hereby amended and restated in its entirety as follows:

The Total Leverage Ratio, calculated on a Pro Forma Basis, would not exceed 5.00:1.00.

g. Schedule 1.01(a) of the Credit Agreement is hereby replaced with Schedule 1.01(a) attached hereto.

3. New Delayed Draw Term Commitments.

Each of the Borrower, the Administrative Agent and the Lenders party hereto hereby acknowledge and agree that the aggregate amount of Initial Delayed Draw Term Loan Commitment immediately prior to the effectiveness of this Amendment is $0. Each New Delayed Draw Term Lender severally and not jointly agrees to establish on the First Amendment Effective Date its respective New Delayed Draw Term Commitments in an aggregate amount equal to $50,000,000, which New Delayed Draw Term Commitments shall constitute Initial Delayed Draw Term Loan Commitments for all purposes under the Credit Agreement and the other Loan Documents. Each Lender with an Initial Delayed Draw Term Loan Commitment severally and not jointly agrees, on the terms and subject to the conditions set forth in the Credit Agreement, to lend to the Borrower from time to time on or after the First Amendment Effective Date, up to the amount set forth opposite such Lender's name on the Commitment Schedule under the heading "Initial Delayed Draw Term Loan Commitment". Each such Loan shall be made in addition to the existing Initial Loans and not in repayment thereof, and the proceeds thereof shall be used in accordance with Section 5.11 of the Credit Agreement. Without limiting the generality of the foregoing, any Initial Delayed Draw Term

Loans made on or after the First Amendment Effective Date shall (i) constitute Obligations under the Loan Documents and have all of the benefits thereof, (ii) have all of the rights, remedies, privileges and protections applicable to the Initial Loans under the Credit Agreement and the other Loan Documents and (iii) be secured on a pari passu basis by the Liens granted to the Administrative Agent under any Collateral Document. For the avoidance of doubt, the New Delayed Draw Term Commitments shall not constitute Incremental Commitments and the establishment thereof shall not constitute a utilization of the Incremental Cap under the Credit Agreement.

4. Conditions Precedent to First Amendment Effective Date. This Amendment shall be effective on the date (the "First Amendment Effective Date") on which each of the following conditions have been satisfied (or waived) in accordance with the terms herein:

a. the Administrative Agent shall have received counterparts of this Amendment executed by (i) the Borrower and each other Loan Party and (ii) the Lenders (each existing Lender party to this Amendment, a "Consenting Lender");

b. prior to or substantially concurrently with the First Amendment Effective Date, the Administrative Agent shall have received all expenses required to be paid by the Borrower pursuant to Section 9.03(a) of the Credit Agreement in connection with this Amendment for which invoices have been presented at least three Business Days prior to the First Amendment Effective Date or such later date to which the Borrower may agree (including the reasonable and documented out-of-pocket fees and expenses of legal counsel required to be paid pursuant to Section 9.03(a) of the Credit Agreement);

c. the Administrative Agent (or its counsel) shall have received (i) a certificate of each Loan Party, dated as of the First Amendment Effective Date and executed by a secretary, assistant secretary or other Responsible Officer thereof, which shall (A) certify that (w) attached thereto is a true and complete copy of the certificate or articles of incorporation, formation or organization of such Loan Party, certified by the relevant authority of its jurisdiction of organization, (x) the certificate or articles of incorporation, formation or organization of such Loan Party attached thereto has not been amended (except as attached thereto) since the date reflected thereon, (y) attached thereto is a true and correct copy of the by-laws or operating, management, partnership or similar agreement of such Loan Party, together with all amendments thereto as of the First Amendment Effective Date and such by-laws or operating, management, partnership or similar agreement are in full force and effect and (z) attached thereto is a true and complete copy of the resolutions or written consent, as applicable, of its board of directors, board of managers, sole member or other applicable governing body authorizing the execution and delivery of this Amendment, which resolutions or consent have not been modified, rescinded or amended (other than as attached thereto) and are in full force and effect, and (B) identify by name and title and bear the signatures of the officers, managers, directors or other authorized signatories of such Loan Party who are authorized to sign this Amendment and (ii) a good standing (or equivalent) certificate for each Loan Party from the relevant authority of its jurisdiction of organization, dated as of a recent date;

d. the Administrative Agent (or its counsel) shall have received, on behalf of itself and the New Delayed Draw Term Lenders on the First Amendment Effective Date, a customary written opinion of (x) Weil, Gotshal & Manges LLP, as counsel for Holdings, the Borrower and each other Loan Party and (y) local counsel for the Loan Parties organized in Colorado, in each case, (i) dated the First Amendment Effective Date and (ii) addressed to the Administrative Agent and the New Delayed Draw Term Lenders;

e. the Administrative Agent shall have received (i) a certificate in substantially the form of Exhibit O to the Credit Agreement from the chief financial officer (or other officer with reasonably equivalent responsibilities) of the Borrower dated as of the First Amendment Effective Date and certifying as to the matters set forth therein, after giving effect to the transactions contemplated herein and (ii) a certificate from a Responsible Officer of the Borrower certifying as to the matters set forth in Sections 4(f) and (g) below;

f. the representations and warranties contained in Section 5 hereof shall be true and correct to the extent required by the terms hereof;

g. at the time of and immediately after giving effect to this Amendment, no Event of Default shall have occurred and be continuing; and

h. the Administrative Agent, for the account of each Lender with a New Delayed Draw Term Commitment, shall have received a closing fee (the "Closing Fee") in an amount equal to 1.00% of the New Delayed Draw Term Commitments provided by such Lender on the First Amendment Effective Date.

5. Representations and Warranties. Each Loan Party hereby represents and warrants to the Administrative Agent and each New Delayed Draw Term Lender that, as of the First Amendment Effective Date, the representations and warranties of the Loan Parties set forth in the Credit Agreement (as amended by this Amendment) and the other Loan Documents are true and correct in all material respects on and as of the First Amendment Effective Date with the same effect as though such representations and warranties had been made on and as of the First Amendment Effective Date; provided that to the extent that any representation and warranty specifically refers to a given date or period, it shall be true and correct (after giving effect to any qualification therein) in all material respects as of such date or for such period; provided, further, that any representation or 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.

6. No Modification. Except as expressly set forth herein, nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Credit Agreement or any of the other Loan Documents. Except as amended or consented to hereby, the Credit Agreement and other Loan Documents remain unmodified and in full force and effect. All references in the Loan Documents to the Credit Agreement shall be deemed to be references to the Credit Agreement as amended hereby. For the avoidance of doubt, each Consenting Lender agrees Section 2.12(f) of the Credit Agreement shall not apply to the amendments contemplated hereby, and no premium, fee or other amount shall be payable under such Section as a result of this Amendment and the transactions contemplated hereby.

7. Reaffirmation. Each of the Reaffirming Parties, as party to the Credit Agreement and/or certain of the Collateral Documents and the other Loan Documents, in each case as amended, supplemented or otherwise modified from time to time, hereby (i) consents to the amendment of the Credit Agreement effected hereby, (ii) acknowledges and agrees that all of its obligations under the Credit Agreement, the Collateral Documents and the other Loan Documents to which it is a party are reaffirmed and remain in full force and effect on a continuous basis and are hereby ratified and confirmed in all respects, in each case as amended by this Amendment, (iii) reaffirms (A) each Lien granted by it to the Administrative Agent for the benefit of the Secured Parties and (B) any guaranties made by it pursuant to the Loan Guaranty, (iv) acknowledges and agrees that the grants of security interests by it contained in the Security Agreement and any other Collateral Document shall remain in full force and effect and continue to secure the obligations of the Loan Parties under the Credit Agreement after giving effect to the Amendment and (v) agrees that the Obligations include, among other things and without limitation, the payment of any principal or interest on the New Delayed Draw Term Loans under the Credit Agreement as amended by this Amendment. Nothing contained in this Amendment shall be construed as substitution or novation of the obligations outstanding under the Credit Agreement or the other Loan Documents, which shall remain in full force and effect, except to any extent modified hereby.

8. 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. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. 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.

9. Successors and Assigns. The provisions of this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns in accordance with Section 9.05 of the Credit Agreement.

10. Governing Law; Jurisdiction; Consent to Service of Process; Waiver of Jury Trial.

a. THIS AMENDMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AMENDMENT, 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 U.S. 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 THIS AMENDMENT 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 AMENDMENT 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 OF THE CREDIT AGREEMENT. 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 THAT SERVICE OF PROCESS WAS INVALID AND INEFFECTIVE. NOTHING IN THIS AMENDMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AMENDMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW.

e. 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.

11. Severability. To the extent permitted by applicable Requirements of Law, any provision of this Amendment 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.

[*Signature Pages Follow*]

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

FWR HOLDING CORPORATION,
as the Borrower

By: /s/ Kenneth L. Pendery, Jr.
Name: Kenneth L. Pendery, Jr.
Title: Executive Chairman

AI FRESH PARENT, INC.,
as Holdings

By: /s/ Christopher Tomasso
Name: Christopher Tomasso
Title: President

FIRST WATCH RESTAURANTS, INC.
FIRST WATCH FRANCHISE DEVELOPMENT CO.
E&I HOLDINGS, INC.
GOOD EGG RESTAURANTS, LLC

By: /s/ Kenneth L. Pendery, Jr.
Name: Kenneth L. Pendery, Jr.
Title: Executive Chairman

FIRST WATCH E&I RESTAURANT GROUP LLC

By: **FIRST WATCH RESTAURANTS, INC.,**
its sole member

By: /s/ Kenneth L. Pendery, Jr.
Name: Kenneth L. Pendery, Jr.
Title: Executive Chairman

Administrative Agent:

GOLUB CAPITAL MARKETS LLC,
as Administrative Agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Lenders:

GOLUB CAPITAL FINANCE FUNDING LLC
By: GC Advisors LLC, its Manager, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GC FINANCE OPERATIONS LLC
By: GC Advisors LLC, its Manager, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GOLUB CAPITAL BDC CLO 2014 LLC
By: GC Advisors LLC, its Collateral Manager, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GOLUB CAPITAL HOLDINGS LLC
By: GC Advisors LLC, its Manager, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GOLUB CAPITAL PEARLS DIRECT LENDING PRORAMM, L.P.
By: GC Advisors LLC, its Manager, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

PEARLS X, L.P.
By: GC Advisors LLC, its Manager, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GCIC HOLDINGS LLC
By: Golub Capital Investment Corporation, its sole member
By: GC Advisors LLC, its Manager, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GOLUB CAPITAL PARTNERS CLO 16(M)-R, LTD.
By: GC Advisors LLC, its agent, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GOLUB CAPITAL PARTNERS CLO 17(M)-R, LTD.
By: GC Advisors LLC, its agent, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GOLUB CAPITAL PARTNERS CLO 18(M)-R, LTD.
By: GC Advisors LLC, its agent, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GOLUB CAPITAL PARTNERS CLO 25(M)-R, LTD.
By: GC Advisors LLC, its agent, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GOLUB CAPITAL PARTNERS CLO 28(M)-R, LTD.
By: GC Advisors LLC, its agent, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GOLUB CAPITAL PARTNERS CLO 34(M)-R, LTD.
By: GC Advisors LLC, its agent, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GCIC CLO II LLC
By: GC Advisors LLC, as Collateral Manager, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GCPF LOAN FUNDING B, LTD.
By: GC Advisors LLC, its agent, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GCP FINANCE 5 LTD.
By: GC Advisors LLC, as agent, individually, as a Lender

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Exhibit 10.1(c)

SECOND AMENDMENT TO CREDIT AGREEMENT

THIS SECOND AMENDMENT TO CREDIT AGREEMENT (this "Amendment") is entered into as of December 20, 2019 by and among FWR Holding Corporation, a Delaware corporation (the "Borrower"), AI Fresh Parent, Inc., a Delaware corporation ("Holdings"), the other Loan Parties party hereto, the lenders holding the New Delayed Draw Term Commitments (as defined below) party hereto (the "New Delayed Draw Term Lenders"), the other Lenders party hereto and Golub Capital Markets LLC ("Golub Capital"), in its capacities as administrative agent and collateral agent for the Secured Parties (in such capacities and together with its successors and assigns, the "Administrative Agent").

W I T N E S S E T H:

WHEREAS, the Borrower (successor by merger to AI Fresh Merger Sub, Inc., a Delaware corporation), Holdings, the Administrative Agent and the Lenders from time to time party thereto are parties to that certain Credit Agreement, dated as of August 21, 2017 (as amended by that certain First Amendment to Credit Agreement, dated as of February 28, 2019, by and among the Borrower, Holdings, the lenders party thereto and the Administrative Agent, and as may be further amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Credit Agreement");

WHEREAS, the Borrower has requested new delayed draw term loan commitments in an aggregate principal amount of $40,000,000 (the "New Delayed Draw Term Commitments"), which will be made available on the Second Amendment Effective Date (as defined below), and which New Delayed Draw Term Commitments shall constitute a separate Class of Initial Delayed Draw Term Loan Commitments under the Credit Agreement and the loans thereunder (the "New Delayed Draw Term Loans") shall constitute Initial Delayed Draw Term Loans under the Credit Agreement;

WHEREAS, the Borrower has requested, and the Lenders party hereto have agreed, to amend the Credit Agreement in certain respects on the terms and subject to the conditions set forth herein; and

WHEREAS, each Loan Party party hereto (collectively, the "Reaffirming Parties" and each, a "Reaffirming Party") expects to realize substantial direct and indirect benefits as a result of this Amendment becoming effective and the consummation of the transactions contemplated hereby and agrees to reaffirm its obligations pursuant to the Credit Agreement, the Collateral Documents and the other Loan Documents to which it is a party.

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

1. Defined Terms. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Credit Agreement.

2. Amendments to Credit Agreement. Effective as of the Second Amendment Effective Date:

a. Section 1.01 of the Credit Agreement is hereby amended by inserting in appropriate alphabetical order the following new definitions:

"First Amendment Initial Delayed Draw Term Loan Commitment" means the commitments of the Initial Delayed Draw Term Lenders to make Initial Delayed Draw Term Loans hereunder established pursuant to the First Amendment on the First Amendment Effective Date.

"Second Amendment" means that certain Second Amendment to Credit Agreement, dated as of the Second Amendment Effective Date, among the Borrower, Holdings, the other Loan Parties party thereto, the Administrative Agent and the Lenders party thereto.

"Second Amendment Initial Delayed Draw Term Loan Commitment" means the commitments of the Initial Delayed Draw Term Lenders to make Initial Delayed Draw Term Loans hereunder established pursuant to the Second Amendment on the Second Amendment Effective Date.

"Second Amendment Effective Date" means December 20, 2019.

b. The definition of "Initial Delayed Draw Term Loan Commitment" contained in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety as follows:

"Initial Delayed Draw Term Loan Commitment" means, with respect to each Term Lender, (a) with respect to the First Amendment Initial Delayed Draw Term Loan Commitment, the commitment of such Term Lender to make Initial Delayed Draw Term Loans hereunder in an aggregate amount not to exceed the amount set forth opposite such Initial Delayed Draw Term Lender's name on the Commitment Schedule and (b) with respect to the Second Amendment Initial Delayed Draw Term Loan Commitment, the commitment of such Term Lender to make Initial Delayed Draw Term Loans hereunder in an aggregate amount not to exceed the amount set forth opposite such Initial Delayed Draw Term Lender's name on the Commitment Schedule, in each case under the preceding clauses (a) and (b) as the same may be (x) reduced from time to time pursuant to Section 2.09 and (y) reduced or increased from time to time pursuant to assignments by or to such Term Lender pursuant to Section 9.05. The aggregate amount of the Term Lenders' Initial Delayed Draw Term Loan Commitments (i) on the Closing Date was $50,000,000, all of which was funded prior to the First Amendment Effective Date, (ii) on the First Amendment Effective Date was $50,000,000, of which $35,000,000 was funded prior to the Second Amendment Effective Date, and (iii) on the Second Amendment Effective Date: (x) in respect of the First Amendment Initial Delayed Draw Term Loan Commitment, is $15,000,000, and (y) in respect of the Second Amendment Initial Delayed Draw Term Loan Commitment is $40,000,000.

c. The definition of "Initial Delayed Draw Term Loan Commitment Termination Date" contained in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety as follows:

"Initial Delayed Draw Term Loan Commitment Termination Date" means (a) in the case of the First Amendment Initial Delayed Draw Term Loan Commitment, the earlier of (x) February 28, 2021 and (y) the date such Initial Delayed Draw Term Loan Commitment is wholly terminated pursuant to Section 2.09(a)(ii)(A) or Section 2.09(b)(ii) and (b) in the case of the Second Amendment Initial Delayed Draw Term Loan Commitment, the earlier of (x) date that is two years after the Second Amendment Effective Date and (y) the date such Initial Delayed Draw Term Loan Commitment is wholly terminated pursuant to Section 2.09(a)(ii)(A) or Section 2.09(b)(ii).

d. Section 2.01(a)(iii) of the Credit Agreement is hereby amended and restated in its entirety as follows:

(iii) each Initial Delayed Draw Term Lender severally, and not jointly, agrees to make Initial Delayed Draw Term Loans to the Borrower in Dollars in a principal amount not to exceed its Initial Delayed Draw Term Loan Commitment at any time and from time to time on and after the Closing Date, and until the earlier of (A) the Initial Delayed Draw Term Loan Commitment Termination Date and (B) the termination of the Initial Delayed Draw Term Loan Commitment of such Initial Delayed Draw Term Lender in accordance with the terms hereof; it being understood and agreed that, on and after the Second Amendment Effective Date until the Initial Delayed Draw Term Loan Commitment Termination Date with respect to the First Amendment Initial Delayed Draw Term Loan Commitment, Initial Delayed Draw Term Loans shall be deemed to be made first, in reliance on the unused portion of the First Amendment Initial Delayed Draw Term Loan Commitment until the unused portion of the First Amendment Initial Delayed Draw Term Loan Commitment is $0, and then, in reliance on the unused portion of the Second Amendment Initial Delayed Draw Term Loan Commitment. The First Amendment Initial Delayed Draw Term Loan Commitment shall constitute a separate Class from the Second Amendment Initial Delayed Draw Term Loan Commitment for all purposes under this Agreement. The Initial Delayed Draw Term Loans and Initial Term Loans are the same Class of Term Loans for all purposes under this Agreement. On the Initial Delayed Draw Term Loan Commitment Termination Date, to the extent requested by the Borrower in accordance with Section 2.03, the Initial Delayed Draw Term Loans may be borrowed in an amount not to exceed any unused Initial Delayed Draw Term Loan Commitment as of the date of such Borrowing.

e. Schedule 1.01(a) of the Credit Agreement is hereby replaced with Schedule 1.01(a) attached hereto.

3. New Delayed Draw Term Commitments.

Each of the Borrower, the Administrative Agent and the Lenders party hereto hereby acknowledge and agree that the aggregate amount of Initial Delayed Draw Term Loan Commitment immediately prior to the effectiveness of this Amendment is $15,000,000. Each New Delayed Draw Term Lender severally and not jointly agrees to establish on the Second Amendment Effective Date its respective New Delayed Draw Term Commitments as set forth on Schedule I attached hereto in an aggregate amount equal to $40,000,000, which New Delayed Draw Term Commitments shall constitute Initial Delayed Draw Term Loan Commitments for all purposes under the Credit Agreement and the other Loan Documents. Each Lender with an Initial Delayed Draw Term Loan Commitment severally and not jointly agrees, on the terms and subject to the conditions set forth in the Credit Agreement, to lend to the Borrower from time to time on or after the Second Amendment Effective Date, up to the amount set forth opposite such Lender's name on the Commitment Schedule under the headings "First Amendment Initial Delayed Draw Term Loan Commitment" and "Second Amendment Initial Delayed Draw Term Loan Commitment". Each such Loan shall be made in addition to the existing Initial Loans and not in repayment thereof, and the proceeds thereof shall be used in accordance with Section 5.11 of the Credit Agreement. Without limiting the generality of the foregoing, any Initial Delayed Draw Term Loans made on or after the Second Amendment Effective Date shall (i) constitute Obligations under the Loan Documents and have all of the benefits thereof, (ii) have all of the rights, remedies, privileges and protections applicable to the Initial Loans under the Credit Agreement and the other Loan Documents and (iii) be secured on a *pari passu* basis by the Liens granted to the Administrative Agent under any Collateral Document. For the avoidance of doubt, the New Delayed Draw Term Commitments shall not constitute Incremental Commitments and the establishment thereof shall not constitute a utilization of the Incremental Cap under the Credit Agreement.

4. Conditions Precedent to Second Amendment Effective Date. This Amendment shall be effective on the date (the "Second Amendment Effective Date") on which each of the following conditions have been satisfied (or waived) in accordance with the terms herein:

a. the Administrative Agent shall have received counterparts of this Amendment executed by (i) the Borrower and each other Loan Party, (ii) the Lenders constituting Required Lenders (each existing Lender party to this Amendment, a "Consenting Lender") and (iii) the New Delayed Draw Term Lenders;

b. prior to or substantially concurrently with the Second Amendment Effective Date, the Administrative Agent shall have received all expenses required to be paid by the Borrower pursuant to Section 9.03(a) of the Credit Agreement in connection with this Amendment for which invoices have been presented at least three Business Days prior to the Second Amendment Effective Date or such later date to which the Borrower may agree (including the reasonable and documented out-of-pocket fees and expenses of legal counsel required to be paid pursuant to Section 9.03(a) of the Credit Agreement);

c. the Administrative Agent (or its counsel) shall have received (i) a certificate of each Loan Party, dated as of the Second Amendment Effective Date and executed by a secretary, assistant secretary or other Responsible Officer thereof, which shall (A) certify that (w) attached thereto is a true and complete copy of the certificate or articles of incorporation, formation or organization of such Loan Party, certified by the relevant authority of its jurisdiction of organization, (x) the certificate or articles of incorporation, formation or organization of such Loan Party attached thereto has not been amended (except as attached thereto) since the date reflected thereon, (y) attached thereto is a true and correct copy of the by-laws or operating, management, partnership or similar agreement of such Loan Party, together with all amendments thereto as of the Second Amendment Effective Date and such by-laws or operating, management, partnership or similar agreement are in full force and effect and (z) attached thereto is a true and complete copy of the resolutions or written consent, as applicable, of its board of directors, board of managers, sole member or other applicable governing body authorizing the execution and delivery of this Amendment, which resolutions or consent have not been modified, rescinded or amended (other than as attached thereto) and are in full force and effect, and (B) identify by name and title and bear the signatures of the officers, managers, directors or other authorized signatories of such Loan Party who are authorized to sign this Amendment and (ii) a good standing (or equivalent) certificate for each Loan Party from the relevant authority of its jurisdiction of organization, dated as of a recent date;

d. the Administrative Agent (or its counsel) shall have received, on behalf of itself and the New Delayed Draw Term Lenders on the Second Amendment Effective Date, a customary written opinion of (x) Weil, Gotshal & Manges LLP, as counsel for Holdings, the Borrower and each other Loan Party and (y) local counsel for the Loan Parties organized in Colorado, in each case, (i) dated the Second Amendment Effective Date and (ii) addressed to the Administrative Agent and the New Delayed Draw Term Lenders;

e. the Administrative Agent shall have received (i) a certificate in substantially the form of Exhibit O to the Credit Agreement from the chief financial officer (or other officer with reasonably equivalent responsibilities) of the Borrower dated as of the Second Amendment Effective Date and certifying as to the matters set forth therein, after giving effect to the transactions contemplated herein and (ii) a certificate from a Responsible Officer of the Borrower certifying as to the matters set forth in Sections 4(f) and (g) below;

f. the representations and warranties contained in Section 5 hereof shall be true and correct to the extent required by the terms hereof;

g. at the time of and immediately after giving effect to this Amendment, no Event of Default shall have occurred and be continuing; and

h. the Administrative Agent, for the account of each Lender with a New Delayed Draw Term Commitment, shall have received a closing fee (the "Closing Fee") in an amount equal to 1.00% of the New Delayed Draw Term Commitments provided by such Lender on the Second Amendment Effective Date.

5. Representations and Warranties. Each Loan Party hereby represents and warrants to the Administrative Agent and each New Delayed Draw Term Lender that, as of the Second Amendment Effective Date, the representations and warranties of the Loan Parties set forth in the Credit Agreement (as amended by this Amendment) and the other Loan Documents are true and correct in all material respects on and as of the Second Amendment Effective Date with the same effect as though such representations and warranties had been made on and as of the Second Amendment Effective Date; provided that to the extent that any representation and warranty specifically refers to a given date or period, it shall be true and correct (after giving effect to any qualification therein) in all material respects as of such date or for such period; provided, further, that any representation or 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.

6. No Modification. Except as expressly set forth herein, nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Credit Agreement or any of the other Loan Documents. Except as amended or consented to hereby, the Credit Agreement and other Loan Documents remain unmodified and in full force and effect. All references in the Loan Documents to the Credit Agreement shall be deemed to be references to the Credit Agreement as amended hereby. For the avoidance of doubt, each Consenting Lender agrees Section 2.12(f) of the Credit Agreement shall not apply to the amendments contemplated hereby, and no premium, fee or other amount shall be payable under such Section as a result of this Amendment and the transactions contemplated hereby.

7. Reaffirmation. Each of the Reaffirming Parties, as party to the Credit Agreement and/or certain of the Collateral Documents and the other Loan Documents, in each case as amended, supplemented or otherwise modified from time to time, hereby (i) consents to the amendment of the Credit Agreement effected hereby, (ii) acknowledges and agrees that all of its obligations under the Credit Agreement, the Collateral Documents and the other Loan Documents to which it is a party are reaffirmed and remain in full force and effect on a continuous basis and are hereby ratified and confirmed in all respects, in each case as amended by this Amendment, (iii) reaffirms (A) each Lien granted by it to the Administrative Agent for the benefit of the Secured Parties and (B) any guaranties made by it pursuant to the Loan Guaranty, (iv) acknowledges and agrees that the grants of security interests by it contained in the Security Agreement and any other Collateral Document shall remain in full force and effect and continue to secure the obligations of the Loan Parties under the Credit Agreement after giving effect to the Amendment and (v) agrees that the Obligations include, among other things and without limitation, the payment of any principal or interest on the New Delayed Draw Term Loans under the Credit Agreement as amended by this Amendment. Nothing contained in this Amendment shall be construed as substitution or novation of the obligations outstanding under the Credit Agreement or the other Loan Documents, which shall remain in full force and effect, except to any extent modified hereby.

8. 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. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. 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.

9. Successors and Assigns. The provisions of this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns in accordance with Section 9.05 of the Credit Agreement.

10. Governing Law; Jurisdiction; Consent to Service of Process; Waiver of Jury Trial.

a. THIS AMENDMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AMENDMENT, 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 U.S. 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 THIS AMENDMENT 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 AMENDMENT 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 OF THE CREDIT AGREEMENT. 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 THAT SERVICE OF PROCESS WAS INVALID AND INEFFECTIVE. NOTHING IN THIS AMENDMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AMENDMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW.

e. 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.

11. Severability. To the extent permitted by applicable Requirements of Law, any provision of this Amendment 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.

[*Signature Pages Follow*]

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

FWR HOLDING CORPORATION,
as the Borrower

By: /s/ Kenneth L. Pendery, Jr.
Name: Kenneth L. Pendery, Jr
Title: Executive Chairman

AI FRESH PARENT, INC.,
as Holdings

By: /s/ Christopher Tomasso
Name: Christopher Tomasso
Title: President

FIRST WATCH RESTAURANTS, INC.
FIRST WATCH FRANCHISE DEVELOPMENT CO.
E&I HOLDINGS, INC.
GOOD EGG RESTAURANTS, LLC

By: /s/ Kenneth L. Pendery, Jr.
Name: Kenneth L. Pendery, Jr
Title: Executive Chairman

FIRST WATCH E&I RESTAURANT GROUP LLC

By: FIRST WATCH RESTAURANTS, INC.,
its sole member

By: /s/ Kenneth L. Pendery, Jr.
Name: Kenneth L. Pendery, Jr
Title: Executive Chairman

As Agent

GOLUB CAPITAL MARKETS LLC

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

As Lender

GCIC CLO II LLC
By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 16(M)-R, Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 17(M)-R, Ltd.
By: GC Advisors LLC, as agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 18(M)-R, Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 21(M)-R, Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 24(M)-R, Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 25(M)-R, Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 28(M), Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 44(M), Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 45(M), Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital BDC CLO 2014 LLC
By: GC Advisors LLC, its Collateral Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital PERLS Direct Lending Program, L.P.
By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

PEARLS X, L.P.
By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital BDC Holdings LLC
By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GC Finance Operations LLC
By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GCIC Holdings LLC
By: Golub Capital BDC, Inc., its sole member
By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GCPF Loan Funding D, L.P.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GCP Finance 5 Ltd.
By: GC Advisors LLC, as agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

ARES CENTRE STREET PARTNERSHIP, L.P.,
as a Lender

By: Ares Centre Street GP, Inc., as general partner

By: /s/ Michael L. Smith
Name: Michael L. Smith
Title: Authorized Signatory

NATIONWIDE LIFE INSURANCE COMPANY,
as a Lender

By: Ares Capital Management LLC, its investment manager

By: /s/ Michael L. Smith
Name: Michael L. Smith
Title: Authorized Signatory

NATIONWIDE MUTUAL INSURANCE COMPANY,
as a Lender

By: Ares Capital Management LLC, its investment manager

By: /s/ Michael L. Smith
Name: Michael L. Smith
Title: Authorized Signatory

AO MIDDLE MARKET CREDIT FINANCING L.P.,
as a Lender

By: /s/ Michael L. Smith
Name: Michael L. Smith
Title: Authorized Signatory

ARES CSIDF HOLDINGS LLC, as a Lender

By: /s/ Michael L. Smith
Name: Michael L. Smith
Title: Authorized Signatory

ARES JASPER FUND HOLDINGS LLC, as a Lender

By: /s/ Michael L. Smith
Name: Michael L. Smith
Title: Authorized Signatory

ARES JASPER FUND L.P., as a Lender

By: /s/ Michael L. Smith
Name: Michael L. Smith
Title: Authorized Signatory

SALI FUND MANAGEMENT, as a Lender

By: /s/ Michael L. Smith
Name: Michael L. Smith
Title: Authorized Signatory

PREMIA LV 1 LTD, as a Lender

By: /s/ Michael L. Smith
Name: Michael L. Smith
Title: Authorized Signatory

CADEX CREDIT FINANCING LLC, as a Lender

By: /s/ Michael L. Smith
Name: Michael L. Smith
Title: Authorized Signatory

TCG BDC SPV LLC, as a Lender

By: /s/ Pranai Cheroo
Name: Pranai Cheroo
Title: Vice President

CARLYLE DIRECT LENDING CLO 2015-1R LLC, as a Lender

By: /s/ Pranai Cheroo
Name: Pranai Cheroo
Title: Vice President

TCG BDC, INC., as a Lender

By: /s/ Pranai Cheroo
Name: Pranai Cheroo
Title: Vice President

CDL 2018-1, LP, as a Lender

By: /s/ Pranai Cheroo
Name: Pranai Cheroo
Title: Vice President

CPC V, L.P., as a Lender

By: /s/ Pranai Cheroo
Name: Pranai Cheroo
Title: Vice President

CPC V SPV LLC, as a Lender

By: /s/ Pranai Cheroo
Name: Pranai Cheroo
Title: Vice President

CDL 2018-2, LP, as a Lender

By: /s/ Pranai Cheroo
Name: Pranai Cheroo
Title: Vice President

MC UNI SUBSIDIARY LLC, as a Lender

By: /s/ Omar Eraiqat
Name: Omar Eraiqat
Title: Authorized Signatory

GOLDMAN SACHS PRIVATE MIDDLE MARKET CREDIT II LLC, as a Lender

By: /s/ Brendan McGovern
Name: Brendan McGovern
Title: Authorized Signatory

GOLDMAN SACHS PRIVATE MIDDLE MARKET LENDING CORP., as a Lender

By: /s/ Brendan McGovern
Name: Brendan McGovern
Title: Authorized Signatory

GOLDMAN SACHS BDC, INC., as a Lender

By: /s/ Brendan McGovern
Name: Brendan McGovern
Title: Authorized Signatory

GOLDMAN SACHS PRIVATE MIDDLE MARKET CREDIT SPV LLC, as a Lender

By: /s/ Brendan McGovern
Name: Brendan McGovern
Title: Authorized Signatory

SENIOR CREDIT (UWF) LLC, as a Lender

By: /s/ Brendan McGovern
Name: Brendan McGovern
Title: Authorized Signatory

SENIOR CREDIT FUND (UCR) SPV LLC, as a Lender

By: /s/ Brendan McGovern
Name: Brendan McGovern
Title: Authorized Signatory

ARES CAPITAL CORPORATION,
as a Lender

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

CION ARES DIVERSIFIED CREDIT FUND, as a Lender

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

ARES CREDIT STRATEGIES INSURANCE DEDICATED FUND SERIES INTERESTS OF SALI MULTI-SERIES FUND, L.P.,
as a Lender

By: Ares Management LLC, its investment subadvisor
By: Ares Capital Management LLC, as subadvisor

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

ALTERNATIVE BLOCK FOR BROADLY SYNDICATED ASSETS ARES CREDIT STRATEGIES INSURANCE DEDICATED FUND SERIES INTERESTS OF THE SALI MULTI-SERIES FUND, L.P., as a Lender

By: Ares Management LLC, its investment subadvisor

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

AC AMERICAN FIXED INCOME IV, L.P.,
as a Lender

By: Ares Capital Management LLC, its investment manager

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

AO MIDDLE MARKET CREDIT L.P., as a Lender by its general partner, OCM Middle Market Credit G.P. Inc.

By: /s/ K. Patel
Name: K. Patel
Title: Director

By: /s/ Jeremy Ehrlich
Name: Jeremy Ehrlich
Title: Director

FEDERAL INSURANCE COMPANY, as a Lender

By: Ares Capital Management LLC, its investment manager

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

SC ACM PRIVATE DEBT FUND L.P., as a Lender

By: Ares Capital Management LLC, its investment advisor

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

GREAT AMERICAN INSURANCE COMPANY, as a Lender

By: Ares Capital Management LLC, its investment manager

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

GREAT AMERICAN LIFE INSURANCE COMPANY, as a Lender

By: Ares Capital Management LLC, its investment manager

By: /s/ Joshua M. Bloomstein
Name: Joshua M. Bloomstein
Title: Authorized Signatory

Exhibit 10.1(d)

THIRD AMENDMENT AND WAIVER TO CREDIT AGREEMENT

THIS THIRD AMENDMENT AND WAIVER TO CREDIT AGREEMENT (this "Amendment") is entered into as of April 27, 2020 by and among FWR Holding Corporation, a Delaware corporation (the "Borrower"), AI Fresh Parent, Inc., a Delaware corporation ("Holdings"), the other Loan Parties party hereto, the other Lenders (as defined in the Credit Agreement referred to below) party hereto that constitute the Required Lenders (as defined in the Credit Agreement), the Lenders party hereto that constitute each Initial Delayed Draw Term Lender (as defined in the Credit Agreement) holding Initial Delayed Draw Term Loan Commitments (as defined in the Credit Agreement) and Golub Capital Markets LLC ("Golub Capital"), in its capacities as administrative agent and collateral agent for the Secured Parties (in such capacities and together with its successors and assigns, the "Administrative Agent").

W I T N E S S E T H:

WHEREAS, the Borrower (successor by merger to AI Fresh Merger Sub, Inc., a Delaware corporation), Holdings, the Administrative Agent and the Lenders from time to time party thereto are parties to that certain Credit Agreement, dated as of August 21, 2017 (as amended by that certain First Amendment to Credit Agreement, dated as of February 28, 2019, as further amended by that certain Second Amendment to Credit Agreement, dated as of December 20, 2019, and as may be further amended, restated, amended and restated, supplemented and/or otherwise modified from time to time prior to the date hereof, the "Credit Agreement");

WHEREAS, pursuant to that certain Borrowing Request, dated March 13, 2020, the Borrower requested a Borrowing of Initial Delayed Draw Term Loans in an aggregate principal amount of $39,600,000 to be made on March 24, 2020 (the "Specified DDTL Borrowing") and in connection therewith represented and certified that, among other things, as of the date of such Specified DDTL Borrowing (the "DDTL Borrowing Date"), the Total Leverage Ratio, calculated on a Pro Forma Basis, does not exceed 5.00:1.00 (such Total Leverage Ratio governor, the "DDTL Incurrence Test");

WHEREAS, following the Specified DDTL Borrowing, (a) the Borrower determined that (i) the Total Leverage Ratio as of the DDTL Borrowing Date, calculated on a Pro Forma Basis after giving effect to the Specified DDTL Borrowing, was incorrectly calculated (the matters described in this clause (a)(i), the "DDTL Calculation Error") and (ii) as of the DDTL Borrowing Date, in order to satisfy the DDTL Incurrence Test, the Borrower would only have been able to borrow $38,500,000 (the difference between the Specified DDTL Borrowing and such amount, the "Excess DDTL Borrowing") and (b) immediately upon learning of such error, the Borrower returned an amount of Initial Delayed Draw Term Loans in an aggregate principal amount equal to $1,100,000;

WHEREAS, pursuant to Section 9.02(b) of the Credit Agreement, the Borrower has requested, and the Lenders party hereto that constitute the Required Lenders have agreed, to (a) amend the Credit Agreement in certain respects as described herein and (b) waive any Default or Event of Default arising as a result of the DDTL Calculation Error and the Excess DDTL Borrowing, including any Default or Event of Default that may arise under Sections 7.01(c) and/or 7.01(d) of the Credit Agreement (the Defaults and Events of Default described in this clause (b), the "Specified Events of Default"), in each case, upon the terms and subject to the conditions set forth herein;

WHEREAS, each Loan Party party hereto (collectively, the "Reaffirming Parties" and each, a "Reaffirming Party") expects to realize substantial direct and indirect benefits as a result of this Amendment becoming effective and the consummation of the transactions contemplated hereby and agrees to reaffirm its obligations pursuant to the Credit Agreement, the Collateral Documents and the other Loan Documents to which it is a party.

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

1. Defined Terms. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Credit Agreement.

2. Amendments to Credit Agreement. Effective as of the Third Amendment Effective Date:

a. Section 1.01 of the Credit Agreement is hereby amended by inserting in appropriate alphabetical order the following new definitions:

"CARES Act" means the Coronavirus Aid, Relief and Economic Security Act (H.R. 748; P.L. 116-136), as amended (including any successor thereto), and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, regardless of the date enacted, adopted, issued or implemented, including the Interim Final Rules set forth in 85 Fed. Reg. 20811 (Apr. 15, 2020), 85 Fed. Reg. 20817 (Apr. 15, 2020) and 85 Fed. Reg. 21747 (Apr. 20, 2020) (including any successors thereto).

"Outstanding PPP Amount" has the meaning set forth in Section 6.01(hh).

"PPP Debt" has the meaning set forth in Section 6.01(hh).

"PPP Debt Lender" means the lender of the PPP Debt.

"Specified Determination Date" means the date that is the earlier to occur of (i) the date that is 120 days following the initial funding of the PPP Debt (or such longer period as the Administrative Agent may reasonably agree) and (ii) the date that the Borrower receives a determination by the PPP Debt Lender and/or the Small Business Administration regarding the amount of the PPP Debt that is eligible to be forgiven.

"Third Amendment Effective Date" means April 27, 2020.

b. The definition of "Consolidated Total Debt" contained in Section 1.01 of the Credit Agreement is hereby amended to add the following proviso immediately before the period at the end of such definition:

; provided, further, that notwithstanding anything to the contrary contained in the foregoing, (x) until the Specified Determination Date and solely for purposes of determining actual compliance with Section 6.15(a), "Consolidated Total Debt" shall not include the aggregate outstanding principal amount of PPP Debt and (y) from and after the Specified Determination Date, "Consolidated Total Debt" shall include only that portion of PPP Debt that (I) prior to the date the Borrower receives a determination by the PPP Debt Lender and/or the Small Business Administration regarding the amount of the PPP Debt that is eligible to be forgiven, would reasonably be expected to be determined to be ineligible for forgiveness, in the good faith determination of the Borrower, or (II) after the date the Borrower receives a determination by the PPP Debt Lender and/or the Small Business Administration regarding the amount of the PPP Debt that is eligible to be forgiven, has been determined to be ineligible for forgiveness and (z) at all times, the proceeds of the PPP Debt shall not be permitted to be netted from the calculation of "Consolidated Total Debt".

c. The definition of "Initial Delayed Draw Term Loan Commitment" contained in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

"Initial Delayed Draw Term Loan Commitment" means, with respect to each Term Lender, the commitment of such Term Lender to make Initial Delayed Draw Term Loans hereunder in an aggregate amount not to exceed the amount set forth opposite such Initial Delayed Draw Term Lender's name on the Commitment Schedule as the same may be (x) reduced from time to time pursuant to Section 2.09 and (y) reduced or increased from time to time pursuant to assignments by or to such Term Lender pursuant to Section 9.05. The aggregate amount of the Term Lenders' Initial Delayed Draw Term Loan Commitments (i) on the Closing Date was $50,000,000, all of which was funded prior to the First Amendment Effective Date, (ii) on the First Amendment Effective Date was $50,000,000, of which $35,000,000 was funded prior to the Second Amendment Effective Date, (iii) on the Second Amendment Effective Date: (x) in respect of the First Amendment Initial Delayed Draw Term Loan Commitment, was $15,000,000, all of which was funded prior to the Third Amendment Effective Date, and (y) in respect of the Second Amendment Initial Delayed Draw Term Loan Commitment was $40,000,000, and (iv) on the Third Amendment Effective Date, in respect of the Second Amendment Initial Delayed Draw Term Loan Commitment, is $1,500,000.

d. Section 3 of the Credit Agreement is amended to include a new Section 3.17 to read as follows:

Section 3.17 PPP Debt.

As of the Third Amendment Effective Date, to the Borrower's knowledge, each Loan Party and/or Restricted Subsidiary that has applied for PPP Debt, as of the date of such application, met the eligibility criteria set forth in the CARES Act with respect to the incurrence of such PPP Debt.

e. Section 4.02 of the Credit Agreement is hereby amended to include a new paragraph (d) to read as follows:

(d) In the case of the making of any Initial Revolving Loan or the issuance of any Letter of Credit under the Initial Revolving Facility, at the time of and immediately after giving effect to such Credit Extension (and the use of proceeds thereof), the aggregate amount of Cash and Cash Equivalents of the Borrower and its Subsidiaries (exclusive of any such Cash and Cash Equivalents deposited in accounts the primary function of which is to serve as a payroll account (so long as such payroll account is a zero-balance account or is funded no earlier than the Business Day immediately prior to the date of any payroll disbursements and in an amount not exceeding the same)) would not exceed $15,000,000.

f. The last paragraph of Section 4.02 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

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), (c) and (d) of this Section; provided, however, that the conditions set forth in this Section 4.02 shall not apply to (A) any Incremental Loan made in connection with any acquisition, other Investment or irrevocable repayment or redemption of Indebtedness

and/or (B) any Credit Extension under any Incremental Amendment and/or Extension Amendment unless in each case the lenders in respect thereof have required satisfaction of the same in the applicable Incremental Amendment or Extension Amendment, as applicable.

g. Section 4.03 of the Credit Agreement is hereby amended to include a new paragraph (e) to read as follows:

(e) In the case of the making of any Initial Delayed Draw Term Loan Extension, at the time of and immediately after giving effect to such Initial Delayed Draw Term Loan Extension (and the use of proceeds thereof), the aggregate amount of Cash and Cash Equivalents of the Borrower and its Subsidiaries (exclusive of any such Cash and Cash Equivalents deposited in accounts the primary function of which is to serve as a payroll account (so long as such payroll account is a zero-balance account or is funded no earlier than the Business Day immediately prior to the date of any payroll disbursements and in an amount not exceeding the same)) would not exceed $15,000,000.

h. The last paragraph of Section 4.03 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

Each Initial Delayed Draw Term Loan Extension shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in clauses (b), (c), (d) and (e) of this Section; provided, however, that notwithstanding anything to the contrary in this Section 4.03 or in any other provision of any Loan Document, if the proceeds of any Initial Delayed Draw Term Loan Extension are intended to be applied to finance an acquisition or other Investment, the conditions in paragraph (b) above shall, at the Borrower's option, be satisfied as of the date of the related acquisition agreement or the date of the relevant Borrowing.

i. Section 5.01(b) of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

Annual Financial Statements. As soon as available, and in any event within 120 days (or, (x) in the case of the Fiscal Year ending on December 31, 2017, 150 days and (y) in the case of the Fiscal Year ending on December 31, 2019, on or before May 27, 2020) 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 operations, stockholders' equity and cash flows of the Borrower for such Fiscal Year and, commencing after the completion of the second full Fiscal Year ended after the Closing Date, setting forth, in reasonable detail, in comparative form the corresponding figures for the previous Fiscal Year 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 "going concern" explanatory paragraph or like statement (except as resulting from (A) the impending maturity of any Indebtedness prior to the end of the fourth Fiscal Quarter following the relevant audit date, and/or (B) any breach or anticipated breach of any financial covenant, and/or (C) in the case of such report for such consolidated financial statements for the Fiscal Year ending on December 31, 2019, the actual or potential impacts of COVID-19 (including the actual or potential impacts of the government-mandated closures of restaurants and other measures taken to combat the spread of COVID-19) on the business, operations and/or financial condition of the Borrower and its Subsidiaries) or 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 income and cash flows for the periods indicated in conformity with GAAP;

j. Section 5.01 of the Credit Agreement is hereby amended to (i) delete "and" from the end of Section 5.01(k), (ii) replace the period at the end of Section 5.01(l) with "; and" and (iii) add the following new paragraphs (m), (n) and (o) to read as follows:

(m) Cash Flow Forecasts. Until December 31, 2020, (i) on May 1, 2020 and (ii) thereafter, no later than the 15th day of each calendar month and the last day of each calendar month, in each case, a 13-week forecast of cash flows of the Borrower and its Subsidiaries prepared by management of the Borrower, in form and substance substantially similar to the forecast contained in the lender presentation titled "COVID-19 Lender Update" and delivered to the Administrative Agent and the Lenders on April 16, 2020;

(n) Monthly Financial Statements. Until December 31, 2020, as soon as available, and in any event within 30 days after the end of each calendar month of each Fiscal Year (commencing with the calendar month ended April 30, 2020) (or such later date as the Administrative Agent may reasonably agree from time to time), the consolidated balance sheet of the Borrower as at the end of such calendar month and the related consolidated statements of operations and cash flows of the Borrower for such calendar month and for the period from the beginning of the then current Fiscal Year to the end of such calendar month; and

(o) Monthly Lender Calls. Promptly following the delivery of financial statements pursuant to Section 5.01(n), Borrower will host a conference call with the Lenders at a time to be mutually agreed between the Borrower and the Administrative Agent, to review the financial information presented therein.

k. Article 5 of the Credit Agreement is hereby amended to include a new Section 5.16 to read as follows:

Section 5.16. PPP Debt.

(a) The Loan Parties shall use the proceeds of the PPP Debt only for the purposes permitted under Section 1102 of the CARES Act.

(b) The Borrower shall use commercially reasonable efforts to seek to obtain forgiveness of the PPP Debt within the time periods set forth, and to the extent provided, in Section 1106 of the CARES Act.

(c) The Borrower shall deliver to Administrative Agent prompt written notice of (i) its application to the PPP Debt Lender and/or the Small Business Administration for forgiveness of the PPP Debt and (ii) any determination by the PPP Debt Lender and/or the Small Business Administration regarding the amount of the PPP Debt that is eligible to be forgiven.

(d) The Borrower shall provide the Administrative Agent, promptly upon the Administrative Agent's reasonable request therefor (which requests shall not be made more than twice in any calendar month), with copies of records of the Borrower and its Subsidiaries' utilization of the proceeds of the PPP Debt.

l. Section 6.01(u) of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

(u) Indebtedness of the Borrower and/or any Subsidiary in an aggregate outstanding principal amount not to exceed the greater of $10,000,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period; provided that, for so long as the PPP Debt remains outstanding (the principal amount of such PPP Debt outstanding at any time, the "Outstanding PPP Amount"), the Borrower and/or any Subsidiary shall not be permitted to borrow or incur Indebtedness in reliance on this clause (u) in an aggregate outstanding principal amount equal to the then outstanding Outstanding PPP Amount;

m. Section 6.01 of the Credit Agreement is hereby amended to (i) delete "and" from the end of Section 6.01(ff), (ii) replace the period at the end of Section 6.01(gg) with "; and" and (iii) add the following new paragraph (hh) to read as follows:

(hh) Indebtedness of the Borrower incurred pursuant to the "paycheck protection program" of the CARES Act in an aggregate principal amount not to exceed $10,000,000 (the "PPP Debt"), which Indebtedness constitutes a "covered loan" under, and as defined in, Section 1102 of the CARES Act.

n. Section 6.02 of the Credit Agreement is hereby amended to (i) delete "and" from the end of Section 6.01(gg), (ii) replace the period at the end of Section 6.01(hh) with "; and" and (iii) add the following new paragraph (ii) to read as follows:

(ii) Liens securing the PPP Debt, solely to the extent consisting of a contractual possessory security interest in, and/or a contractual right of setoff against, all of the Borrower's right, title and interest in and to, all of the Borrower's deposits, moneys, securities and other properties in the possession of or on deposit with, or in transit to, the PPP Debt Lender (or any affiliate thereof).

o. Section 6.04(b) of the Credit Agreement is hereby amended to (i) delete "and" from the end of Section 6.04(vii), (ii) replace the period at the end of Section 6.04(viii) with "; and" and (iii) add a new clause (ix) to read as follows:

(ix) Restricted Debt Payments of PPP Debt made within 5 Business Days of the Third Amendment Effective Date.

p. Section 7.01(e) of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

(e) Other Defaults Under Loan Documents. Default by any Loan Party in the performance of or compliance with (i) Section 5.01(a) or (b), which default has not been remedied or waived within 10 Business Days, (ii) Section 5.01(m), Section 5.01(n) and Section 5.01(o), which default has not been remedied or waived within 5 Business Days, or (iii) any other 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 the earlier of (A) receipt by the Borrower of written notice thereof from the Administrative Agent or (B) the date on which a Responsible Officer of any Loan Parties becomes aware of such Default; or

q. Schedule 1.01(a) of the Credit Agreement is hereby replaced with Schedule 1.01(a) attached hereto.

r. Exhibit B to the Credit Agreement is hereby amended to add the following new paragraph (D) at the end thereof:

(D) At the time of and immediately after giving effect to the [Borrowing][Initial Delayed Draw Term Loan Extension] (and the use of proceeds thereof), the aggregate amount of Cash and Cash Equivalents of the Borrower and its Subsidiaries (exclusive of any such Cash and Cash Equivalents deposited in accounts the primary function of which is to serve as a payroll account (so long as such payroll account is a zero-balance account or is funded no earlier than the Business Day immediately prior to the date of any payroll disbursements and in an amount not exceeding the same)) does not exceed $15,000,000.

3. Initial Delayed Draw Term Loan Commitments.

Each of the Borrower, the Administrative Agent and the Lenders party hereto hereby acknowledge and agree that the aggregate amount of Second Amendment Initial Delayed Draw Term Loan Commitments immediately prior to the Third Amendment Effective Date is $400,000. Each Initial Delayed Draw Term Lender severally and not jointly agrees that on the Third Amendment Effective Date its respective Initial Delayed Draw Term Commitments is as set forth on Schedule I attached hereto and the aggregate amount of all such Initial Delayed Draw Term Commitments equals $1,500,000, which Initial Delayed Draw Term Commitments constitute Second Amendment Initial Delayed Draw Term Loan Commitments for all purposes under the Credit Agreement and the other Loan Documents. Each Lender with an Initial Delayed Draw Term Loan Commitment severally and not jointly agrees, on the terms and subject to the conditions set forth in the Credit Agreement, to lend to the Borrower from time to time on or after the Third Amendment Effective Date, up to the amount set forth opposite such Lender's name on the Commitment Schedule under the heading "Second Amendment Initial Delayed Draw Term Loan Commitment". Each such Loan shall be made in addition to the existing Initial Loans and not in repayment thereof, and the proceeds thereof shall be used in accordance with Section 5.11 of the Credit Agreement. Without limiting the generality of the foregoing, any Initial Delayed Draw Term Loans made on or after the Third Amendment Effective Date shall (i) constitute Obligations under the Loan Documents and have all of the benefits thereof, (ii) have all of the rights, remedies, privileges and protections applicable to the Initial Loans under the Credit Agreement and the other Loan Documents and (iii) be secured on a *pari passu* basis by the Liens granted to the Administrative Agent under any Collateral Document. For the avoidance of doubt, no Delayed Draw Term Commitments shall constitute Incremental Commitments and nothing in this Section 3 shall constitute a utilization of the Incremental Cap under the Credit Agreement.

4. Waiver.

a. Effective as of the Third Amendment Effective Date and in reliance on the representations and warranties of the Borrower set forth in Section 7 below, each of the Lenders party hereto constituting Required Lenders and the Administrative Agent hereby irrevocably and forever waive (i) the Specified Events of Default and (ii) their respective right to take any action under the Credit Agreement and/or the other Loan Documents that they may have otherwise had as a result of the occurrence of the Specified Events of Default.

b. The foregoing waiver in clause (a) above is a limited, one-time waiver and, except as expressly set forth herein, shall not be deemed to (i) constitute a waiver of any other Event of Default or any other breach of the Credit Agreement or any of the other Loan Documents, whether now existing or hereafter arising, (ii) constitute a waiver of any right or remedy of the Administrative Agent or any of the Lenders under the Loan Documents that does not arise as a result of the Specified Events of Default (all such rights and remedies being expressly reserved by the Administrative Agent and the Lenders), (iii) establish a custom or course of dealing or conduct between the Administrative Agent and the Lenders, on the one hand, and the Loan Parties on the other hand or (iv) constitute a consent to any other act, omission or any breach of the Credit Agreement or any of the other Loan Documents. Each Lender expressly reserves the right to exercise all rights and remedies under the Credit Agreement and all Loan Documents and under law upon the occurrence of any other Default or Event of Default.

5. Conditions Precedent to Third Amendment Effective Date. This Amendment shall be effective on the date (the "Third Amendment Effective Date") on which each of the following conditions have been satisfied (or waived) in accordance with the terms herein:

a. the Administrative Agent shall have received counterparts of this Amendment executed by (i) the Borrower and each other Loan Party, (ii) the Lenders constituting Required Lenders and (iii) the Lenders constituting each Initial Delayed Draw Term Lender;

b. the representations and warranties contained in Section 6 hereof shall be true and correct to the extent required by the terms hereof; and

c. at the time of and immediately after giving effect to this Amendment, except for the Specified Events of Default waived pursuant to Section 4 hereof, no Event of Default shall have occurred and be continuing.

6. Representations and Warranties. Each Loan Party hereby represents and warrants to the Administrative Agent and each Initial Delayed Draw Term Lender that, as of the Third Amendment Effective Date, except with respect to the Specified Events of Default, the representations and warranties of the Loan Parties set forth in the Credit Agreement and the other Loan Documents are true and correct in all material respects on and as of the Third Amendment Effective Date with the same effect as though such representations and warranties had been made on and as of the Third Amendment Effective Date; provided that to the extent that any representation and warranty specifically refers to a given date or period, it shall be true and correct (after giving effect to any qualification therein) in all material respects as of such date or for such period; provided, further, that any representation or 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.

7. No Modification. Except as expressly set forth herein, nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Credit Agreement or any of the other Loan Documents. Except as amended, consented to or otherwise modified hereby, the Credit Agreement and other Loan Documents remain unmodified and in full force and effect. All references in the Loan Documents to the Credit Agreement shall be deemed to be references to the Credit Agreement as amended or otherwise modified hereby.

8. Reaffirmation. Each of the Reaffirming Parties, as party to the Credit Agreement and/or certain of the Collateral Documents and the other Loan Documents, in each case as amended, supplemented or otherwise modified from time to time, hereby (i) consents to the amendment of the Credit Agreement effected hereby, (ii) acknowledges and agrees that all of its obligations under the Credit Agreement, the

Collateral Documents and the other Loan Documents to which it is a party are reaffirmed and remain in full force and effect on a continuous basis and are hereby ratified and confirmed in all respects, in each case as amended by this Amendment, (iii) reaffirms (A) each Lien granted by it to the Administrative Agent for the benefit of the Secured Parties and (B) any guaranties made by it pursuant to the Loan Guaranty, (iv) acknowledges and agrees that the grants of security interests by it contained in the Security Agreement and any other Collateral Document shall remain in full force and effect and continue to secure the obligations of the Loan Parties under the Credit Agreement after giving effect to the Amendment and (v) agrees that the Obligations include, among other things and without limitation, the payment of any principal or interest on the Delayed Draw Term Loans under the Credit Agreement as amended by this Amendment. Nothing contained in this Amendment shall be construed as substitution or novation of the obligations outstanding under the Credit Agreement or the other Loan Documents, which shall remain in full force and effect, except to any extent modified hereby.

9. 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. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. 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.

10. Successors and Assigns. The provisions of this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns in accordance with Section 9.05 of the Credit Agreement.

11. Governing Law; Jurisdiction; Consent to Service of Process; Waiver of Jury Trial.

a. THIS AMENDMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AMENDMENT, 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 U.S. 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 THIS AMENDMENT 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 AMENDMENT 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 OF THE CREDIT AGREEMENT. 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 THAT SERVICE OF PROCESS WAS INVALID AND INEFFECTIVE. NOTHING IN THIS AMENDMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AMENDMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW.

e. 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.

12. Severability. To the extent permitted by applicable Requirements of Law, any provision of this Amendment 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.

[*Signature Pages Follow*]

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

FWR HOLDING CORPORATION,
as the Borrower

By: /s/ Kenneth L. Pendery, Jr.
Name: Kenneth L. Pendery, Jr.
Title: Executive Chairman

AI FRESH PARENT, INC.,
as Holdings

By: /s/ Christopher Tomasso
Name: Christopher Tomasso
Title: President

FIRST WATCH RESTAURANTS, INC.
FIRST WATCH FRANCHISE DEVELOPMENT CO.
E&I HOLDINGS, INC.
GOOD EGG RESTAURANTS, LLC

By: /s/ Kenneth L. Pendery, Jr.
Name: Kenneth L. Pendery, Jr.
Title: Executive Chairman

FIRST WATCH E&I RESTAURANT GROUP LLC

By: FIRST WATCH RESTAURANTS, INC.,
its sole member

By: /s/ Kenneth L. Pendery, Jr.
Name: Kenneth L. Pendery, Jr.
Title: Executive Chairman

As Agent

GOLUB CAPITAL MARKETS LLC

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

As Lender

GCIC CLO II LLC
By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 16(M)-R, Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 17(M)-R, Ltd.
By: GC Advisors LLC, as agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 18(M)-R, Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 21(M)-R, Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 24(M)-R, Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 25(M)-R, Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 28(M)-R, L.P.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 36(M), Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 38(M), Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 44(M), Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 47(M), L.P.
By: GC Advisors LLC, as agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital BDC CLO 2014 LLC
By: GC Advisors LLC, its Collateral Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital PEARLS Direct Lending Program, L.P.
By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

PEARLS X, L.P.
By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital BDC Holdings LLC
By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GC Finance Operations LLC
By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GCIC Holdings LLC
By: Golub Capital BDC, Inc., its sole member
By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GCP Finance 5 Ltd.
By: GC Advisors LLC, as agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

ARES CENTRE STREET PARTNERSHIP, L.P.,
as a Lender

By: Ares Centre Street GP, Inc., as general partner

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

NATIONWIDE LIFE INSURANCE COMPANY,
as a Lender
By: Ares Capital Management LLC, its investment manager

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

NATIONWIDE MUTUAL INSURANCE COMPANY,
as a Lender
By: Ares Capital Management LLC, its investment manager

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

ARES CSIDF HOLDINGS LLC, as a Lender

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

ARES JASPER FUND HOLDINGS LLC, as a Lender

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

ARES JASPER FUND L.P., as a Lender

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

SALI FUND MANAGEMENT, as a Lender

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

PREMIA LV 1 LTD, as a Lender

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

CADEX CREDIT FINANCING LLC, as a Lender

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

ARES CAPITAL CORPORATION,
as a Lender

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

CION ARES DIVERSIFIED CREDIT FUND,
as a Lender

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

ARES CREDIT STRATEGIES INSURANCE DEDICATED FUND SERIES INTERESTS OF SALI MULTI-SERIES FUND, L.P.,
as a Lender

By: Ares Management LLC, its investment subadvisor
By: Ares Capital Management LLC, as subadvisor

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

ARES CREDIT STRATEGIES INSURANCE DEDICATED FUND SERIES INTERESTS OF THE SALI MULTI-SERIES FUND, L.P., as a Lender

By: Ares Management LLC, its investment subadvisor

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

AC AMERICAN FIXED INCOME IV, L.P.,
as a Lender

By: Ares Capital Management LLC, its investment manager

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

AO MIDDLE MARKET CREDIT L.P., as a Lender by its general partner, OCM Middle Market Credit G.P. Inc.

By: /s/ K. Patel
Name: K. Patel
Title: Director

By: /s/ Jeremy Ehrlich
Name: Jeremy Ehrlich
Title: Director

FEDERAL INSURANCE COMPANY, as a Lender

By: Ares Capital Management LLC, its investment manager

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

SC ACM PRIVATE DEBT FUND L.P.,
as a Lender
By: Ares Capital Management LLC, its investment manager

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

GREAT AMERICAN INSURANCE COMPANY,
as a Lender

By: Ares Capital Management LLC, its investment manager

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

GREAT AMERICAN LIFE INSURANCE COMPANY,
as a Lender

By: Ares Capital Management LLC, its investment manager

By: /s/ David Schwartz
Name: David Schwartz
Title: Partner

MC UNI SUBSIDIARY LLC, as a Lender

By: /s/ Peter Gaunt
Name: Peter Gaunt
Title: Principal

TCG BDC SPV LLC, as a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Principal

CARLYLE DIRECT LENDING CLO 2015-1R LLC, as a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Principal

TCG BDC, INC., as a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Principal

CDL 2018-1, LP, as a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Principal

CPC V, L.P., as a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Principal

CPC V SPV LLC, as a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Principal

CDL 2018-2, LP, as a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Principal

GOLDMAN SACHS PRIVATE MIDDLE MARKET CREDIT II LLC, as a Lender

By: /s/ David Yu
Name: David Yu
Title: Authorized Signatory

GOLDMAN SACHS PRIVATE MIDDLE MARKET LENDING CORP., as a Lender

By: /s/ David Yu
Name: David Yu
Title: Authorized Signatory

GOLDMAN SACHS BDC, INC., as a Lender

By: /s/ David Yu
Name: David Yu
Title: Authorized Signatory

GOLDMAN SACHS PRIVATE MIDDLE MARKET CREDIT SPV LLC, as a Lender

By: /s/ David Yu
Name: David Yu
Title: Authorized Signatory

SENIOR CREDIT (UWF) LLC, as a Lender

By: /s/ David Yu
Name: David Yu
Title: Authorized Signatory

SENIOR CREDIT FUND (UCR) SPV LLC, as a Lender

By: /s/ David Yu
Name: David Yu
Title: Authorized Signatory

Exhibit 10.1(e)

FOURTH AMENDMENT TO CREDIT AGREEMENT

THIS FOURTH AMENDMENT TO CREDIT AGREEMENT (this "Amendment") is entered into as of August 14, 2020 by and among FWR Holding Corporation, a Delaware corporation (the "Borrower"), AI Fresh Parent, Inc., a Delaware corporation ("Holdings"), the other Loan Parties party hereto, the other Lenders (as defined in the Credit Agreement referred to below) party hereto that constitute the Required Lenders (as defined in the Credit Agreement) and the Required Revolving Lenders (as defined in the Credit Agreement) and Golub Capital Markets LLC ("Golub Capital"), in its capacities as administrative agent and collateral agent for the Secured Parties (in such capacities and together with its successors and assigns, the "Administrative Agent").

W I T N E S S E T H:

WHEREAS, the Borrower (successor by merger to AI Fresh Merger Sub, Inc., a Delaware corporation), Holdings, the Administrative Agent and the Lenders from time to time party thereto are parties to that certain Credit Agreement, dated as of August 21, 2017 (as amended by that certain First Amendment to Credit Agreement, dated as of February 28, 2019, as further amended by that certain Second Amendment to Credit Agreement, dated as of December 20, 2019, as further amended by that certain Third Amendment and Waiver to Credit Agreement, dated as of April 27, 2020, and as may be further amended, restated, amended and restated, supplemented and/or otherwise modified from time to time prior to the date hereof, the "Credit Agreement");

WHEREAS, pursuant to Section 9.02(b) of the Credit Agreement, the Borrower has requested, and the Lenders party hereto that constitute the Required Lenders have agreed, to amend the Credit Agreement in certain respects as described herein, in each case, upon the terms and subject to the conditions set forth herein; and

WHEREAS, each Loan Party party hereto (collectively, the "Reaffirming Parties" and each, a "Reaffirming Party") expects to realize substantial direct and indirect benefits as a result of this Amendment becoming effective and the consummation of the transactions contemplated hereby and agrees to reaffirm its obligations pursuant to the Credit Agreement, the Collateral Documents and the other Loan Documents to which it is a party.

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

1. Defined Terms. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Credit Agreement.

2. Amendments to Credit Agreement. On the Fourth Amendment Effective Date (as defined below):

a. The Credit Agreement shall be amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Exhibit I hereto, which amendments shall be effective as of August 12, 2020.

b. Paragraph (D) of Exhibit B to the Credit Agreement is hereby amended and restated in its entirety to read as follows:

(D) At the time of and immediately after giving effect to the [Borrowing][Initial Delayed Draw Term Loan Extension] (and the use of proceeds thereof), the aggregate amount of Cash and Cash Equivalents of the Borrower and its Subsidiaries (exclusive of any such Cash and Cash Equivalents deposited in accounts the primary function of which is to serve as a payroll account (so long as such payroll account is a zero - balance account or is funded no earlier than the Business Day immediately prior to the date of any payroll disbursements and in an amount not exceeding the same)) does not exceed $[15,000,000][1][20,000,000][2].

3. Conditions Precedent to Fourth Amendment Effective Date. This Amendment shall be effective on the date (the "Fourth Amendment Effective Date") on which each of the following conditions have been satisfied (or waived) in accordance with the terms herein:

a. the Administrative Agent shall have received counterparts of this Amendment executed by (i) the Borrower and each other Loan Party, (ii) the Lenders constituting the Required Lenders and (iii) the Lenders constituting the Required Revolving Lenders;

b. the representations and warranties contained in Section 4 hereof shall be true and correct to the extent required by the terms hereof;

c. at the time of and immediately after giving effect to this Amendment, no Event of Default shall have occurred and be continuing;

d. Holdings shall have contributed to the Borrower, and the Borrower shall have received, Cash proceeds of Qualified Capital Stock issued by Holdings or any other Parent Company to the Sponsor in an aggregate amount of not less than $40,000,000; and

e. the Borrower shall have repaid all outstanding Revolving Loans in full.

4. Representations and Warranties. Each Loan Party hereby represents and warrants to the Administrative Agent and each Lender party hereto that, as of the Fourth Amendment Effective Date, the representations and warranties of the Loan Parties set forth in the Credit Agreement and the other Loan Documents are true and correct in all material respects on and as of the Fourth Amendment Effective Date with the same effect as though such representations and warranties had been made on and as of the Fourth Amendment Effective Date; provided that to the extent that any representation and warranty specifically refers to a given date or period, it shall be true and correct (after giving effect to any qualification therein) in all material respects as of such date or for such period; provided, further, that any representation or 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.

5. No Modification. Except as expressly set forth herein, nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Credit Agreement or any of the other Loan Documents. Except as amended, consented to or otherwise modified hereby, the Credit Agreement and other Loan Documents remain unmodified and in full force and effect. All references in the Loan Documents to the Credit Agreement shall be deemed to be references to the Credit Agreement as amended or otherwise modified hereby.

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1 Insert for any Initial Delayed Draw Term Loan Extension.

2 Insert for any Revolving Borrowing.

6. Reaffirmation. Each of the Reaffirming Parties, as party to the Credit Agreement and/or certain of the Collateral Documents and the other Loan Documents, in each case as amended, supplemented or otherwise modified from time to time, hereby (i) consents to the amendment of the Credit Agreement effected hereby, (ii) acknowledges and agrees that all of its obligations under the Credit Agreement, the Collateral Documents and the other Loan Documents to which it is a party are reaffirmed and remain in full force and effect on a continuous basis and are hereby ratified and confirmed in all respects, in each case as amended by this Amendment, (iii) reaffirms (A) each Lien granted by it to the Administrative Agent for the benefit of the Secured Parties and (B) any guaranties made by it pursuant to the Loan Guaranty and (iv) acknowledges and agrees that the grants of security interests by it contained in the Security Agreement and any other Collateral Document shall remain in full force and effect and continue to secure the obligations of the Loan Parties under the Credit Agreement after giving effect to the Amendment. Nothing contained in this Amendment shall be construed as substitution or novation of the obligations outstanding under the Credit Agreement or the other Loan Documents, which shall remain in full force and effect, except to any extent modified hereby.

7. 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. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. 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.

8. Successors and Assigns. The provisions of this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns in accordance with Section 9.05 of the Credit Agreement.

9. Governing Law; Jurisdiction; Consent to Service of Process; Waiver of Jury Trial.

a. THIS AMENDMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AMENDMENT, 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 U.S. 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 THIS AMENDMENT 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 AMENDMENT 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 OF THE CREDIT AGREEMENT. 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 THAT SERVICE OF PROCESS WAS INVALID AND INEFFECTIVE. NOTHING IN THIS AMENDMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AMENDMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW.

e. 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.

10. Severability. To the extent permitted by applicable Requirements of Law, any provision of this Amendment 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.

[*Signature Pages Follow*]

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

FWR HOLDING CORPORATION,
as the Borrower

By: /s/ Christopher Tomasso
Name: Christopher Tomasso
Title: President

AI FRESH PARENT, INC., as Holdings

By: /s/ Christopher Tomasso
Name: Christopher Tomasso
Title: President

FIRST WATCH RESTAURANTS, INC.
FIRST WATCH FRANCHISE DEVELOPMENT CO.
E&I HOLDINGS, INC.
GOOD EGG RESTAURANTS, LLC

By: /s/ Christopher Tomasso
Name: Christopher Tomasso
Title: President

FIRST WATCH E&I RESTAURANT GROUP LLC

By: FIRST WATCH RESTAURANTS, INC., its sole member

By: /s/ Christopher Tomasso
Name: Christopher Tomasso
Title: President

Administrative Agent:

GOLUB CAPITAL MARKETS LLC, as Administrative Agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

As Existing Lender

GCIC CLO II LLC
By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 16(M)-R, Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 17(M)-R, Ltd.
By: GC Advisors LLC, as agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 18(M)-R, Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 21(M)-R, Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 24(M)-R, Ltd.
By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 25(M)-R, Ltd.

By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 28(M)-R, L.P.

By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 31(M)-R, Ltd.

By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 36(M), Ltd.

By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 38(M), Ltd.

By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 42(M), Ltd.

By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 44(M), Ltd.

By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 45(M), Ltd.

By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital Partners CLO 47(M), L.P.

By: GC Advisors LLC, as agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital BDC CLO 2014 LLC

By: GC Advisors LLC, its Collateral Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital PEARLS Direct Lending Program, L.P.

By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

PEARLS X, L.P.

By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

Golub Capital BDC Holdings LLC

By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GC Finance Operations LLC

By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GCIC Holdings LLC

By: Golub Capital BDC, Inc., its sole member

By: GC Advisors LLC, its Manager

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GCPF Loan Funding D, L.P.

By: GC Advisors LLC, its agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

GCP Finance 5 Ltd.

By: GC Advisors LLC, as agent

By: /s/ Marc C. Robinson
Name: Marc C. Robinson
Title: Managing Director

ARES CENTRE STREET PARTNERSHIP, L.P., as a Lender

By: Ares Centre Street GP, Inc., as general partner

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

NATIONWIDE LIFE INSURANCE COMPANY,as a Lender

By: Ares Capital Management LLC, its investment manager

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

NATIONWIDE MUTUAL INSURANCE COMPANY,

as a Lender

By: Ares Capital Management LLC, its investment manager

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

ARES CSIDF HOLDINGS LLC, as a Lender

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

ARES JASPER FUND HOLDINGS LLC, as a Lender

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

ARES JASPER FUND L.P., as a Lender

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

SALI FUND MANAGEMENT, as a Lender

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

PREMIA LV 1 LTD, as a Lender

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

CADEX CREDIT FINANCING LLC, as a Lender

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

ARES CAPITAL CORPORATION, as a Lender

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

CION ARES DIVERSIFIED CREDIT FUND, as a Lender

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

ARES CREDIT STRATEGIES INSURANCE DEDICATED FUND SERIES INTERESTS OF SALI MULTI-SERIES FUND, L.P., as a Lender

By: Ares Management LLC, its investment subadvisor

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

ARES CREDIT STRATEGIES INSURANCE DEDICATED FUND SERIES INTERESTS OF THE SALI MULTI-SERIES FUND, L.P., as a Lender

By: Ares Management LLC, its investment subadvisor

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

AC AMERICAN FIXED INCOME IV, L.P., as a Lender

By: Ares Management LLC, its investment manager

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

FEDERAL INSURANCE OMPANY,

as a Lender

By: Ares Capital Management LLC, its investment manager

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

SC ACM PRIVATE DEBT FUND L.P., as a Lender

By: Ares Capital Management LLC, its investment advisor

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

GREAT AMERICAN INSURANCE COMPANY, as a Lender

By: Ares Capital Management LLC, its investment manager

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

GREAT AMERICAN LIFE INSURANCE COMPANY, as a Lender

By: Ares Capital Management LLC, its investment manager

By: /s/ Josh Bloomstein
Name: Josh Bloomstein
Title: Authorized Signatory

AO MIDDLE MARKET CREDIT L.P.,
as a Lender

By: its general partner, OCM Middle Market Credit G.P. Inc.

By: /s/ K. Patel
Name: K. Patel
Title: Director

By: /s/ Jeremy Ehrlich
Name: Jeremy Ehrlich
Title: Director

GOLDMAN SACHS PRIVATE MIDDLE MARKET CREDIT II LLC, as a Lender

By: /s/ David Yu
Name: David Yu
Title: Authorized Signatory

GOLDMAN SACHS PRIVATE MIDDLE MARKET LENDING CORP., as a Lender

By: /s/ David Yu
Name: David Yu
Title: Authorized Signatory

GOLDMAN SACHS BDC, INC., as a Lender

By: /s/ David Yu
Name: David Yu
Title: Authorized Signatory

GOLDMAN SACHS PRIVATE MIDDLE MARKET CREDIT SPV LLC, as a Lender

By: /s/ David Yu
Name: David Yu
Title: Authorized Signatory

SENIOR CREDIT (UWF) LLC, as a Lender

By: /s/ David Yu
Name: David Yu
Title: Authorized Signatory

SENIOR CREDIT FUND (UCR) SPV LLC, as a Lender

By: /s/ David Yu
Name: David Yu
Title: Authorized Signatory

TCG BDC SPV LLC, as a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Principal

CARLYLE DIRECT LENDING CLO 2015-1R LLC, as a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Principal

TCG BDC, INC., as a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Principal

CDL 2018-1, LP, as a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Principal

CPC V, L.P., as a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Principal

CPC V SPV LLC, as a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Principal

CDL 2018-2, LP, as a Lender

By: /s/ Miles Toben
Name: Miles Toben
Title: Principal

MC UNI SUBSIDIARY LLC, as a Lender

By: /s/ Peter Gaunt
Name: Peter Gaunt
Title: Principal

Exhibit I

[See attached]

~~CONFORMED COPY~~[1]

CREDIT AGREEMENT
Dated as of August 21, 2017

as amended by
First Amendment to Credit Agreement, dated as of February 28, 2019,
Second Amendment to Credit Agreement, dated as of December 20, 2019,
Third Amendment and Waiver to Credit Agreement, dated as of April 27, 2020 and
Fourth Amendment to Credit Agreement, dated as of August 14, 2020

among

AI FRESH MERGER SUB, INC.
(to be merged with and into FWR HOLDING CORPORATION),
as the Borrower,

AI FRESH PARENT, INC.,
as Holdings,

THE FINANCIAL INSTITUTIONS PARTY HERETO,
as Lenders,

GOLUB CAPITAL MARKETS LLC,
as Administrative Agent,

GOLUB CAPITAL MARKETS LLC, TCG BDC, INC.,
ARES CAPITAL MANAGEMENT LLC,
GOLDMAN SACHS PRIVATE MIDDLE MARKET CREDIT LLC,
GOLDMAN SACHS MIDDLE MARKET LENDING CORP. and
SENIOR CREDIT FUND SPV I, LLC,
as Joint Lead Arrangers and Joint Bookrunners

1 ~~Conformed to reflect (i) that certain First Amendment to Credit Agreement, dated as of February 28, 2019 (the "First Amendment"), (ii) that certain Second Amendment to Credit Agreement, dated as of December 20, 2019 (the "Second Amendment") and (iii) that certain Third Amendment and Waiver to Credit Agreement, dated as of April 27, 2020 (the "Third Amendment". This document is provided for convenience only. In the event of any conflict between this document and the Credit Agreement as amended by the First Amendment, Second Amendment and Third Amendment, the Credit Agreement as amended by the First Amendment, Second Amendment and Third Amendment shall control.~~

TABLE OF CONTENTS

CREDIT AGREEMENT

CREDIT AGREEMENT, dated as of August 21, 2017 (this "Agreement"), by and among AI Fresh Merger Sub, Inc., a Delaware corporation ("Merger Sub" and, prior to the Closing Date Merger (as defined below), the Borrower), which upon the effectiveness of the Closing Date Merger will be merged with and into FWR Holding Corporation, a Delaware corporation (the "Target" and, after the Closing Date Merger, the Borrower), AI Fresh Parent, Inc., a Delaware corporation ("Holdings"), the Lenders from time to time party hereto, Golub Capital Markets LLC ("Golub Capital"), in its capacities as administrative agent and collateral agent for the Secured Parties (in such capacities and together with its successors and assigns, the "Administrative Agent").

RECITALS

A. Pursuant to the terms of the Merger Agreement, Merger Sub will be merged with and into the Target on the Closing Date, with the Target as the surviving entity of such merger (the "Closing Date Merger").

B. Substantially concurrently with the consummation of the Closing Date Merger, all indebtedness for borrowed money that is outstanding under that certain Amended and Restated Credit Agreement, dated as of May 27, 2015 (as amended, modified and supplemented from time to time and in effect on the date hereof, the "Existing Credit Agreement"), by and among, *inter alios*, First Watch Restaurants, Inc., a Delaware corporation, as the borrower, the Target, as a guarantor, the lenders from time to time party thereto and Golub Capital, as administrative agent, will be repaid in full (or in the case of letters of credit issued under the Existing Credit Agreement, at the election of the Borrower, replaced, backstopped or incorporated or "grandfathered" into the Revolving Facility) and all commitments, liens and security interests under the Existing Credit Agreement shall be terminated and released (the "Refinancing").

C. To fund the Refinancing and a portion of the consideration for the Closing Date Merger, the Borrower has requested that the Lenders extend credit under this Agreement in the form of (i) Initial Term Loans in an original aggregate principal amount equal to $155,000,000, (ii) an Initial Delayed Draw Term Facility in an original aggregate principal amount equal to $50,000,000 of commitments and (iii) an Initial Revolving Facility with an available amount of $20,000,000.

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 1.01. 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.

"Acceptable Intercreditor Agreement" means:

(a) with respect to any Indebtedness that is secured on a pari passu basis with the Initial Loans, a First Lien Intercreditor Agreement; and/or

(b) with respect to any other Indebtedness (i) any other customary intercreditor or subordination agreement or arrangement, as applicable, the terms of which are consistent with market terms (as determined by the Borrower and the Administrative Agent in good faith) in each case, 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) any other intercreditor agreement the terms of which are reasonably acceptable to the Borrower and the Administrative Agent.

"ACH" means automated clearing house transfers.

"Additional Agreement" has the meaning assigned to such term in Article 8.

"Additional Commitment" means any commitment hereunder added pursuant to Sections 2.22 or 2.23.

"Additional Loans" means any Additional Revolving Loans and any Additional Term Loans.

"Additional Revolving Credit Commitments" means any revolving credit commitment added pursuant to Sections 2.22 or 2.23.

"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, 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 or 2.23.

"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 or 2.23.

"Additional Term Loans" means any term loan added pursuant to Section 2.22 or 2.23.

"Adjusted Eurocurrency Rate" means, with respect to any Eurocurrency Rate Borrowing for any Interest Period, an interest rate per annum equal to the greater of (i) the Eurocurrency Rate for such Interest Period, multiplied by the Statutory Reserve Rate and (ii) 1.00%. The Adjusted Eurocurrency Rate for any Eurocurrency Rate Borrowing that includes the Statutory Reserve Rate as a component of the calculation will be adjusted automatically with respect to all such Eurocurrency Rate Borrowings then outstanding as of the effective date of any change in the Statutory Reserve Rate.

"Adjustment Date" has the meaning assigned to such term in the definition of "Applicable Rate".

"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.

"Advent" means Advent International Corporation.

"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 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 Subsidiaries, threatened in writing, against or affecting Holdings, the Borrower or any of its Subsidiaries or any property of Holdings, the Borrower or any of its Subsidiaries.

"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" solely because it is an unrelated portfolio company of the Sponsor and none of the Administrative Agent, the Arrangers, any Lender (other than any Affiliated Lender or Debt Fund Affiliate) or any of their respective Affiliates shall be considered an Affiliate of Holdings or any subsidiary thereof.

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

"Affiliated Lender Assignment and Assumption" means 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 or 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.

"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 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 LIBO Rate for any day shall be based on the rate determined on such day at 11:00 a.m. (London time)) plus 1.00%, (c) the Prime Rate and (d) 1.00%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the LIBO Rate, 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 LIBO Rate, as the case may be.

"Applicable Initial Delayed Draw Term Loan Percentage" means, with respect to any Initial Delayed Draw Term Lender of any Class, a percentage equal to a fraction the numerator of which is the aggregate outstanding principal amount of the unused Initial Delayed Draw Term Loan Commitments of such Initial Delayed Draw Term Lender under the applicable Class and the denominator of which is the aggregate outstanding principal amount of the Initial Delayed Draw Term Loan Commitments of all Initial Delayed Draw Term Lenders under the applicable Class.

"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 and Initial Delayed Draw 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 Additional Term Loan Commitments and Initial Delayed Draw Term Loan 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 PIK Rate" means~~:~~, with respect to any Initial Revolving Loan, any Initial Term Loan and any Initial Delayed Draw Term Loan, the rate per annum set forth below under the caption "PIK Rate", in each case, opposite the applicable level of Total Leverage Ratio; provided that until the first Adjustment Date following the first full Fiscal Quarter ended after the Fourth Amendment Effective Date for which the Borrower has delivered financial statements pursuant to Section 5.01(a) or (b), the "Applicable PIK Rate" for any Initial Revolving Loan, any Initial Term Loan and any Initial Delayed Draw Term Loan shall be calculated using the rates per annum set forth in the pricing grid below in Level I:

Level	Total Leverage Ratio	PIK Rate
I	Greater than 7.00:1.00	1.50%
II	Less than or equal to 7.00:1.00 and greater than 6.00:1.00	0.75%
III	Less than or equal to 6.00:1.00	0.25%

"Applicable Rate" means:

(a) prior to the First Amendment Effective Date, (i) with respect to any Initial Revolving Loan, the rate per annum applicable to the relevant Class of Revolving Loans set forth below under the caption "ABR Spread" or "Adjusted Eurocurrency Rate Spread," as the case may be, opposite the applicable level of Total Leverage Ratio, and (ii) with respect to any Initial Term Loan and any Initial Delayed Draw Term Loan, the rate per annum applicable to the relevant Class of Initial Loans set forth below under the caption "ABR Spread" or "Adjusted Eurocurrency Rate Spread," as the case may be, opposite the applicable level of Total Leverage Ratio; provided that until the first Adjustment Date following the first full Fiscal Quarter ended after the Closing Date for which the Borrower has delivered financial statements pursuant to Section 5.01(a) or (b), the "Applicable Rate" for any Revolving Loan, any Initial Term Loan and any Initial Delayed Draw Term Loan shall be 6.00% per annum for Adjusted Eurocurrency Rate Loans and 5.00% per annum for ABR Loans:

		Initial Revolving Loans		Initial Term Loans		Initial Delayed Draw Term Loans	
Level	Total Leverage Ratio	ABR Spread	Adjusted Eurocurrency Rate Spread	ABR Spread	Adjusted Eurocurrency Rate Spread	ABR Spread	Adjusted Eurocurrency Rate Spread
I	Greater than 4.25:1.00	5.00%	6.00%	5.00%	6.00%	5.00%	6.00%
II	Less than or equal to 4.25:1.00	4.75%	5.75%	4.75%	5.75%	4.75%	5.75%

~~and~~

(b) on and after the First Amendment Effective Date but prior to the Fourth Amendment Effective Date, (i) with respect to any Initial Revolving Loan, the rate per annum applicable to the relevant Class of Revolving Loans set forth below under the caption "ABR Spread" or "Adjusted Eurocurrency Rate Spread," as the case may be, opposite the applicable level of Total Leverage Ratio, and (ii) with respect to any Initial Term Loan and any Initial Delayed Draw Term Loan, the rate per annum applicable to the relevant Class of Initial Loans set forth below under the caption "ABR Spread" or "Adjusted Eurocurrency Rate Spread," as the case may be, opposite the applicable level of Total Leverage Ratio; provided that until the first Adjustment Date following the first full Fiscal Quarter ended after the First Amendment Effective Date for which the Borrower has delivered financial statements pursuant to Section 5.01(a) or (b), the "Applicable Rate" for any Revolving Loan, any Initial Term Loan and any Initial Delayed Draw Term Loan shall be 5.50% per annum for Adjusted Eurocurrency Rate Loans and 4.50% per annum for ABR Loans:

Level	Total Leverage Ratio	Initial Revolving Loans		Initial Term Loans		Initial Delayed Draw Term Loans	
		ABR Spread	Adjusted Eurocurrency Rate Spread	ABR Spread	Adjusted Eurocurrency Rate Spread	ABR Spread	Adjusted Eurocurrency Rate Spread
I	Greater than 4.25:1.00	4.50%	5.50%	4.50%	5.50%	4.50%	5.50%
II	Less than or equal to 4.25:1.00	4.25%	5.25%	4.25%	5.25%	4.25%	5.25%

and

(c) on and after the Fourth Amendment Effective Date, with respect to any Initial Revolving Loan, any Initial Term Loan and any Initial Delayed Draw Term Loan, (i) 5.50% per annum for Adjusted Eurocurrency Rate Loans or 4.50% per annum for ABR Loans plus (ii) the Applicable PIK Rate.

The Applicable Rate shall be adjusted from time to time upon delivery to the Administrative Agent of the financial statements for each Fiscal Quarter required to be delivered pursuant to Section 5.01(a) or (b), as applicable, accompanied by a written calculation of the Total Leverage Ratio pursuant to a properly completed Compliance Certificate delivered to Administrative Agent with such financial statements pursuant to Section 5.01(c) hereof. If such calculation indicates that any of the rates per annum applicable to any Class of Revolving Loans, the Initial Term Loans or any Delayed Draw Term Loans shall increase or decrease, then on the first day of the month following the month in which such financial statements and Compliance Certificate are delivered to Administrative Agent (the "Adjustment Date"), the "Applicable Rate" shall be adjusted in accordance therewith; provided, however, that if Borrower shall fail to deliver any such financial statements or Compliance Certificate for any such Fiscal Quarter by the date required pursuant to the applicable clause of Section 5.01(a) or (b), as applicable, then, effective as of the first day of the month following the end of the month during which such financial statements were to have been delivered, and continuing through the last day of the month in which such financial statements and such written calculation are finally delivered (if ever), the "Applicable Rate" for any Initial Revolving Loan or Initial Loan shall be calculated using the rate per annum set forth in the applicable pricing grid above in Level I until such financial statements are delivered in compliance with Section 5.01(a) or (b), as applicable; provided further, however, that during the existence of any Default or Event of Default, at the election of Administrative Agent or Required Lenders, the "Applicable Rate" shall not decrease with respect to any Loan as otherwise set forth above.

"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) 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 Golub Capital, TCG BDC, Inc., Ares Capital Management LLC, Goldman Sachs Private Middle Market Credit LLC, Goldman Sachs Middle Market Lending Corp. and Senior Credit Fund SPV I, LLC.

"Assignment Agreement" means, collectively, each Assignment and Assumption and each Affiliated Lender Assignment and Assumption.

"Assignment and Assumption" means 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 or 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) $7,500,000; provided that, during the Restricted Period, the amount set forth in this clause (i) shall be deemed to be $750,000; plus

(ii) the Retained Excess Cash Flow Amount (provided that the Retained Excess Cash Flow Amount shall not be available for (x) any Restricted Payment made pursuant to Section 6.04(a)(iii)(A) or Restricted Debt Payment made pursuant to Section 6.04(b)(vi) unless (A) no Event of Default exists at the time of making such Restricted Payment or Restricted Debt Payment, as applicable, and (B) after giving effect thereto, the Total Leverage Ratio, calculated on a Pro Forma Basis, would not exceed 4.50:1.00) or (y) any Investment made pursuant to Section 6.06(r) unless (A) no Event of Default under Sections 7.01(a), (f) or (g) exists at the time of the making of such Investment and (B) after giving effect thereto, the Total Leverage Ratio, calculated on a Pro Forma Basis, would not exceed 5.25:1.00; plus

(iii) 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 (other than any amounts (x) constituting a Cure Amount, a Liquidity Cure Amount, the Fourth Amendment Equity Contribution Amount or a Contribution Indebtedness Amount, (y) received from the Borrower or any Subsidiary or (z) consisting of the proceeds of any loan or advance made pursuant to Section 6.06(h)(ii)) received as Cash equity by the Borrower or any of its Subsidiaries; plus

(iv) the aggregate principal amount of any Indebtedness (including any Disqualified Capital Stock) of the Borrower or any Subsidiary issued after the Closing Date (other than Indebtedness or such Disqualified Capital Stock issued to the Borrower or any Subsidiary), which has been converted into or exchanged for Capital Stock of the Borrower, any Subsidiary or any Parent Company that does not constitute Disqualified Capital Stock, together with the fair market value of any Cash Equivalents received by the Borrower or such 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 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 Subsidiary) of any Investment made pursuant to Section 6.06(r) (but, in the aggregate for each of this clause (v) and clause (vi) below, not in excess of the original amount of the Available Amount used to fund such Investment); 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 net proceeds received by the Borrower or any 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) (but, in the aggregate for each of this clause (vi) and clause (v) above, not in excess of the original amount of the Available Amount used to fund such Investment); plus

(vii) [Reserved];

(viii) the amount of any Declined Proceeds; 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), in each case, after the Closing Date and prior to such time or contemporaneously therewith.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Banking Services" means each and any of the following bank services provided to any Loan Party (a) under any arrangement that is in effect on the Closing Date between any Loan Party and a counterparty that is (or is an Affiliate of) the Administrative Agent, any Lender or any Arranger as of the Closing Date or (b) under any arrangement that is entered into after the Closing Date by any Loan Party with any counterparty that is (or is an Affiliate of) the Administrative Agent, any Lender or any Arranger at the time such arrangement is entered into: 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 and any arrangements or services 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), in connection with Banking Services, in each case, that have been designated to the Administrative Agent in writing by the Borrower as being Banking Services Obligations for the purposes of the Loan Documents, 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 Acceptable Intercreditor Agreement as if it were a Lender.

"Bankruptcy Code" means Title 11 of the United States Code (11 U.S.C. § 101 *et seq*.), as it has been, or may be, amended, from time to time.

"Bi-Weekly Cash Flow Reporting End Date" has the meaning assigned to such term in Section 5.01(m).

"Bona Fide Debt Fund" means any debt fund, investment vehicle, regulated bank entity or unregulated lending entity that is 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 which is managed, sponsored or advised by any Person controlling, controlled by or under common control with (a) any Company Competitor or (b) any Affiliate of any Company Competitor, but, in each case, with respect to which no personnel involved with any investment in such Person or the management, control or operation of such Person (i) directly or indirectly makes, has the right to make or participates with others in making any investment decisions, or otherwise causing the direction of the investment policies, with respect to 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 Holdings, the Borrower or its subsidiaries or any entity that forms a part of any of their respective businesses; it being understood and agreed that the term "Bona Fide Debt Fund" shall not include any Person that is a Disqualified Lending Institution.

"Borrower" means (a) prior to the Closing Date Merger, Merger Sub, (b) following the Closing Date Merger, the Target and (c) 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 Adjusted Eurocurrency Rate 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.

"Business Day" means:

(a) 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; and

(b) if such day relates to any interest rate setting as to any Adjusted Eurocurrency Rate Loan or Letter of Credit denominated in Dollars, any funding, disbursement, settlement and/or payments in respect of such Adjusted Eurocurrency Rate Loan or Letter of Credit or any other dealing to be carried out pursuant to this Agreement in respect of any such Adjusted Eurocurrency Rate Loan or Letter of Credit, means any such day described in clause (a) above that is also a London Banking Day.

"Capital Expenditures" means, with respect to the Borrower and its 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, are, or are required to be included as, capital expenditures on the consolidated statement of cash flows for the Borrower and its 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 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 Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

"CARES Act" means the Coronavirus Aid, Relief and Economic Security Act (H.R. 748; P.L. 116- 136), as amended (including any successor thereto), and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, regardless of the date enacted, adopted, issued or implemented, including the Interim Final Rules set forth in 85 Fed. Reg. 20811 (Apr. 15, 2020), 85 Fed. Reg. 20817 (Apr. 15, 2020) and 85 Fed. Reg. 21747 (Apr. 20, 2020) (including any successors thereto).

"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. government or (ii) issued by any agency or instrumentality of the U.S. the obligations of which are backed by the full faith and credit of the U.S., 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 U.S. 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, if at any time neither S&P nor Moody's shall be rating 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 or at least P-2 from Moody's (or, if at any time neither S&P nor Moody's shall be rating 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 U.S., any state thereof or the District of Columbia or any political subdivision thereof or any foreign bank or its branches or agencies 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 money market mutual 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 or at least P-2 from Moody's; 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 Flow Reporting End Date" has the meaning assigned to such term in Section 5.01(m).

"CFC" means a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"CFC Holdco" means (a) any direct or indirect Domestic Subsidiary that has no material assets other than the Capital Stock or Capital Stock and Indebtedness of one or more CFCs and (b) any direct or indirect Domestic Subsidiary that has no material assets other than the Capital Stock or Capital Stock and Indebtedness of one or more Persons of the type described in the immediately preceding clause (a); provided that, for purposes of this definition of "CFC Holdco", references to "Indebtedness" shall include all intercompany indebtedness of such CFCs or Persons, notwithstanding the definition of "Indebtedness".

"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 U.S. 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 the earliest to occur of:

(a) at any time prior to a Qualifying IPO, the Permitted Holders ceasing to beneficially own, either directly or indirectly (within the meaning of Rule 13d-3 and Rule 13d-5 under the Exchange Act), Capital Stock representing more than 50% of the total voting power of all of the outstanding Capital Stock of Holdings;

(b) at any time on or after a Qualifying IPO, the acquisition by any Person or group (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) any Permitted Holder and (iii) any underwriter in connection with any Qualifying IPO), of Capital Stock representing more than the greater of (x) 35% of the total voting power of all of the outstanding Capital Stock of Holdings and (y) the percentage of the total voting power of all of the outstanding Capital Stock of Holdings owned, directly or indirectly, beneficially by the Permitted Holders; and

(c) the Borrower ceasing to be a direct or indirect Wholly-Owned Subsidiary of Holdings (it being understood and agreed for the avoidance of doubt that the Closing Date Merger shall not trigger a "Change of Control" for any purpose under this Agreement or any other Loan Document).

"Charge" means any fee, loss, charge, expense, cost, accrual or reserve 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 Loans, Additional Term Loans of any series established as a separate "Class" pursuant to Section 2.22 or 2.23, Initial Revolving Loans or Additional Revolving Loans of any series established as a separate "Class" pursuant to Section 2.22 or 2.23, (b) any Commitment, refers to whether such Commitment is an Initial Term Loan Commitment, Initial Delayed Draw Term Loan Commitment, an Additional Term Loan Commitment of any series established as a separate "Class" pursuant to Section 2.22 or 2.23, an Initial Revolving Credit Commitment or an Additional Revolving Credit Commitment of any series established as a separate "Class" pursuant to Section 2.22 or 2.23, (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. Notwithstanding anything to the contrary in this Agreement, the Initial Term Loans and the Initial Delayed Draw Term Loans are a single Class for all purposes under this Agreement (except as provided in Section 2.10).

"Closing Date" means August 21, 2017, the date on which the conditions specified in Section 4.01 were satisfied (or waived in accordance with Section 9.02).

"Closing Date Material Adverse Effect" has the meaning assigned to "Material Adverse Effect" in the Merger Agreement, as in effect on July 25, 2017 and giving effect to any amendment, waiver or consent permitted under Section 4.01(n).

"Closing Date Merger" has the meaning assigned to such term in the recitals to this Agreement.

"Code" means the Internal Revenue Code of 1986.

"Collateral" has the meaning set forth in the Security Agreement.

"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 (y) the time periods (and extensions thereof) set forth in Section 5.12, the requirement that:

(a) the Administrative Agent shall have received in the case of any Subsidiary that is required to become a Loan Party after the Closing Date (including by ceasing to be an Excluded Subsidiary):

(i) (A) a Joinder Agreement, (B) if the respective Subsidiary required to comply with the requirements set forth in this definition pursuant to Section 5.12 owns registrations of or applications for U.S. Patents, Trademarks and/or Copyrights that constitute Collateral, an Intellectual Property Security Agreement in substantially the form attached as Exhibit C hereto, (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, (E) if applicable, an executed joinder to any Acceptable Intercreditor Agreement in substantially the form attached as an exhibit thereto, (F) a joinder to the Intercompany Note and (G) control agreements or other control arrangements with respect to Deposit Accounts of such Loan Party that are concentration accounts; and

(ii) each item of Collateral that such Subsidiary is required to deliver under Section 4.02 of the Security Agreement (which, for the avoidance of doubt, shall be delivered within the applicable time period set forth in Section 5.12(a)); and

(b) the Administrative Agent shall have received with respect to any Material Real Estate Asset acquired after the Closing Date, a Mortgage and any necessary UCC fixture filing in respect thereof, in each case together with, to the extent customary and appropriate (as reasonably determined by the Administrative Agent and the Borrower)):

(i) evidence that (A) counterparts of such Mortgage have been duly executed, acknowledged and delivered and such Mortgage and any corresponding UCC or equivalent fixture filing are in form suitable for filing or recording in all filing or recording offices that the Administrative Agent may deem reasonably necessary in order to create a valid and subsisting Lien on such Material Real Estate Asset in favor of the Administrative Agent for the benefit of the Secured Parties, (B) such Mortgage and any corresponding UCC or equivalent fixture filings have been submitted to the relevant recorder's office for recording and (C) all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Administrative Agent;

(ii) one or more fully paid policies of title insurance (the "Mortgage Policies") in an amount reasonably acceptable to the Administrative Agent (not to exceed the fair market value of the Material Real Estate Asset covered thereby (as reasonably determined by the Borrower)) issued by a nationally recognized title insurance company in the applicable jurisdiction that is reasonably acceptable to the Administrative Agent, insuring the relevant Mortgage as having created a valid subsisting Lien on the real property described therein with the ranking or the priority which it is expressed to have in such Mortgage, subject only to Permitted Liens, together with such endorsements, coinsurance and reinsurance as the Administrative Agent may reasonably request to the extent the same are available in the applicable jurisdiction;

(iii) customary legal opinions of local counsel for the relevant Loan Party in the jurisdiction in which such Material Real Estate Asset is located, and if applicable, in the jurisdiction of formation of the relevant Loan Party, in each case as the Administrative Agent may reasonably request; and

(iv) surveys and appraisals (if required under the Financial Institutions Reform Recovery and Enforcement Act of 1989, as amended) and "Life-of-Loan" flood certifications and any required borrower notices under Regulation H (together with evidence of federal flood insurance for any such Flood Hazard Property located in a flood hazard area); provided that the Administrative Agent may in its reasonable discretion accept (A) any existing appraisal so long as such existing appraisal or survey satisfies any applicable local law requirements and (B) any new survey or any existing survey, together with a no change affidavit, in either case sufficient for the relevant title insurance company to remove the standard survey exception and issue the survey-related endorsements.

Notwithstanding any provision of any Loan Document to the contrary, if any mortgage tax or similar tax or charge is owed on the entire amount of the Obligations evidenced hereby, then, to the extent permitted by, and in accordance with, applicable Requirements of Law, the amount of such mortgage tax or similar tax or charge shall be calculated based on the lesser of (x) the amount of the Obligations allocated to the applicable Material Real Estate Asset and (y) the fair market value of the applicable Material Real Estate Asset at the time the Mortgage is entered into and determined in a manner reasonably acceptable to Administrative Agent and the Borrower, which in the case of clause (y) will result in a limitation of the Obligations secured by the Mortgage to such amount.

"Collateral Documents" means, collectively, (i) the Security Agreement, (ii) each Mortgage, (iii) each Intellectual Property Security Agreement, (iv) any supplement to any of the foregoing delivered to the Administrative Agent pursuant to the definition of "Collateral and Guarantee Requirement", (v) the Perfection Certificate (including any Perfection Certificate delivered to the Administrative Agent pursuant to the definition of "Collateral and Guarantee Requirement") and (vi) 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 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 Delayed Draw Term Loan Commitment, Initial Revolving Credit Commitment and Additional Commitment, as applicable, in effect as of such time.

"Commitment Schedule" means the Schedule attached hereto as Schedule 1.01(a).

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

"Company Competitor" means any competitor of the Borrower and/or any of its subsidiaries and/or the Target and/or any of its subsidiaries.

"Compliance Certificate" means a Compliance Certificate substantially in the form of Exhibit D.

"Confidential Information" has the meaning assigned to such term in Section 9.13.

"Consolidated Adjusted EBITDA" means, with respect to any Person on a consolidated basis for any period, the sum of (without duplication):

(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 in an amount representing the earnings for the applicable period that such proceeds are intended to replace (whether or not then received so long as such Person in good faith expects to receive such proceeds within the next four Fiscal Quarters (it being understood that to the extent such proceeds are not actually received within such Fiscal Quarters, such proceeds shall be deducted in calculating Consolidated Adjusted EBITDA for such Fiscal Quarters)); plus

(c) those amounts which, in the determination of Consolidated Net Income for such period, have been deducted for:

(i) Consolidated Interest Expense;

(ii) [Reserved];

(iii) any provision for federal, foreign, state or local income, franchise, excise and similar Taxes paid or accrued (which shall be net of any tax credits);

(iv) (A) all depreciation, 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;

(v) any earn-out and contingent consideration obligations (including to the extent accounted for as bonuses, compensation or otherwise) incurred in connection with any acquisition and/or other Investment permitted under Section 6.06 which is paid or accrued during such period and in connection with any similar acquisition or other Investment completed prior to the Closing Date and, in each case, adjustments thereof;

(vi) any non-cash Charge, including (x) contractual rent increases that have not then actually been enacted and (y) 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, the cash payment in respect thereof in such future period shall be subtracted from Consolidated Adjusted EBITDA to such extent);

(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);

(viii) (A) Transaction Costs, (B) Charges incurred (1) in connection with any transaction (in each case, regardless of whether consummated), and whether or not permitted under this Agreement, including any incurrence, issuance and/or incurrence of Indebtedness and/or any issuance and/or offering of Capital Stock (including, in each case, by any Parent Company), any Investment, any acquisition, 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) in connection with any Qualifying IPO, (C) the amount of any Charge that is actually reimbursed or reimbursable by third parties pursuant to indemnification or reimbursement provisions or similar agreements or insurance; provided that in respect of any Charge that is added back in reliance on clause (C) above, the relevant Person in good faith expects to receive reimbursement for such fee, cost, expense or reserve within the next four Fiscal Quarters (it being understood that to the extent any reimbursement amount is not actually received within such Fiscal Quarters, such reimbursement amount shall be deducted in calculating Consolidated Adjusted EBITDA for such Fiscal Quarters) and/or (D) after a Qualifying IPO or any issuance of debt securities, Public Company Costs;

(ix) any Charge or deduction that is associated with any Subsidiary and attributable to any non-controlling interest and/or minority interest of any third party;

(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 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 within the next four Fiscal Quarters (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within the next four Fiscal Quarters) or (ii) without duplication of amounts 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 (it being understood that if the amount received in cash under any such agreement in any period exceeds the amount of Charge paid during such period such excess amounts received may be carried forward and applied against any Charge in any future period);

(xi) the amount of management, monitoring, consulting, transaction and advisory fees and related indemnities and expenses (including reimbursements) pursuant to any sponsor management agreement and payments made to any Investor (and/or its Affiliates or management companies) for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities and payments to outside directors of the Borrower or a Parent Company actually paid by or on behalf of, or accrued by, such Person or any of its subsidiaries; provided that such payment is permitted under this Agreement;

(xii) any Charge attributable to the undertaking and/or implementation of cost savings initiatives, cost rationalization programs, operating expense reductions and/or synergies and/or similar initiatives and/or programs (including in connection with any integration, restructuring or transition, any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, any facility, restaurant, store or Unit

Location opening and/or pre-opening (including unused warehouse space costs), any inventory optimization program and/or any curtailment), any business optimization Charge, any restructuring 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 a new market, any Charge relating to any strategic initiative, any signing Charge, 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 software development Charge, any Charge associated with new systems design, any implementation Charge, any project startup Charge, any Charge in connection with new operations, any Charge in connection with unused warehouse space, any Charge relating to a new contract, any consulting Charge and/or any corporate development Charge; provided that (A) the amount added back in such period pursuant to this clause (c)(xii), together with all amounts added back in such period to Consolidated Adjusted EBITDA pursuant to clauses (c)(xiv), (c)(xviii) and (e)(iii) of this definition shall not exceed 25% of Consolidated Adjusted EBITDA (calculated after giving effect to all permitted other pro forma adjustments other than the addbacks with respect to such clauses) and (B) such cap shall not apply to any other provision of the definition of "Consolidated Adjusted EBITDA" other than the clauses specifically enumerated above; plus

(xiii) any Charge incurred or accrued in connection with (i) the Closing Date Merger and/or any other acquisition or similar Investment (including, legal, accounting and other professional fees and expenses incurred in connection therewith) prior to, on or after the Closing Date, (ii) real property leases (including Charges in connection with the relocation or closure of any leased facilities, stores, restaurants or Unit Locations during such period) and (iii) one-time consulting costs; plus

(xiv) the amount of any fees, expenses and other Charges of consultants incurred after the Closing Date in connection with strategic and operational analyses; provided that (A) the amount added back in such period pursuant to this clause (c)(xiv), together with all amounts added back in such period to Consolidated Adjusted EBITDA pursuant to clauses (c)(xii), (c)(xviii) and (e)(iii) of this definition shall not exceed 25% of Consolidated Adjusted EBITDA (calculated after giving effect to all permitted other pro forma adjustments other than the addbacks with respect to such clauses) and (B) such cap shall not apply to any other provision of the definition of "Consolidated Adjusted EBITDA" other than the clauses specifically enumerated above; plus

(xv) any Charge in connection with the severance, hiring and relocation of corporate level employees (excluding store-level employees), including executive search expenses; plus

(xvi) 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; plus

(xvii) other add backs, adjustments and exclusions reflected in the Quality of Earnings Reports; plus

(xviii) any Charge from any extraordinary, nonrecurring and/or unusual item, less any gains from such extraordinary, nonrecurring and/or unusual item, (in each case as determined in good faith by the Borrower); provided that (A) the amount added back in such period pursuant to this clause (c)(xviii), together with all amounts added back in such period to Consolidated Adjusted EBITDA pursuant to clauses (c)(xii), (c)(xiv) and (e)(iii) of this definition shall not exceed 25% of Consolidated Adjusted EBITDA (calculated after giving effect to all permitted other pro forma adjustments other than the addbacks with respect to such clauses) and (B) such cap shall not apply to any other provision of the definition of "Consolidated Adjusted EBITDA" other than the clauses specifically enumerated above; 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 so long as the non-cash income or gain was deducted in the calculation of Consolidated Adjusted EBITDA (including any component definition) pursuant to clause (h) below for such period or any previous period and not added back; plus

(e) the full pro forma "run rate" cost savings, operating expense reductions, operational improvements and synergies (net of actual amounts realized) that are reasonably identifiable and factually supportable (in the good faith determination of such Person, as certified by a Responsible Officer of such Person in the Compliance Certificate required by Section 5.01(c) to be delivered in connection with the financial statements for such period) related to (i) the Transactions, (ii) any Investment, Disposition, operating improvement, restructuring, cost savings initiative, any similar initiative (including the renegotiation of contracts and other arrangements) and/or specified transaction, in each case, on or prior to the Closing Date and (iii) any Investment, Disposition, operating improvement, restructuring, cost savings initiative, any similar initiative (including the renegotiation of contracts and other arrangements) and/or specified transaction, in each case, after the Closing Date for which the relevant action resulting in such expected cost savings, operating expense reductions, operational improvements and/or synergies with respect to this clause (e)(iii) must either be taken or expected to be taken after the date of determination within 18 months and shall not, when taken together with all amounts added back in such period to Consolidated Adjusted EBITDA pursuant to clauses (c)(xii), (c)(xiv) and (c)(xviii) of this definition shall not exceed 25% of Consolidated Adjusted EBITDA (calculated after giving effect to all permitted other pro forma adjustments other than the addbacks with respect to such clauses); provided, such cap shall not apply to any amounts relating to (i) any other provision of the definition of "Consolidated Adjusted EBITDA" other than the clauses specifically enumerated above or (ii) amounts that would be permitted to be included in pro forma financial statements prepared in accordance with Regulation S- X under the Securities Act; plus

(f) if greater than zero, with respect to any new facility, store or restaurant (which, for the avoidance of doubt, shall mean a facility, store or restaurant open for less than 12 months), the pro forma "run rate" Consolidated Adjusted EBITDA attributable to such new facility, store or restaurant, which will be assumed to be (i)(A) the Consolidated Adjusted EBITDA attributable to comparable facilities, stores or restaurants that have been opened and operating for a period of at least 12 consecutive months and determined in good faith by a Responsible Officer of the Borrower by annualizing the Consolidated Adjusted EBITDA attributable to relevant comparable facilities in their respective fourth full Fiscal Quarter of operation, minus (ii) the actual Consolidated Adjusted EBITDA generated by the relevant facility, store or restaurant; provided that (i) the amount added back in such period pursuant to this clause (f) of this definition shall not exceed 7.5% of Consolidated Adjusted EBITDA (calculated after giving effect to all permitted other pro forma adjustments other than the addbacks with respect to this clause (f)) and (ii) such cap with respect to this clause (f) shall not apply to any other provision of the definition of "Consolidated Adjusted EBITDA"; plus

(g) Consolidated Restaurant Pre-Opening Costs; provided that the amount added back pursuant to this clause (g) shall not exceed $300,000 during such period for each single new or converted facility, store, restaurant or other Unit Location; minus

(h) 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, 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

(i) the amount of any cash payment made during such period in respect of any noncash accrual, reserve or other non-cash Charge that is accounted for in a prior period which was added to Consolidated Net Income to determine Consolidated Adjusted EBITDA for such prior period and which does not otherwise reduce Consolidated Net Income for the current period; minus

(j) any non-cash gain, including (x) contractual rent decreases that have not then actually been enacted and (y) the excess of actual cash rent paid during such period over GAAP rent expense due to the use of straight line rent for GAAP purposes (provided that, to the extent that any such non-cash gain represents an accrual or reserve for any potential cash item in any future period, (A) such Person may elect not to deduct such non-cash gain in the current period and (B) to the extent such Person elects to deduct such non-cash gain, the cash payment in respect thereof in such future period shall be added back to Consolidated Adjusted EBITDA to such extent).

Notwithstanding anything to the contrary herein, it is agreed that for the purpose of calculating the Total Leverage Ratio for any period that includes the Fiscal Quarters ended on or about September 25, 2016, December 25, 2016, March 26, 2017 or June 25, 2017, (i) Consolidated Adjusted EBITDA for the Fiscal Quarter ended on or about September 25, 2016 shall be deemed to be $4,817,993, (ii) Consolidated Adjusted EBITDA for the Fiscal Quarter ended on or about December 25, 2016 shall be deemed to be $5,521,804, (iii) Consolidated Adjusted EBITDA for the Fiscal Quarter ended on or about March 26, 2017 shall be deemed to be $8,457,014 and (iv) Consolidated Adjusted EBITDA for the Fiscal Quarter ended on or about June 25, 2017 shall be deemed to be $8,202,678 in each case, as adjusted on a Pro Forma Basis, as applicable.

"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 Subsidiaries for such period, whether paid or accrued and whether or not capitalized, (including, without limitation (and without duplication), amortization of any debt issuance cost and/or 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 and 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 Loan Party, 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:

(a) (i) the income of any Person (other than a Subsidiary of the Subject Person) in which any other Person (other than the Subject Person or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or 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 Subsidiaries by such Person during such period or (ii) the loss of any Person (other than a Subsidiary of the Subject Person) in which any other Person (other than the Subject Person or any of its Subsidiaries) has a joint interest, other than to the extent that the Subject Person or any of its Subsidiaries has contributed cash or Cash Equivalents to such Person in respect of such loss during such period,

(b) any gain or Charge (i) as a result of, or in connection with Dispositions or abandonments of assets outside the ordinary course of business (including asset retirement costs) and (ii) from Disposed or abandoned, divested and/or discontinued assets, properties or operations and/or discontinued operations (other than, at the option of the Borrower, relating to assets or properties held for sale or pending the divestiture or termination thereof),

(c) any Charge associated with and/or payment of any actual or prospective legal settlement, fine, judgment or order,

(d) any net gain or Charge with respect to (i) any disposed, abandoned, divested and/or discontinued asset, property or operation (other than, at the option of the Borrower, any asset, property or operation pending the disposal, abandonment, divestiture and/or termination thereof), (ii) any disposal, abandonment, divestiture and/or discontinuation of any asset, property or operation (other than, at the option of such Person, 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,

(e) any net income or write-off or amortization made of any deferred financing cost and/or premium paid or other Charge, in each case attributable to the early extinguishment of Indebtedness (and the termination of any associated Hedge Agreement),

(f) (i) any Charge incurred pursuant to any management equity plan, profits interest or stock option plan or any other management or employee benefit plan or agreement, any pension 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 of Holdings (or any other Parent Company), the Borrower and/or any Subsidiary; provided that with respect to any such Charges that are cash Charges, in each case, to the extent that any such cash Charge 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,

(g) any Charge 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 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,

(h) (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, lease, rights fee arrangement, software, goodwill, intangible asset, in-process research and development, deferred revenue, advanced billing and debt line items thereof), resulting from the application of purchase accounting in relation to the Transactions or

any consummated acquisition or recapitalization accounting or the amortization or write-off of any amounts thereof, net of Taxes, and (ii) the cumulative effect of changes (effected through cumulative effect adjustment or retroactive application) in, or 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 the Borrower 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),

(i) [Reserved],

(j) solely for the purpose of calculating Excess Cash Flow, the income or loss of any Person accrued prior to the date on which such Person becomes a Subsidiary of such Person or is merged into or consolidated with such Person or any Subsidiary of such Person or the date that such other Person's assets are acquired by such Person or any Subsidiary of such Person,

(k) (i) any unrealized gain or loss in respect 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, (ii) any realized or unrealized foreign currency exchange gain or loss (including any currency re-measurement of Indebtedness, any net gain or loss resulting from Hedge Agreements for currency exchange risk resulting from any intercompany Indebtedness, any foreign currency translation or transaction or any other currency-related risk), and

(l) 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.

"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.

"Consolidated Total Debt" means, as to any Person at any date of determination, the aggregate principal amount of all third party debt for borrowed money (including LC Disbursements that have not been reimbursed within three Business Days and the outstanding principal balance of all Indebtedness of such Person represented by notes, bonds and similar instruments and excluding undrawn letters of credit), Earn-Out Obligations, Capital Leases and purchase money Indebtedness; provided that "Consolidated Total Debt" shall be calculated (i) net of the amount of Unrestricted Cash Amount and (ii) excluding 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; provided, further, that notwithstanding anything to the contrary contained in the foregoing, (x) until the Specified Determination Date and solely for purposes of determining actual compliance with Section 6.15(a), "Consolidated Total Debt" shall not include the aggregate outstanding principal amount of PPP Debt and (y) from and after the Specified Determination Date, "Consolidated Total Debt" shall include only that portion of PPP Debt that (I) prior to the date the Borrower receives a determination by the PPP Debt Lender and/or the Small Business Administration regarding the amount of the PPP Debt that is eligible to be forgiven, would reasonably be expected to be determined to be ineligible for forgiveness, in the good faith determination of the Borrower, or (II) after the date the Borrower receives a determination by the PPP Debt Lender and/or the Small Business Administration regarding the amount of the PPP Debt that is eligible to be forgiven, has been determined to be ineligible for forgiveness and (z) at all times, the proceeds of the PPP Debt shall not be permitted to be netted from the calculation of "Consolidated Total Debt".

"Consolidated Working Capital" means, as at any date of determination, the excess of Current Assets over Current Liabilities.

"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.

"Contribution Indebtedness Amount" has the meaning assigned to such term in Section 6.01(r).

"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.

"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, without limitation, 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.

"Covenant Suspension Period" means the period commencing on April 1, 2020 and ending on the first Business Day following the date the Compliance Certificate for the Fiscal Quarter ending March 28, 2021 is delivered or required to have been delivered to the Administrative Agent pursuant to Section 5.01(c).

"Credit Extension" means each of (i) the making of a Revolving Loan (other than any Letter of Credit Reimbursement Loan) or (ii) 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.

"Cure Amount" has the meaning assigned to such term in Section 6.15(b).

"Cure Right" has the meaning assigned to such term in Section 6.15(b).

"Current Assets" means, at any date, all assets of the Borrower and its Subsidiaries which under GAAP would be classified as current assets (excluding any (i) cash or Cash Equivalents (including cash and Cash Equivalents held on deposit for third parties by the Borrower and/or any Subsidiary), (ii) permitted loans to third parties, (iii) deferred bank fees and derivative financial instruments related to Indebtedness, (iv) the current portion of current and deferred Taxes and (v) management fees receivables).

"Current Liabilities" means, at any date, all liabilities of the Borrower and its Subsidiaries which under GAAP would be classified as current liabilities, other than (i) current maturities of long term debt, (ii) outstanding revolving loans and letter of credit exposure, (iii) accruals of Consolidated Interest Expense (excluding Consolidated Interest Expense that is due and unpaid), (iv) obligations in respect of derivative financial instruments related to Indebtedness, (v) the current portion of current and deferred Taxes, (vi) liabilities in respect of unpaid earnouts or unpaid acquisition, disposition or refinancing related expenses and deferred purchase price holdbacks, (vii) accruals relating to restructuring reserves, (viii) liabilities in respect of funds of third parties on deposit with the Borrower and/or any Subsidiary, (ix) management fees payables, (x) the current portion of any Capital Lease Obligation, (xi) the current portion of any other long term liability for Indebtedness, (xii) accrued settlement costs, (xiii) non-cash compensation costs and expenses and (xiv) any other liabilities that are not Indebtedness and will not be settled in Cash or Cash Equivalents during the next succeeding twelve month period after such date.

"Debt Fund Affiliate" means any affiliate of the Sponsor (other than a natural person) that is a bona fide debt fund or 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 the affiliate of the Sponsor that is the ultimate indirect holder of the equity interests of Holdings) 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.

"Debtor Relief Laws" means the Bankruptcy Code of the U.S., 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 U.S. 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 required to be funded by it hereunder within two Business Days of the date such obligation arose or such Loan or Letter of Credit 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 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 prospective Loans and participations in then outstanding Letters of Credit; 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 Lender or its parent by any Governmental Authority; provided that such action does not result in or provide such Lender with immunity from the jurisdiction of courts within the U.S. 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.

"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 Subsidiary in connection with any Disposition pursuant to Section 6.07(h) and/or Section 6.08 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).

"Disposition" or "Dispose" means the sale, lease, sublease, or other disposition of any property of any Person.

"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 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 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 91 days following the Latest Maturity Date at the time such Capital Stock is issued, (c) contains any mandatory repurchase obligation or any other repurchase obligation at the option of the holder thereof (other than for Qualified Capital Stock), in whole or in part, which may come into effect prior to 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 91 days following the Latest Maturity Date shall constitute Disqualified Capital Stock) or (d) provides for the scheduled payments of dividends in Cash on or prior to 91 days following the Latest Maturity Date at the time such Capital Stock is issued; provided that any 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, Qualifying IPO or any Disposition occurring prior to 91 days following the Latest Maturity Date at the time such Capital Stock is issued shall not constitute Disqualified Capital Stock if such Capital Stock provides that the issuer thereof will not redeem any such Capital Stock pursuant to such provisions prior to the Termination Date.

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 Holdings, the Borrower or any Subsidiary, 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:

(a) (i) any Person identified in writing to the Arrangers on or prior to July 28, 2017, (ii) any Affiliate of any Person described in clause (i) above that is reasonably identifiable as an Affiliate of such Person on the basis of such Affiliate's name and (iii) any other Affiliate of any Person described in clause (i) or (ii) above that is identified in a written notice to Golub Capital (if prior to the Closing Date) or the Administrative Agent (if after the Closing Date) (each such person described in clauses (i) through (iii) above, a "Disqualified Lending Institution");

(b) (i) any Person that is or becomes a Company Competitor and/or any Affiliate of any Company Competitor (other than any Affiliate that is a Bona Fide Debt Fund) and is identified as such in writing to Golub Capital (if prior to the Closing Date) or the Administrative Agent (if after the Closing Date) from time to time, (ii) any Affiliate of any Person described in clause (i) above (other than any Affiliate that is a Bona Fide Debt Fund) that is reasonably identifiable as an Affiliate of such person on the basis of such Affiliate's name and (iii) any other Affiliate of any Person described in clauses (i) and/or (ii) above that is identified in a written notice to Golub Capital (if prior to the Closing Date) or to the Administrative Agent (if after the Closing Date) (it being understood and agreed that no Bona Fide Debt Fund may be designated as a Disqualified Institution pursuant to this clause (iii)); and

(c) any Affiliate of any Arranger (or director (or equivalent manager), officer or employee of any Arranger or any Affiliate thereof) that is engaged as a principal primarily in private equity or venture capital;

it being understood and agreed that no written notice delivered pursuant to clauses (a)(iii), (b)(i) and/or (b)(iii) above shall apply retroactively to disqualify any Person that has previously acquired an assignment or participation interest in any Loans.

"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).

"Dollar Equivalent" means, at any time, (a) with respect to any amount denominated in Dollars, such amount and (b) with respect to any amount denominated in any currency other than Dollars, the equivalent amount thereof in Dollars as determined by the Administrative Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date or other relevant date of determination) for the purchase of Dollars with such other currency.

"Dollars" or "$" refers to lawful money of the U.S.

"Domestic Subsidiary" means any Subsidiary incorporated or organized under the laws of the U.S., any state thereof or the District of Columbia.

"Dutch Auction" has the meaning assigned to such term on Schedule 1.01(b) hereto.

"Earn-Out Obligations" means all payment obligations pursuant to earn-out provisions in any definitive agreement relating to an acquisition or similar Investment permitted hereunder that are classified as liability in accordance with GAAP (but only to the extent all conditions to payment (other than the specified date for payment) have been realized), the amount of which, together with any earn-outs actually paid in the applicable Test Period, exceed $5,500,000 in such Test Period.

"ECF Prepayment Amount" has the meaning assigned to such term in Section 2.11(b)(i).

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Yield" means, as to any Indebtedness, the effective yield applicable thereto calculated by the Administrative Agent in consultation with the Borrower in a manner consistent with generally accepted financial practices, taking into account (a) interest rate margins, (b) interest rate floors (subject to the proviso set forth below), (c) any amendment to the relevant interest rate margins and interest rate floors prior to the applicable date of determination and (d) original issue discount and upfront or similar fees (based on an assumed four-year average life to maturity or lesser remaining average life to maturity), but excluding (i) any arrangement, commitment, structuring, underwriting, ticking, unused line fees and/or amendment fees (regardless of whether any such fees are paid to or shared in whole or in part with any lender), (ii) any other fee that is not paid directly by the Borrower generally to all relevant lenders ratably and (iii) any effects of any step downs of the Applicable Rate; provided, however, that (A) to the extent that the LIBO Rate (with an Interest Period of three months) or Alternate Base Rate (without giving effect to any floor specified in the definition thereof) is less than any floor applicable to the applicable Loans in respect of which the Effective Yield is being calculated on the date on which the Effective Yield is determined, the amount of the resulting difference will be deemed added to the interest rate margin applicable to the relevant Indebtedness for purposes of calculating the Effective Yield and (B) to the extent that the LIBO Rate (for a period of three months) or Alternate Base Rate (without giving effect to any floor specified in the definition thereof) is greater than any applicable floor on the date on which the Effective Yield is determined, the floor will be disregarded in calculating the Effective Yield.

"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, (ii) any Disqualified Institution or (iii) except as permitted under Section 9.05(g), the Borrower or any of its subsidiaries.

"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 and all current or future applicable foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other applicable requirements of Governmental Authorities and the common 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 the Borrower or any of its 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.

"Equity Contribution" means, collectively, the direct or indirect contribution on the Closing Date by the Investors to Merger Sub of an aggregate amount of cash and rollover equity in the form of Qualified Capital Stock that represents not less than 40% of the sum of (i) the aggregate gross proceeds of the Initial Term Loans funded on the Closing Date, plus (ii) the amount of such cash and rollover equity (such sum, the "Funded Capitalization"); provided that, on the Closing Date, after giving effect to the Transactions and the Equity Contribution, the Sponsor will own, directly or indirectly, at least 50.1% of the issued and outstanding Capital Stock of Holdings.

"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 the Borrower or any 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 the Borrower or any 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 the Borrower or any 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 the Borrower or any Subsidiary or any ERISA Affiliate from a Multiemployer Plan resulting in the imposition of Withdrawal Liability on the Borrower or any Subsidiary or any ERISA Affiliate, notification of the Borrower or any 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 or is in "reorganization" within the meaning of Section 4241 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 the Borrower or any 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 the Borrower or any 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.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Eurocurrency Rate" means, (i) for any Interest Period, the rate per annum equal to the offered rate which appears on the page of the Reuters Screen which displays the London interbank offered rate administered by ICE Benchmark Administration Limited (such page currently being the LIBOR01 page) (the "LIBO Rate") for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time), two Business Days prior to the commencement of such Interest Period, (ii) in the event the rate referenced in the preceding clause (i) does not appear on such page or service or if such page or service shall cease to be available, the rate reasonably determined by the Administrative Agent to be the offered rate on such other page or other service which displays the LIBO Rate for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time) two Business Days prior to the commencement of such Interest Period, or (iii) provided that if LIBO Rates are quoted under either of the preceding clauses (i) or (ii), but there is no such quotation for the Interest Period elected, the LIBO Rate shall be equal to the Interpolated Rate; provided, that if any such rate determined pursuant to the preceding clauses (i), (ii), or (iii) is below zero, the Eurocurrency Rate will be deemed to be zero. When used in reference to any Loan or Borrowing, "Eurocurrency Rate" shall refer to whether such Loan or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Eurocurrency Rate as set forth in the preceding sentence.

"Event of Default" has the meaning assigned to such term in Article 7.

"Excess Cash Flow" means, for any Excess Cash Flow Period, any amount (if positive) equal to:

(a) Consolidated Adjusted EBITDA for such Excess Cash Flow Period (without giving effect to clauses (b), (e) and (f) of the definition thereof, the amounts added back in reliance on which shall be deducted in determining Excess Cash Flow); plus

(b) any extraordinary, unusual or non-recurring cash gain during such Excess Cash Flow Period (whether or not accrued in such Excess Cash Flow Period) to the extent not otherwise included in Consolidated Adjusted EBITDA (including any component definition used therein); plus

(c) any foreign currency exchange gain actually realized and received in cash in U.S. Dollars (including any currency re-measurement of Indebtedness, any net gain or loss resulting from Hedge Agreements for currency exchange risk resulting from any intercompany Indebtedness, any foreign currency translation or transaction or any other currency-related risk), net of any loss from foreign currency translation; plus

(d) [Reserved];

(e) an amount equal to all Cash received for such period on account of any net non- Cash gain or income from any Investment deducted in a previous period pursuant to clause (s)(ii) of this definition; plus

(f) the decrease, if any, in Consolidated Working Capital from the first day to the last day of such Excess Cash Flow Period, but excluding any such decrease in Consolidated Working Capital arising from (i) the acquisition or Disposition of any Person by the Borrower or any Subsidiary, (ii) the reclassification during such period of current assets to long term assets and current liabilities to long term liabilities, (iii) the application of purchase and/or recapitalization accounting and/or (iv) the effect of any fluctuation in the amount of accrued and contingent obligations under any Hedge Agreement; minus

(g) the amount, if any, which, in the determination of Consolidated Adjusted EBITDA (including any component definitions used therein) for such Excess Cash Flow Period, has been included in respect of income or gain from any Disposition outside of the ordinary course of business (including Dispositions constituting covered losses or taking of assets referred to in the definition of "Net Insurance/Condemnation Proceeds") of the Borrower and/or any Subsidiary; minus

(h) cash payments actually made in respect of the following (without duplication):

(i) any Investment permitted by Section 6.06 (other than Investments (i) in Cash or Cash Equivalents, (ii) in any Loan Party or (iii) made pursuant to Section 6.06(r)), earn-out payments and/or any Restricted Payment permitted by Section 6.04(a) (other than pursuant to Section 6.04(a)(iii)(A)) and actually made in cash during such Excess Cash Flow Period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such Excess Cash Flow Period,

(A) except to the extent the relevant Investment and/or Restricted Payment is financed with the proceeds of long term funded Indebtedness (other than revolving Indebtedness) and

(B) without duplication of any amounts deducted from Excess Cash Flow for a prior Excess Cash Flow Period;

(ii) any realized foreign currency exchange loss actually paid or payable in cash (including any currency re-measurement of Indebtedness, any net gain or loss resulting from Hedge Agreements for currency exchange risk resulting from any intercompany Indebtedness, any foreign currency translation or transaction or any other currency-related risk);

(iii) the aggregate amount of any extraordinary, unusual or non-recurring cash Charge (whether or not incurred in such Excess Cash Flow Period) excluded in calculating Consolidated Adjusted EBITDA (including any component definition used therein);

(iv) consolidated Capital Expenditures actually made in cash during such Excess Cash Flow Period or, at the option of the Borrower, made prior to the date the Borrower is required to make a payment of Excess Cash Flow in respect of such Excess Cash Flow Period, (A) except to the extent financed with the proceeds of long term funded Indebtedness (other than revolving Indebtedness) and (B) without duplication of any amount deducted from Excess Cash Flow for a prior Excess Cash Flow Period;

(v) any long-term liability, excluding the current portion of any such liability (other than Indebtedness) of the Borrower and/or any Subsidiary;

(vi) any cash Charge added back in calculating Consolidated Adjusted EBITDA pursuant to clause (c) of the definition thereof or excluded from the calculation of Consolidated Net Income in accordance with the definition thereof;

(vii) the aggregate amount of expenditures actually made by the Borrower and/or any Subsidiary during such Fiscal Year (including any expenditure for the payment of financing fees) to the extent that such expenditures are not expensed; minus

(i) the aggregate principal amount of (i) all optional prepayments of Indebtedness (other than any optional prepayment of (A) Indebtedness under the Loan Documents that is prepaid, repurchased, redeemed or otherwise retired prior to such date, in each case, that is deducted in calculating the amount of any Excess Cash Flow payment in accordance with Section 2.11(b)(i) or (B) revolving Indebtedness except to the extent any related commitment is permanently reduced in connection with such repayment), (ii) all mandatory prepayments and scheduled repayments of Indebtedness during such Excess Cash Flow Period and (iii) the aggregate amount of any premium, make-whole or penalty payment actually paid in cash by the Borrower and/or any Subsidiary during such period that are required to be made in connection with any prepayment of Indebtedness, in each case, except to the extent financed with long term funded Indebtedness (other than revolving Indebtedness); minus

(j) Consolidated Interest Expense actually paid or payable in cash by the Borrower and/or any Subsidiary during such Excess Cash Flow Period; minus

(k) Taxes (inclusive of Taxes paid or payable under tax sharing agreements or arrangements and/or in connection with any intercompany distribution) paid or payable by Borrower and/or any Subsidiary with respect to such Excess Cash Flow Period; minus

(l) the increase, if any, in Consolidated Working Capital from the first day to the last day of such Excess Cash Flow Period, but excluding any such increase in Consolidated Working Capital arising from (i) the acquisition or Disposition of any Person by the Borrower and/or any Subsidiary, (ii) the reclassification during such period of current assets to long term assets and current liabilities to long term liabilities, (iii) the application of purchase and/or recapitalization accounting and/or (iv) the effect of any fluctuation in the amount of accrued and contingent obligations under any Hedge Agreement; minus

(m) the amount of any Tax obligation of the Borrower and/or any Subsidiary that is estimated in good faith by the Borrower as due and payable (but is not currently due and payable) by the Borrower and/or any Subsidiary as a result of the repatriation of any dividend or similar distribution of net income of any Foreign Subsidiary to the Borrower and/or any Subsidiary; minus

(n) without duplication of amounts deducted from Excess Cash Flow in respect of a prior period, at the option of the Borrower, the aggregate consideration (i) required to be paid in Cash by the Borrower and/or any Subsidiary pursuant to binding contracts entered into prior to or during such period relating to Capital Expenditures, acquisitions or Investments (including with respect to earn out payments) and Restricted Payments described in clause (h)(i) above and/or (ii) otherwise committed to be made in connection with Capital Expenditures, acquisitions or Investments and/or Restricted Payments described in clause (h)(i) above (clauses (i) and (ii), the "Scheduled Consideration") (other than Investments in (A) Cash and Cash Equivalents and (B) the Borrower and/or any Subsidiary) to be consummated or made during the period of four consecutive Fiscal Quarters of the Borrower following the end of such period (except, in each case, to the extent financed with long term funded Indebtedness (other than revolving Indebtedness)); provided that to the extent the aggregate amount actually utilized to finance such Capital Expenditures, acquisitions or Investments or Restricted Payments during such subsequent period of four consecutive Fiscal Quarters is less than the Scheduled Consideration, the amount of the resulting shortfall shall be added to the calculation of Excess Cash Flow at the end of such subsequent period of four consecutive Fiscal Quarters; minus

(o) [Reserved];

(p) cash payments (other than in respect of Taxes, which are governed by clause (k) above) made during such Excess Cash Flow Period for any liability the accrual of which in a prior Excess Cash Flow Period resulted in an increase in Excess Cash Flow in such prior period (provided that there was no other deduction to Consolidated Adjusted EBITDA or Excess Cash Flow related to such payment), except to the extent financed with long term funded Indebtedness (other than revolving Indebtedness); minus

(q) cash expenditures made in respect of any Hedge Agreement during such period to the extent (i) not otherwise deducted in the calculation of Consolidated Net Income or Consolidated Adjusted EBITDA and (ii) not financed with long term funded Indebtedness (other than revolving Indebtedness); minus

(r) amounts paid in Cash (except to the extent financed with long term funded Indebtedness (other than revolving Indebtedness)) during such period on account of (i) items that were accounted for as non-Cash reductions of Consolidated Net Income or Consolidated Adjusted EBITDA in a prior period and (ii) reserves or amounts established in purchase accounting to the extent such reserves or amounts are added back to, or not deducted from, Consolidated Net Income; minus

(s) an amount equal to the sum of (i) the aggregate net non-cash loss on any non- ordinary course Disposition by the Borrower and/or any Subsidiary during such period (other than any Disposition among the Borrower and/or any Subsidiaries during such period) to the extent included in arriving at Consolidated Net Income and (ii) the aggregate net non-Cash gain or income from any non-ordinary course Investment to the extent included in arriving at Consolidated Adjusted EBITDA.

"Excess Cash Flow Period" means each full Fiscal Year of the Borrower ending thereafter (commencing with the Fiscal Year ending on December 30, 2018).

"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:

(a) 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; 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,

(b) the Capital Stock of any (i) Captive Insurance Subsidiary, (ii) not-for-profit subsidiary and/or (iii) special purpose entity used for any permitted securitization facility,

(c) any intent-to-use (or similar) Trademark application prior to the filing and acceptance of a "Statement 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 Trademark application under applicable federal Law,

(d) any asset (including any Capital Stock), the grant or perfection of a security interest in which would (i) be prohibited under applicable Requirements of Law (including, without limitation, rules and regulations of any Governmental Authority) or (ii) require any governmental or regulatory consent, approval, license or authorization, except to the extent such requirement or prohibition would be rendered ineffective under the UCC or other applicable Requirements of Law notwithstanding such requirement or prohibition; it being understood that the term "Excluded Asset" shall not include proceeds or receivables arising out of any asset described in clause (d)(i) or (d)(ii) 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 requirement or prohibition or (iii) result in material adverse tax consequences to any Loan Party as reasonably determined by the Borrower and specified in a written notice to the Administrative Agent,

(e) (i) any leasehold Real Estate Asset, (ii) any leasehold interest in any other assets, to the extent the creation and perfection of a Lien on such assets is not the type that may be perfected by the filing of a Form UCC-1 financing statement under the UCC and (iii) any owned Real Estate Asset that is not a Material Real Estate Asset,

(f) the Capital Stock of any Person that is not a Wholly-Owned Subsidiary,

(g) any Margin Stock,

(h) the Capital Stock of any Foreign Subsidiary and of any CFC Holdco, in each case (x) in excess of 65% of the issued and outstanding voting Capital Stock of any such Person or (y) to the extent such Person is not a first-tier Subsidiary of any Loan Party,

(i) Commercial Tort Claims,

(j) escrow, fiduciary and trust accounts,

(k) [Reserved],

(l) any lease, license or agreement or any assets subject to any purchase money security interest, Capital Lease 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, the Borrower or any Subsidiary of the Borrower) after giving effect to the applicable anti-assignment provisions of the UCC or any other applicable Requirement of Law; it being understood that the term "Excluded Asset" shall not include proceeds or receivables arising out of any asset described in this clause (l) 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, and

(m) any asset with respect to which the Administrative Agent and the Borrower have reasonably determined in writing that the cost, burden, difficulty or consequence (including any effect on the ability of the Borrower and its subsidiaries to conduct their operations and business in the ordinary course of business and including the cost of title insurance, surveys or flood insurance (if necessary)) 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.

"Excluded Subsidiary" means:

(a) any Subsidiary that is not a Wholly-Owned Subsidiary,

(b) any Immaterial Subsidiary,

(c) any Subsidiary (i) that 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 Subsidiary becomes a subsidiary (which Contractual Obligation was not entered into in contemplation of this Agreement), (ii) that would require a governmental (including regulatory) or third-party consent (which third-party consent is required on the Closing Date or at the time such Subsidiary becomes a Subsidiary), 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) (in each case, at the time such Subsidiary became a Subsidiary) or (iii) with respect to which the provision of a Loan Guaranty would result in material adverse tax consequences as reasonably determined by the Borrower in consultation with the Administrative Agent,

(d) any not-for-profit subsidiary,

(e) any Captive Insurance Subsidiary,

(f) any special purpose entity used for any permitted securitization or receivables facility or financing,

(g) any Foreign Subsidiary,

(h) (i) any CFC Holdco and/or (ii) any Domestic Subsidiary that is a direct or indirect subsidiary of any Foreign Subsidiary that is a CFC,

(i) any Subsidiary acquired by the Borrower or any of its Subsidiaries 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 incurred or modified in contemplation of such acquisition) and/or

(j) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower, the burden or cost of providing a Loan Guaranty outweighs, or would be excessive in light of, the practical benefits afforded thereby.

"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) (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, (a) any Taxes imposed on (or measured by) such recipient's net or overall gross income 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 U.S. 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 the Administrative Agent, such Lender or any Issuing Bank to comply with Sections 2.17(f) or (j) and (e) any U.S. federal withholding Tax 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 each of (a) Holdings, 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, hereof owned, leased, operated or used by the Borrower or any of its 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 current Section 1471(b)(1) of the Code (or any amended or successor version described above) and any intergovernmental agreements implementing any of the foregoing and any treaty, law, regulation or other official guidance issued under or with respect to any of the foregoing.

"FCPA" has the meaning assigned to such term in Section 3.17(c).

"Federal Assignment of Claims Act" means the Federal Assignment of Claims Act (41 U.S.C. § 15).

"Federal Funds Effective Rate" means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depositary institutions (as determined in such manner as the Federal Reserve Bank of New York sets 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.

"Fee Letter" means that certain Fee Letter, dated as of July 28, 2017, by and among Merger Sub, the Arrangers and the Administrative Agent.

"Financial Covenant Level" has the meaning assigned to such term in Section 6.15.

"First Amendment" means that certain First Amendment to Credit Agreement, dated as of the First Amendment Effective Date, among the Borrower, Holdings, the other Loan Parties party thereto, the Administrative Agent and the Lenders party thereto.

"First Amendment Effective Date" means February 28, 2019.

"First Amendment Initial Delayed Draw Term Loan Commitment" means the commitments of the Initial Delayed Draw Term Lenders to make Initial Delayed Draw Term Loans hereunder established pursuant to the First Amendment on the First Amendment Effective Date.

"First Lien Intercreditor Agreement" means an intercreditor agreement (a) substantially in the form of Exhibit E, with (i) any immaterial changes (as determined in the Administrative Agent's sole discretion) thereto as the Borrower and the Administrative Agent may agree in their respective reasonable discretion and/or (ii) any material changes thereto as the Borrower and the Administrative Agent may agree in their respective reasonable discretion and/or (b) any other form to which the Borrower and the Administrative Agent may agree in their respective reasonable discretion.

"First Priority" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that, subject to any applicable Acceptable Intercreditor Agreement, such Lien is senior in priority to any other Lien to which such Collateral is subject, other than any Permitted Lien.

"Fiscal Quarter" means any fiscal quarter of any Fiscal Year of the Borrower ending on a date set forth on Schedule 1.01(c) hereto, which schedule may be amended in the event of a change in the Fiscal Year of the Borrower permitted under Section 6.13.

"Fiscal Year" means the fiscal year of the Borrower ending on or about December 31 of each calendar year.

"Fixed Amounts" has the meaning assigned to such term in Section 1.10(c).

"Fixed Incremental Amount" means the greater of (a) $20,000,000 and (b) 75% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period; provided that, during the Restricted Period, the Fixed Incremental Amount shall be deemed to be $2,000,000.

"Flood Hazard Property" means any parcel of any Material Real Estate Asset subject to a Mortgage located in the U.S. in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"FLSA" has the meaning assigned to such term in Section 3.15.

"Foreign Lender" means any Lender or Issuing Bank that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary.

"Fourth Amendment Effective Date" means August 14, 2020.

"Fourth Amendment Equity Contribution Amount" means the aggregate amount of capital contributions made by the Sponsor on the Fourth Amendment Effective Date in respect of Qualified Capital Stock issued by Holdings or any other Parent Company the proceeds of which are contributed to the Borrower in an aggregate amount of not less than $40,000,000.

"Funded Capitalization" has the meaning set forth in the definition of "Equity Contribution".

"FRB" means the Board of Governors of the Federal Reserve System of the U.S.

"GAAP" means generally accepted accounting principles in the U.S. in effect and applicable to the accounting period in respect of which reference to GAAP is made.

"Golub Capital" has the meaning assigned to such term in the preamble to this Agreement.

"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 U.S., a foreign government or any political subdivision thereof.

"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.

"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 between any Loan Party or any 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.

"Immaterial Subsidiary" means, as of any date, any Subsidiary of the Borrower the contribution to Consolidated Adjusted EBITDA of which does not exceed 5.00% of the Consolidated Adjusted EBITDA of the Borrower and its Subsidiaries, in each case, as of the last day of the most recently ended Test Period; provided that the Consolidated Adjusted EBITDA (as so determined) of all Immaterial Subsidiaries shall not exceed 5.00% of Consolidated Adjusted EBITDA, in each case, of the Borrower and its Subsidiaries as of the last day of the most recently ended Test Period; provided, further, 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 of the Merger Sub delivered pursuant to Section 4.01 hereof.

"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 daughter-in- law (including adoptive relationships), 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.

"Incremental Cap" means:

(a) the Fixed Incremental Amount, plus

(b) the amount of any optional prepayment in accordance with Section 2.11(a) of any Incremental Term Loan incurred in reliance on clause (a) above; provided that such prepayment was not funded with the proceeds of any long-term Indebtedness (other than revolving Indebtedness), plus

(c) an unlimited amount so long as, in the case of this clause (c), after giving effect to the relevant Incremental Facility, the Total Leverage Ratio does not exceed 5.25:1.00, calculated on a Pro Forma Basis for the Test Period then most recently ended including the application of the proceeds thereof (without "netting" the cash proceeds of the applicable Incremental Facility or any other simultaneous incurrence of debt on the consolidated balance sheet of the Borrower), and in the case of any Incremental Revolving Facility then being incurred or established, assuming a full drawing of such Incremental Revolving Facility;

provided, that:

(i) any Incremental Facility may be incurred under one or more of clauses (a) through (c) of this definition as selected by the Borrower in its sole discretion, and

(ii) if any Incremental Facility is intended to be incurred under clause (c) of this definition and any other clause of this definition in a single transaction or series of related transaction, (A) the incurrence of the portion of such Incremental Facility to be incurred or implemented under clause (c) of this definition shall be calculated first without giving effect to any Incremental Facilities to be incurred under any other clause of this definition, but giving full *pro forma* effect to the use of proceeds of the entire amount of such Incremental Facility and the related transactions, and (B) the incurrence of the portion of such Incremental Facility to be incurred or implemented under the other applicable clauses of this definition shall be calculated thereafter; and

(iii) the aggregate amount of all Incremental Revolving Facilities shall not exceed $7,500,000 (unless otherwise agreed by the Required Revolving Lenders).

"Incremental Commitment" means any commitment made by a lender to provide all or any portion of any Incremental Facility or Incremental Loan.

"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 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 Revolving Commitment" means any commitment made by a lender to provide all or any portion of any Incremental Revolving Facility.

"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 Loans" has the meaning assigned to such term in Section 2.22(a).

"Incurrence-Based Amounts" has the meaning assigned to such term in Section 1.10(c).

"Indebtedness" as applied to any Person means, without duplication:

(a) all indebtedness for borrowed money;

(b) 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;

(c) 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;

(d) any obligation 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 (A) such obligation becomes a liability on the statement of financial position or balance sheet (excluding the footnotes thereto) in accordance with GAAP and (B) all conditions to payment of such obligation (other than the specified date for payment) have been realized, (ii) any such obligations 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 incurrence of the obligation in respect thereof or (B) evidenced by a note or similar written instrument);

(e) all Indebtedness of others secured by any Lien on any asset owned or held by such Person regardless of whether the Indebtedness secured thereby have been assumed by such Person or is non-recourse to the credit of such Person;

(f) 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;

(g) the Guarantee by such Person of the Indebtedness of another;

(h) all obligations of such Person in respect of any Disqualified Capital Stock; and

(i) 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 obligations under any Derivative Transaction be deemed "Indebtedness" for any calculation of the Total 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 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", as it applies to the Borrower and its Subsidiaries, shall exclude intercompany Indebtedness so long as (A) such intercompany Indebtedness has a term not exceeding 364 days (inclusive of any roll-over or extension of terms) and (B) in the case of any Indebtedness owed by any Loan Party to any Subsidiary that is not a Loan Party, such Indebtedness is unsecured and subordinated to the Obligations and evidenced by the Intercompany Note.

For all purposes hereof, the Indebtedness of any Person shall 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; provided 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, (x) 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 (y) 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).

"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).

"Initial Delayed Draw Term Loan Extension" means the making of an Initial Delayed Draw Term Loan.

"Initial Delayed Draw Term Facility" means the Initial Delayed Draw Term Loan Commitments and the Initial Delayed Draw Term Loans and other extensions of credit thereunder.

"Initial Delayed Draw Term Lender" means any Lender with an Initial Delayed Draw Term Loan Commitment or an outstanding Initial Delayed Draw Term Loan.

"Initial Delayed Draw Term Loan Commitment" means, with respect to each Term Lender, the commitment of such Term Lender to make Initial Delayed Draw Term Loans hereunder in an aggregate amount not to exceed the amount set forth opposite such Initial Delayed Draw Term Lender's name on the Commitment Schedule as the same may be (x) reduced from time to time pursuant to Section 2.09 and (y) reduced or increased from time to time pursuant to assignments by or to such Term Lender pursuant to Section 9.05. The aggregate amount of the Term Lenders' Initial Delayed Draw Term Loan Commitments (i) on the Closing Date was $50,000,000, all of which was funded prior to the First Amendment Effective Date, (ii) on the First Amendment Effective Date was $50,000,000, of which $35,000,000 was funded prior to the Second Amendment Effective Date, (iii) on the Second Amendment Effective Date: (x) in respect of the First Amendment Initial Delayed Draw Term Loan Commitment, was $15,000,000, all of which was funded prior to the Third Amendment Effective Date, and (y) in respect of the Second Amendment Initial Delayed Draw Term Loan Commitment was $40,000,000, and (iv) on the Third Amendment Effective Date, in respect of the Second Amendment Initial Delayed Draw Term Loan Commitment, is $1,500,000.

"Initial Delayed Draw Term Loan Commitment Fee Rate" means, on any date with respect to the Initial Delayed Draw Term Loan Commitments, 1.0% per annum.

"Initial Delayed Draw Term Loan Commitment Termination Date" means (a) in the case of the First Amendment Initial Delayed Draw Term Loan Commitment, the earlier of (x) February 28, 2021 and (y) the date such Initial Delayed Draw Term Loan Commitment is wholly terminated pursuant to Section 2.09(a)(ii)(A) or Section 2.09(b)(ii) and (b) in the case of the Second Amendment Initial Delayed Draw Term Loan Commitment, the earlier of (x) date that is two years after the Second Amendment Effective Date and (y) the date such Initial Delayed Draw Term Loan Commitment is wholly terminated pursuant to Section 2.09(a)(ii)(A) or Section 2.09(b)(ii).

"Initial Delayed Draw Term Loans" means the term loans made by the Initial Delayed Draw Term Lenders to the Borrower pursuant to Section 2.01(a)(iii).

"Initial Lenders" means, in their capacities as Lenders hereunder, the Arrangers and the affiliates of the Arrangers who are party to this Agreement as Lenders on the Closing Date.

"Initial Loans" means the Initial Term Loans and the Initial Delayed Draw Term Loans.

"Initial Revolving Credit Commitment" means, with respect to each Lender, the commitment of such Lender to make Initial Revolving Loans (and acquire participations in Letters of Credit) hereunder as set forth on the Commitment Schedule, or in the Assignment Agreement pursuant to which such Lender 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 $20,000,000.

"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, in each case, attributable to its Initial Revolving Credit Commitment.

"Initial Revolving Credit Maturity Date" means the date that is six 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" means any revolving loan made by the Initial Revolving Lenders to the Borrower pursuant to 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 each Term Lender, the commitment of such Term Lender to make Initial Term Loans hereunder in an aggregate amount not to exceed the amount set forth opposite such Term Lender's name on the Commitment Schedule, as the same may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Term Lender pursuant to Section 9.05 or (ii) 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 $155,000,000.

"Initial Term Loan Maturity Date" means the date that is six years after the Closing Date.

"Initial Term Loans" means the term loans made by the Initial Term Lenders to the Borrower pursuant to 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, in accordance with this Agreement and the Security Agreement, including an Intellectual Property Security Agreement substantially in the form of Exhibit C hereto.

"Intercompany Note" means a promissory note substantially in the form of Exhibit F.

"Interest Election Request" means a request by the Borrower in the form of Exhibit G 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) with respect to any ABR Loan, the last Business Day of each Fiscal Quarter (commencing with the Fiscal Quarter ending on September 24, 2017) and the maturity date applicable to such ABR Loan and (b) with respect to any Adjusted Eurocurrency Rate Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of any Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months (or, to the extent available to all relevant affected Lenders, twelve months or a shorter period) thereafter, as the Borrower may elect; provided that (i) 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 (ii) 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.

"Interpolated Rate" means, in relation to the LIBO Rate or Screen Rate, the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the applicable LIBO Rate or Screen Rate for the longest period (for which that LIBO Rate or Screen Rate is available) which is less than the Interest Period of that Loan; and (b) the applicable LIBO Rate or Screen Rate for the shortest period (for which that LIBO Rate or Screen Rate is available) which exceeds the Interest Period of that Revolving Loan, each as of approximately 11:00 a.m. (London, England time) two Business Days prior to the commencement of such Interest Period of that Loan.

"Investment" means (a) any purchase or other acquisition by the Borrower or any of its Subsidiaries of any of the Securities of any other Person (other than any Loan Party), (b) the acquisition 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 or any division or line of business or other business unit of any 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 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 by the Borrower or any of its Subsidiaries to any other Person. 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 adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto, but giving effect to any repayments of principal in the case of any Investment in the form of a loan and 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).

"Investors" means (a) the Sponsor, (b) the Management Investors and (c) other investors that, directly or indirectly, beneficially own Capital Stock in Holdings on the Closing Date.

"Information" has the meaning assigned to such term in Section 3.11(a).

"IP Rights" has the meaning assigned to such term in Section 3.05(c).

"IRS" means the U.S. Internal Revenue Service.

"Issuing Bank" means, as the context may require, (a) a financial institution selected by the Administrative Agent that is reasonably acceptable to the Borrower and/or (b) the Administrative Agent and/or any Revolving Lender that is appointed as an Issuing Bank in accordance with Section 2.05(i) hereof. 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.

"Joinder Agreement" means a Joinder Agreement substantially in the form of Exhibit J or such other form that is reasonably satisfactory to the Administrative Agent and the Borrower.

"Junior Indebtedness" means any Indebtedness of the types described in clauses (a) and (c) of the definition of "Indebtedness" (other than Indebtedness among Holdings, Borrower and/or its subsidiaries) of the Borrower or any of its Subsidiaries that is expressly subordinated in right of payment to the Obligations.

"Junior Lien Indebtedness" means any Indebtedness of the types described in clauses (a) and (c) of the definition of "Indebtedness" that is secured by a security interest on the Collateral (other than Indebtedness among Holdings, the Borrower and/or its subsidiaries) that is expressly junior or subordinated to the Lien securing the Credit Facilities on the Closing Date.

"Junior Unsecured Indebtedness" means any Indebtedness of the types described in clauses (a) and (c) of the definition of "Indebtedness" that is unsecured.

"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(j).

"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 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 Percentage of the aggregate LC Exposure at such time.

"LCA Investment" has the meaning assigned to such term in Section 1.10.

"Legal Reservations" means the application of 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.

"Letter of Credit" means any standby letter of credit issued pursuant to this Agreement.

"Letter of Credit Reimbursement Loan" has the meaning assigned to such term in Section 2.05(e).

"Letter-of-Credit Right" has the meaning set forth in Article 9 of the UCC.

"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 M hereto or such other form that is reasonably satisfactory to the relevant Issuing Bank and the Borrower.

"Letter of Credit Sublimit" means $5,000,000, subject to increase in accordance with Section 2.22.

"LIBO Rate" has the meaning set forth in the definition of "Eurocurrency Rate".

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any 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.

"Liquidity" means, as of any date, (a) the Unrestricted Cash Amount (determined without giving effect to the proviso in the definition thereof) of the Borrower and its Subsidiaries plus (b) the amount by which the Revolving Credit Commitments of all Revolving Lenders exceed the Revolving Credit Exposure of all Revolving Lenders on such date.

"Liquidity Calculation" has the meaning assigned to such term in Section 5.01(p).

"Liquidity Cure Amount" has the meaning assigned to such term in Section 6.16(b).

"Liquidity Cure Right" has the meaning assigned to such term in Section 6.16(b).

"Liquidity Period" means the period commencing on the Fourth Amendment Effective Date and ending on the first date on or after June 27, 2021 on which a Compliance Certificate is delivered pursuant to Section 5.01(c) demonstrating compliance with the Financial Covenant Level applicable at such time.

"Liquidity Test Date" means each of (i) August 31, 2020 and (ii) thereafter, the 15th day of each calendar month and the last day of each calendar month.

"Loan Documents" means this Agreement, any Promissory Note, each Loan Guaranty, the Collateral Documents, any Acceptable Intercreditor Agreement to which the Borrower is a party, 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 Guaranty" means the Guaranty Agreement, substantially in the form of Exhibit H hereto, executed by each Loan Guarantor 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 Holdings, the Borrower and each Subsidiary Guarantor.

"Loan Guarantor" means Holdings and any Subsidiary Guarantor.

"Loans" means any Initial Loans, any Additional Term Loan, any Revolving Loan or any Additional Revolving Loan.

"London Banking Day" means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank market.

"Management Investors" means the officers, directors, managers, employees and members of management of the Borrower, any Parent Company and/or any subsidiary of the Borrower (including, on the Closing Date, those of the Target and its subsidiaries).

"Margin Stock" has the meaning assigned to such term in Regulation U.

"Material Adverse Effect" means (a) on the Closing Date (including, for purposes of any representation and warranty made as of the Closing Date), a Closing Date Material Adverse Effect and (b) after the Closing Date, a material adverse effect on (i) the business, financial condition or results of operations, in each case, of the Borrower and its 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 which is required to be pledged and delivered to the Administrative Agent (or its bailee) pursuant to the Security Agreement.

"Material Real Estate Asset" means (a) on the Closing Date, each Real Estate Asset listed on Schedule 3.05 and (b) any "fee-owned" Real Estate Asset acquired by any Loan Party after the Closing Date having a fair market value (as reasonably determined by the Borrower after taking into account any liabilities with respect thereto that impact such fair market value) in excess of $1,750,000 as of the date of acquisition thereof.

"Maturity Date" means (a) with respect to the Initial Revolving Facility, the Initial Revolving Credit Maturity Date, (b) with respect to the Initial Loans, the Initial Term Loan Maturity Date, (c) with respect to any Incremental Facility, the final maturity date set forth in the applicable Incremental Facility Amendment, and (d) 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.

"Merger Agreement" means that certain Agreement and Plan of Merger, dated as of July 26, 2017, among Holdings, Merger Sub, the Target, Freeman Spogli Management Co., LP, a Delaware limited partnership, as shareholders' representative and other parties thereto.

"Merger Sub" has the meaning assigned to such term in the preamble to this Agreement.

"Minimum Extension Condition" has the meaning assigned to such term in Section 2.23(b).

"Moody's" means Moody's Investors Service, Inc.

"Mortgage Policies" has the meaning assigned to such term in the definition of "Collateral and Guarantee Requirement".

"Mortgage" means any mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent and the relevant Secured Parties, on any Material Real Estate Asset constituting Collateral, which shall contain such terms as may be necessary under applicable local Requirements of Law to perfect a Lien on the applicable Material Real Estate Asset.

"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 the Borrower or any of its 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.

"Narrative Report" means, with respect to the financial statements in respect of which it is delivered, a customary narrative report describing the operations of the Borrower and its Subsidiaries for the relevant Fiscal Quarter and for the period from the beginning of the then-current Fiscal Year to the end of the period to which the relevant financial statements relate.

"Net Insurance/Condemnation Proceeds" means an amount equal to: (a) any Cash payments or proceeds (including Cash Equivalents) received by the Borrower or any of its Subsidiaries (i) under any casualty insurance policy in respect of a covered loss thereunder of any assets of the Borrower or any of its Subsidiaries or (ii) as a result of the taking of any assets of the Borrower or any of its 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, minus (b)(i) any actual out-of-pocket costs and expenses incurred by the Borrower or any of its Subsidiaries in connection with the adjustment, settlement or collection of any claims of the Borrower or the relevant 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 any Indebtedness secured by a Lien on the Collateral that is *pari passu* with or expressly subordinated to the Lien on the Collateral securing any Secured Obligation) 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) in the case of a taking, the reasonable out-of-pocket costs of putting any affected property in a safe and secure position, (iv) any 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 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, (v) any amounts 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 amounts are 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), (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 amounts are 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 secured by a Lien on the Collateral that is *pari passu* with or expressly subordinated to the Lien on the Collateral securing any Secured Obligation) 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) Cash escrows (until released from escrow to the Borrower or any of its Subsidiaries) from the sale price for such Disposition and (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)) 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 (b) with respect to any issuance or incurrence of Indebtedness or 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.

"Non-Debt Fund Affiliate" means the Sponsor and any Affiliate of the Sponsor (other than any Debt Fund Affiliate, Holdings, the Borrower or any subsidiary of the Borrower).

"Non-Consenting Lender" has the meaning assigned to such term in Section 2.19(b).

"Non-Defaulting Revolving Lenders" has the meaning assigned to such term in Section 2.21(d)(i).

"Notice of Intent to Cure" has the meaning assigned to such term in Section 6.15(b).

"Notice of Intent to Exercise Liquidity Cure Right" has the meaning assigned to such term in Section 6.16(b).

"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.

"OFAC" has the meaning assigned to such term in Section 3.17(a).

"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)(i).

"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 excise or property Taxes arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, 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(b)).

"Outstanding Amount" means (a) with respect to any Term Loan and/or Revolving Loan on any date, the amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Term Loan and/or Revolving Loan, 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 changes 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 disbursements with respect to any Letter of Credit occurring on such date and any other changes in the aggregate amount of such LC Disbursement as of such date, including as a result of any reimbursements by the Borrower of such unreimbursed LC Disbursement.

"Outstanding PPP Amount" has the meaning set forth in Section 6.01(hh).

"Parent Company" means Holdings and any other Person of which the Borrower is an indirect Wholly-Owned Subsidiary.

"Participant" has the meaning assigned to such term in Section 9.05(c)(i).

"Participant 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, without limitation, 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.

"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 the Borrower or any of its 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 I.

"Perfection Requirements" means 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 U.S. Patent and Trademark Office and the U.S. Copyright Office, the proper recording or filing, as applicable, of Mortgages and fixture filings with respect to any Material Real Estate Asset constituting Collateral, in each case in favor of the Administrative Agent for the benefit of the Secured Parties and the delivery to the Administrative Agent of any stock certificate or promissory note, together with instruments of transfer executed in blank, in each case, to the extent required by the applicable Loan Documents.

"Permitted Acquisition" means any acquisition made by the Borrower or any of its Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of (or, with respect to such acquisition by the Borrower or any of its Subsidiaries, substantially all of the assets of the relevant target that are legally permitted to be owned by the Borrower or any of its Subsidiaries under applicable Requirements of Law), or any business line, unit or division or product line (including research and development and related assets in respect of any product) and/or the repurchase of franchised Unit Locations, of any Person or of a majority of the outstanding Capital Stock of any Person who is engaged in a Similar Business (and, in any event, including any Investment in (x) any Subsidiary the effect of which is to increase the Borrower's or any Subsidiary's equity ownership in such Subsidiary or (y) any joint venture for the purpose of increasing the Borrower's or its relevant Subsidiary's ownership interest in such joint venture) if (1) such Person becomes a Subsidiary or (2) such Person, in one transaction or a series of related transaction, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets (or such division, business unit or product line) to, or is liquidated into, the Borrower and/or any Subsidiary as a result of such Investment; provided that:

(a) the Total Leverage Ratio calculated on a Pro Forma Basis is not greater than the lesser of (i) the Financial Covenant Level as of such date and (ii) 6.00:1.00;

(b) the total consideration paid by Persons that are Loan Parties for (i) the Capital Stock of any Person that does not become a Loan Party or is not 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 Subsidiary or joint venture is not, or 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, when taken together with the total consideration for all such Persons and assets so acquired after the Closing Date, the aggregate amount of Investments made in reliance on Section 6.06(b)(iii) and the aggregate outstanding amount of Indebtedness incurred pursuant to Section 6.01(j), shall not exceed $12,500,000; and

(c) the limitation described in clause (b) above shall not apply to any acquisition to the extent 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 Subsidiary, other than any Cure Amount ~~or,~~ any Liquidity Cure Amount, the Fourth Amendment Equity Contribution Amount or any Contribution Indebtedness Amount.

"Permitted Holders" means (a) the Sponsor and Management Investors and (b) any person or entity with which the Sponsor and/or any Management Investor forms a "group" (within the meaning of Section 14(d) of the Exchange Act) so long as, in the case of this clause (b), the Sponsor beneficially owns more than 50% of the relevant voting stock beneficially owned by that group.

"Permitted Liens" means Liens permitted pursuant to Section 6.02.

"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 the Borrower and/or any 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.

"PPP Debt" has the meaning set forth in Section 6.01(hh).

"PPP Debt Lender" means the lender of the PPP Debt.

"Prepayment Asset Sale" means any non-ordinary course Disposition by the Borrower or its Subsidiaries made pursuant to Section 6.07(h).

"Primary Obligor" has the meaning assigned to such term in the definition of "Guarantee".

"Prime Rate" means the rate of interest last quoted by *The Wall Street Journal* (or another national publication reasonably selected by the Administrative Agent) as the "Prime Rate" in the U.S. or, if *The Wall Street Journal* (or such other publication) 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 Leverage Ratio or Consolidated Adjusted EBITDA (including component definitions thereof), that:

(a) (i) in the case of any Disposition of all or substantially all of the Capital Stock of any Subsidiary or any division and/or product line of the Borrower, any Subsidiary income statement items (whether positive or negative) 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 and (ii) in the case of any Permitted Acquisition and/or Investment described in the definition of the term "Subject Transaction", 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,

(b) any retirement or repayment of Indebtedness (other than normal fluctuations in revolving Indebtedness incurred for working capital purposes) 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,

(c) any Indebtedness incurred by the Borrower or any of its Subsidiaries in connection therewith 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, (x) 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), (y) 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 to be the rate of interest implicit in such obligation in accordance with GAAP and (z) 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 and

(d) the acquisition of Cash or Cash Equivalents, 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 Cash or Cash Equivalent 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.

It is hereby agreed that for purposes of determining pro forma compliance with Section 6.15(a) prior to the last day of the first Fiscal Quarter after the Closing Date, the applicable level shall be the level cited in Section 6.15(a). Notwithstanding anything to the contrary set forth in the immediately preceding paragraph, for the avoidance of doubt, when calculating the Total Leverage Ratio for purposes of Section 6.15(a) (other than for the purpose of determining pro forma compliance with Section 6.15(a) 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 of the Borrower and its subsidiaries delivered to Golub Capital on July 21, 2017 and the pro forma financial statements delivered by the Borrower pursuant to Section 4.01(c)(iii).

"Promissory Note" means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit K hereto, evidencing the aggregate outstanding principal amount of Loans of the Borrower to such Lender resulting from the Loans made by such Lender.

"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 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' or managers' 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 and listing fees.

"Public Lender" has the meaning assigned to such term in Section 9.01(d).

"Quality of Earnings Report" means that certain Quality of Earnings Report dated as of July 21, 2017 (as amended by the Addendum to the Quality of Earnings Report, dated as of July 24, 2017), prepared by PricewaterhouseCoopers LLP.

"Qualified Capital Stock" of any Person means any Capital Stock of such Person that is not Disqualified Capital Stock.

"Qualifying IPO" means (a) the issuance and sale by the Borrower or any Parent Company of its common Capital Stock in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act (whether alone or in connection with a secondary public offering) or (b) any merger, amalgamation or consolidation by the Borrower or any Parent Company with and into any Person whose Capital Stock is listed on any securities exchange or otherwise publicly held.

"Real Estate Asset" means, at any time of determination, all right, title and interest (fee, leasehold or otherwise) of any Loan Party in and to real property (including, but not limited to, land, improvements and fixtures thereon).

"Refinancing" has the meaning assigned to such term in the recitals to this Agreement.

"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).

"Regulation D" means Regulation D of the FRB as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation H" means Regulation H of the FRB as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation U" means Regulation U of the FRB as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"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, 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.

"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 Delayed Draw Lenders" means, at any time, Lenders having Initial Delayed Draw Term Loan Commitments representing more than 50% of the Initial Delayed Draw Term Loan Commitments.

"Required Excess Cash Flow Percentage" means, as of any date of determination, (a) if the Total Leverage Ratio is greater than 4.25:1.00, 50%, (b) if the Total Leverage Ratio is less than or equal to 4.25:1.00 and greater than 3.75:1.00, 25%, (c) if the Total Leverage Ratio is less than or equal to 3.75:1.00, 0%; it being understood and agreed that, for purposes of this definition as it applies to the determination of the amount of Excess Cash Flow that is required to be applied to prepay the Term Loans under Section 2.11(b)(i) for any Excess Cash Flow Period, the Total Leverage Ratio shall be determined on the scheduled date of prepayment.

"Required Initial Lenders" means, at any time, Initial Lenders having Loans or unused Commitments representing more than 50% of the sum of the total Loans and such unused Commitments held by the Initial Lenders at such time.

"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 other requirements 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.

"Responsible Officer" of any Person means the chief executive officer, the president, the chief financial officer, the treasurer, any assistant treasurer, any executive vice president, any senior vice president, any vice president or the chief operating officer of such Person and any other individual or similar official thereof responsible for the administration of the obligations of such Person in respect of this Agreement, 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. 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.

"Responsible Officer Certification" means, with respect to the financial statements for which such certification is required, the certification of a Responsible Officer of the Borrower that such financial statements fairly present, in all material respects, in accordance with GAAP, the consolidated financial condition of the Borrower as at the dates indicated and its consolidated operations and cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"Restricted Amount" has the meaning set forth in Section 2.11(b)(iv).

"Restricted Debt" has the meaning set forth in Section 6.04(b).

"Restricted Debt Payments" 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 Period" means the period commencing on the Fourth Amendment Effective Date and ending on the first date on or after September 26, 2021 on which a Compliance Certificate is delivered pursuant to Section 5.01(c) demonstrating compliance with the Financial Covenant Level applicable at such time.

"Retained Excess Cash Flow Amount" means, at any date of determination, an amount, determined on a cumulative basis, that is equal to the aggregate cumulative sum of the Excess Cash Flow that is not required to be applied as a mandatory prepayment under Section 2.11(b)(i) for all Excess Cash Flow Periods ending after the Closing Date and prior to such date; provided that such amount shall not be less than zero for any Excess Cash Flow Period.

"Revaluation Date" means (a) with respect to any Revolving Loan, each of the following: (i) the date of the Borrowing of such Revolving Loan, (ii) each date of any continuation of such Revolving Loan pursuant to the terms of this Agreement and (iii) the date of any voluntary reduction of the related Commitment pursuant to Section 2.09(b), (b) with respect to any Letter of Credit, each of the following: (i) the date of on which such Letter of Credit is issued and (ii) the date of any amendment of such Letter of Credit that has the effect of increasing the face amount thereof and (c) any additional date as the Administrative Agent or the relevant Issuing Bank, as applicable, may determine or the Required Lenders may require at any time.

"Revolving Commitment Fee Rate" means, on any date (a) with respect to the Initial Revolving Credit Commitments, the 0.50% per annum and (b) with respect to Additional Revolving Credit Commitments of any Class, the rate or rates per annum specified in the applicable Incremental Facility Amendment or Extension Amendment.

"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 and any facility governing Extended Revolving Credit Commitments or Extended Revolving Loans.

"Revolving Lender" means any Initial Revolving Lender and any Additional Revolving Lender.

"Revolving Loans" means any Initial Revolving Loans and any Additional Revolving Loans.

"S&P" means Standard & Poor's Financial Services LLC, a subsidiary of the McGraw-Hill Companies, Inc.

"Sale and Lease-Back Transaction" has the meaning assigned to such term in Section 6.08.

"Scheduled Consideration" has the meaning assigned to such term in the definition of "Excess Cash Flow".

"Screen Rate" means the rate appearing on the applicable Reuters screen page (or any successor or substitute page of such Reuters service, or if the Reuters service ceases to be available, any successor to or substitute for such service providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time in consultation with the Borrower, for purposes of providing quotations of interest rates applicable to deposits in Dollars in the London interbank market).

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of its functions.

"Second Amendment" means that certain Second Amendment to Credit Agreement, dated as of the Second Amendment Effective Date, among the Borrower, Holdings, the other Loan Parties party thereto, the Administrative Agent and the Lenders party thereto.

"Second Amendment Effective Date" means December 20, 2019.

"Second Amendment Initial Delayed Draw Term Loan Commitment" means the commitments of the Initial Delayed Draw Term Lenders to make Initial Delayed Draw Term Loans hereunder established pursuant to the Second Amendment on the Second Amendment Effective Date.

"Secured Hedging Obligations" means all Hedging Obligations (other than any Excluded Swap Obligations) under each Hedge Agreement that (a) is in effect on the Closing Date between any Loan Party and a counterparty that is (or is an Affiliate of) the Administrative Agent, a Lender or an Arranger as of the Closing Date or (b) is entered into after the Closing Date between any Loan Party and any counterparty that is (or is an Affiliate of) the Administrative Agent, a Lender or an Arranger at the time such Hedge Agreement is entered into, 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, 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 Acceptable Intercreditor Agreement as if it were a Lender.

"Secured Obligations" means all Obligations, together with all Banking Services Obligations and all Secured Hedging Obligations.

"Secured Parties" means (i) the Lenders and the Issuing Banks, (ii) the Administrative Agent, (iii) each counterparty to a Hedge Agreement with a Loan Party the obligations under which constitute Secured Hedging Obligations, (iv) each provider of Banking Services to any Loan Party the obligations under which constitute Banking Services Obligations, (v) the Arrangers and (vi) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document.

"Securities" means any stock, shares, units, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing; provided that "Securities" shall not include any earn- out agreement or obligation or any employee bonus or other incentive compensation plan or agreement.

"Securities Act" means the Securities Act of 1933 and the rules and regulations of the SEC promulgated thereunder.

"Security Agreement" means the Pledge and Security Agreement, substantially in the form of Exhibit L, among the Loan Parties 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 6.10 if the references to "Subsidiaries" in Section 6.10 were read to refer to such Person.

"SPC" has the meaning assigned to such term in Section 9.05(e).

"Specified Determination Date" means the date that is the earlier to occur of (i) the date that is 120 days following the initial funding of the PPP Debt (or such longer period as the Administrative Agent may reasonably agree) and (ii) the date that the Borrower receives a determination by the PPP Debt Lender and/or the Small Business Administration regarding the amount of the PPP Debt that is eligible to be forgiven.

"Specified Merger Agreement Representations" means such of the representations and warranties made by or on behalf of the Target, its subsidiaries or their respective businesses in the Merger Agreement as are material to the interests of the Lenders, but only to the extent that Merger Sub (or its applicable affiliate) has the right to terminate its obligations under the Merger Agreement or to decline to consummate the Closing Date Merger as a result of a breach of such representations and warranties.

"Specified Representations" means the representations and warranties set forth in Section 3.01(a)(i) (as it relates to the Loan Parties), Section 3.02 (as it relates to the due authorization, execution, delivery and performance of the Loan Documents and the enforceability thereof), Section 3.03(b)(i), Section 3.08, Section 3.12, Section 3.14 (as it relates to the creation, validity and perfection of the security interests in the Collateral), Section 3.16, Section 3.17(a)(ii), Section 3.17(b) and Section 3.17(c)(ii).

"Sponsor" means, collectively, Advent, its controlled Affiliates and funds managed or advised by any of them or any of their respective controlled Affiliates.

"Spot Rate" means, on any date of determination, the exchange rate, as determined by the Administrative Agent, that is applicable to conversion of one currency into another currency, which is the exchange rate reported by Bloomberg (or other commercially available source designated by the Administrative Agent) as of the end of the preceding Business Day in the financial market for the first currency.

"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 (x) as if any future automatic increases in the maximum available amount provided for in any such Letter of Credit had in fact occurred at such time and (y) without regard to whether any conditions to drawing could then be met but after giving effect to all previous drawings made thereunder.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted Eurocurrency Rate, for Eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D). Such reserve percentages shall include those imposed pursuant to such Regulation D. Adjusted Eurocurrency Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"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, with respect to any Test Period, (a) the Transactions, (b) 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 (x) any Subsidiary the effect of which is to increase the Borrower's or any Subsidiary's respective equity ownership in such Subsidiary or (y) any joint venture for the purpose of increasing the Borrower's or its relevant Subsidiary's ownership interest in such joint venture), in each case that is permitted by this Agreement, (c) any Disposition of all or substantially all of the assets or Capital Stock of any subsidiary (or any business unit, line of business or division of the Borrower, any subsidiary) not prohibited by this Agreement, (d) any incurrence or repayment of Indebtedness (other than revolving Indebtedness), (e) any capital contribution in respect of Qualified Capital Stock or any issuance of Qualified Capital Stock (other than any amount constituting a Cure Amount or a Liquidity Cure Amount) and/or (f) 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" or "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 that is not a 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, 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. Notwithstanding the foregoing, the Borrower may elect to cause any Subsidiary that is not otherwise required to be a Subsidiary Guarantor to provide a Loan Guaranty by causing such Subsidiary to execute a joinder to the Loan Guaranty in substantially the form attached as an exhibit thereto, and any such Subsidiary shall be a Loan Party and Subsidiary Guarantor for all purposes hereunder.

"Successor Borrower" has the meaning assigned to such term in Section 6.07(a).

"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.

"Target" has the meaning assigned to such term in the preamble to this Agreement.

"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.

"Termination Date" has the meaning assigned to such term in the lead-in to Article 5.

"Term Commitment" means any Initial Term Loan Commitment, Initial Delayed Draw 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, Initial Delayed Draw Term Lender and any Additional Term Lender.

"Term Loan" means the Initial Loans and, if applicable, any Additional Term Loans.

"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 of Section 5.01(a), "Test Period" means the period of four consecutive Fiscal Quarters most recently ended for which financial statements of the Target are available.

"Threshold Amount" means $7,500,000.

"Third Amendment Effective Date" means April 27, 2020.

"Total Leverage Ratio" means the ratio, as of any date of determination, of (a) Consolidated Total Debt outstanding as of the last day of the most recently ended Test Period to (b) Consolidated Adjusted EBITDA for the Test Period then most recently ended, in each case of the Borrower, its 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, without limitation, 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 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 transactions contemplated by the Merger Agreement, (c) the Equity Contribution, (d) the Refinancing, (e) the Closing Date Merger and (f) 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 U.S. 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 Adjusted Eurocurrency Rate 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.

"Unit Locations" 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 Persons (including, in the case of the Borrower and its Subsidiaries) and (b) Cash and Cash Equivalents of such Person (including, in the case of the Borrower and its Subsidiaries) 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); provided that such amount shall not exceed $10,000,000.

"U.S." means the United States of America.

"U.S. Lender" means any Lender or Issuing Bank that is a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"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)).

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 2.17(f).

"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 effect 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) shall be 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 the Borrower or any 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, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02. 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.*, an "Adjusted Eurocurrency Rate Loan") or by Class and Type (*e.g.*, an "Adjusted Eurocurrency Rate Term Loan"). Borrowings also may be classified and referred to by Class (*e.g.*, a "Term Loan Borrowing") or by Type (*e.g.*, an "Adjusted Eurocurrency Rate Borrowing") or by Class and Type (*e.g.*, an "Adjusted Eurocurrency Rate Term Loan Borrowing").

Section 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) 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), (b) 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, (c) any reference herein or in any Loan Document to any Person shall be construed to include such Person's successors and permitted assigns, (d) 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, (e) 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, (f) 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" and (g) 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. For purposes of determining compliance at any time with Sections 6.01, 6.02, and/or 6.06 in the event that any Indebtedness, Lien or Investment, as

applicable, meets the criteria of more than one of the categories of transactions or items permitted pursuant to any clause of Sections 6.01 (other than Sections 6.01(a)), 6.02 (other than Section 6.02(a)) and 6.06, the Borrower, in its sole discretion, may classify 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. 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 Sections 6.01, 6.02, 6.04, 6.05, 6.06, 6.07 or 6.09, respectively, but may instead be permitted in part under any combination thereof.

Section 1.04. 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 Total Leverage Ratio or Consolidated Adjusted EBITDA 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 (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, 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 such an amendment is requested by the Borrower or the Required Lenders, then 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 1.10, all financial ratios and tests (including the Total Leverage Ratio and the amount of 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 (x) any Subject Transaction has occurred or (y) any Person that subsequently became a Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its 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 (it being understood, for the avoidance of doubt, that solely for purposes of calculating actual compliance with Section 6.15(a), 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," in the event of an accounting change (or any implementation of changes to GAAP contemplated and promulgated as of such date) requiring all leases to be capitalized, only those leases (assuming for purposes hereof that such leases were in existence on the date hereof) that would constitute Capital Leases in conformity with GAAP on the date hereof shall be considered Capital Leases, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

Section 1.05. Effectuation of Transactions. Each of the representations and warranties contained in this Agreement (and all corresponding definitions) is made after giving effect to the Transactions, unless the context otherwise requires.

Section 1.06. Timing of Payment of Performance. When payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or 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 1.07. 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 1.08. Currency Equivalents Generally.

(a) For purposes of any determination under Article 5, Article 6 (other than Section 6.15(a) and the calculation of compliance with any financial ratio for purposes of taking any action hereunder) or Article 7 with respect to the amount of any Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, Investment, Disposition, Sale and Lease-Back Transaction, Affiliate transaction 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 commitments unutilized thereunder and (z) additional amounts 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 6.15(a) 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. Notwithstanding the foregoing or anything to the contrary herein, to the extent that the Borrower would not be in compliance with Section 6.15(a) 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 6.15(a) 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 6.15(a), the Total Leverage Ratio as of the last day of such Test Period shall be calculated on the basis of such average relevant currency exchange rates.

(b) 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 1.09. 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, 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 1.10. Certain Calculations and Tests.

(a) Notwithstanding anything to the contrary herein, in connection with any acquisition or similar Investment, the consummation of which is not conditioned on the availability of debt financing (each, an "LCA Investment") (including with respect to any Indebtedness contemplated or incurred in connection therewith) (other than any Initial Delayed Draw Term Loan), to the extent that the terms of this Agreement require (i) compliance with any financial ratio or test (including, without limitation, Section 6.15(a) hereof and/or any Total Leverage Ratio test) and/or any basket (including any cap expressed as a percentage of Consolidated Adjusted EBITDA) or (ii) the absence of a Default or Event of Default (or any type of Default or Event of Default, but other than any payment or bankruptcy Event of Default) as a condition to making such LCA Investment and/or incurring any Indebtedness or effecting another transaction incurred or contemplated in connection therewith, the determination of whether the relevant condition is satisfied may be made, at the election of the Borrower, at the time of (or on the basis of the financial statements for the most recently ended Test Period at the time of) either (A) the execution of the definitive agreement with respect to the relevant LCA Investment or (B) the consummation of the LCA Investment, in each case, after giving effect, on a Pro Forma Basis to the LCA Investment, any related Indebtedness (including the intended use of proceeds thereof) and all other permitted pro forma adjustments; provided that if the Borrower has made an election under clause (A), in connection with the subsequent calculation of any ratio or basket (other than with respect to any Delayed Draw Term Loan) on or following such date and prior to the earlier of the date on which such LCA Investment is consummated or the definitive agreement for such LCA Investment is terminated, compliance with such ratio or basket shall be calculated on a Pro Forma Basis assuming such LCA Investment and other transactions incurred or contemplated in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated.

(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, without limitation, Section 6.15(a), any Total Leverage Ratio test and/or the amount of Consolidated Adjusted EBITDA), such financial ratio or test shall be calculated at the time such action is taken (subject to clause (a) above), 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 occurring after such calculation.

(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, without limitation, Section 6.15(a) hereof and/or any Total Leverage Ratio test) (any such amount, 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, without limitation, Section 6.15(a) and/or any Total 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 clause (i) above, pro forma effect shall be given to the use of the relevant Fixed Amount in calculating such financial ratio or test applicable to the Incurrence-Based Amount.

(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 granting of a Lien for purposes of Section 6.02.

ARTICLE 2

THE CREDITS

Section 2.01. Commitments.

(a) Subject to the terms and conditions set forth herein,

(i) each Initial Term Lender severally, and not jointly, agrees to make Initial Term Loans to the Borrower on the Closing Date in Dollars in a principal amount not to exceed its Initial Term Loan Commitment;

(ii) each Revolving Lender severally, and not jointly, agrees to make Revolving Loans to the Borrower in Dollars, if applicable, 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; and

(iii) each Initial Delayed Draw Term Lender severally, and not jointly, agrees to make Initial Delayed Draw Term Loans to the Borrower in Dollars in a principal amount not to exceed its Initial Delayed Draw Term Loan Commitment at any time and from time to time on and after the Closing Date, and until the earlier of (A) the Initial Delayed Draw Term Loan Commitment Termination Date and (B) the termination of the Initial Delayed Draw Term Loan Commitment of such Initial Delayed

Draw Term Lender in accordance with the terms hereof; it being understood and agreed that, on and after the Second Amendment Effective Date until the Initial Delayed Draw Term Loan Commitment Termination Date with respect to the First Amendment Initial Delayed Draw Term Loan Commitment, Initial Delayed Draw Term Loans shall be deemed to be made first, in reliance on the unused portion of the First Amendment Initial Delayed Draw Term Loan Commitment until the unused portion of the First Amendment Initial Delayed Draw Term Loan Commitment is $0, and then, in reliance on the unused portion of the Second Amendment Initial Delayed Draw Term Loan Commitment. The First Amendment Initial Delayed Draw Term Loan Commitment shall constitute a separate Class from the Second Amendment Initial Delayed Draw Term Loan Commitment for all purposes under this Agreement. The Initial Delayed Draw Term Loans and Initial Term Loans are the same Class of Term Loans for all purposes under this Agreement. On the Initial Delayed Draw Term Loan Commitment Termination Date, to the extent requested by the Borrower in accordance with Section 2.03, the Initial Delayed Draw Term Loans may be borrowed in an amount not to exceed any unused Initial Delayed Draw Term Loan Commitment as of the date of such Borrowing.

(iv) Within the foregoing limits and subject to the terms, conditions and limitations set forth herein, the Borrower may borrow, pay or prepay and reborrow Revolving Loans. Amounts paid or prepaid in respect of the Initial Loans may not be reborrowed.

(b) Subject to the terms and conditions of this Agreement and any applicable 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 Incremental Facility Amendment.

(c) Administrative Agent may from time to time classify all or any portion of outstanding Initial Delayed Draw Term Loans, in each case in a minimum principal amount of $5,000,000, as a separate tranche of Term Loans, each of which shall be deemed separate and independent tranches of term loans from the other Term Loans hereunder; provided, that once so classified, a separate and independent tranche of Initial Delayed Draw Term Loans shall not be subject to reclassification hereunder. In connection with any such classification (v) the applicable Initial Delayed Draw Term Loans shall be given a numerical designation in ascending order based on the date such Initial Delayed Draw Term Loans are so classified (on an earliest to latest basis, for example, DDTL-1, DDTL-2, DDTL-3, etc.), which numerical designation shall apply to such Initial Delayed Draw Term Loans for all purposes of this Agreement and the other Loan Documents to separately identify that particular tranche of Initial Delayed Draw Term Loans from the other tranches of Initial Delayed Draw Term Loans funded under the Initial Delayed Draw Term Loan Commitment, and each reference herein and in the other Loan Documents to "Initial Delayed Draw Term Loans," "each Initial Delayed Draw Term Loan," "an Initial Delayed Draw Term Loan," "any Initial Delayed Draw Term Loan" or similar reference shall mean a particular tranche of the Initial Delayed Draw Term Loans (applicable to all such tranches equally unless specifically set forth otherwise herein (for example, separate amortization schedules for each such tranche as determined in accordance with the terms of Section 2.10 hereof) or in the applicable Loan Document), (w) the Administrative Agent shall update the Register to reflect any such classification and shall promptly inform the Lenders holding Initial Delayed Draw Term Loans of any such classification, (x) all such tranches of Initial Delayed Draw Term Loans shall rank *pari passu* with one another in right of payment and of security (including, without limitation, with respect to scheduled amortization payments, interest payments, voluntary prepayments, mandatory prepayments and Sections 2.18(b)) and shall share in all payments made on account of the Initial Delayed Draw Term Loans *pro rata* based on the applicable amounts owing in respect of each tranche of Initial Delayed Draw Term Loans, (y) each such tranche of Initial Delayed Draw Term Loans may trade separate from each other tranche of Initial Delayed Draw Term Loans and (z) except for the separate amortization schedules for each such tranche of Initial Delayed Draw Term Loans as determined in accordance with the terms of Section 2.10 hereof, each tranche of Initial Delayed Draw Term Loans shall have terms identical to the other Initial Delayed Draw Term Loans hereunder. Each such separate tranche of Initial Delayed Draw Term Loans shall constitute a separate and distinct Term Loan and a separate and distinct Loan for all purposes of this Agreement

and the other Loan Documents. With respect to a particular tranche of Initial Delayed Draw Term Loans, the term "Initial Delayed Draw Term Loan" shall refer to the aggregate amount of such tranche of Initial Delayed Draw Term Loans funded to the Borrower when used in the context of all Initial Delayed Draw Term Lenders collectively and a particular Initial Delayed Draw Term Lender's portion of the aggregate amount of such tranche of Initial Delayed Draw Term Loans when used in the context of an individual Initial Delayed Draw Term Lender.

Section 2.02. Loans and Borrowings.

(a) Each 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.

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or Adjusted Eurocurrency Rate Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate Loan shall be deemed to have been made and held by such Lender, and the obligation of the Borrower to repay such Adjusted Eurocurrency Rate 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 U.S. federal withholding Tax with respect to such Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate Borrowing, such Adjusted Eurocurrency Rate Borrowing shall comprise an aggregate principal amount that is an integral multiple of $50,000 and not less than $250,000. Each ABR Borrowing when made shall be in a minimum principal amount of $50,000 and in an integral multiple of $50,000; 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 Commitments or (y) required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e). 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 15 different Interest Periods in effect for Adjusted Eurocurrency Rate 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.

(e) Each Borrowing in respect of Initial Delayed Draw Term Loan Commitments shall comprise an aggregate principal amount that is not less than $2,000,000 and in an integral multiple of $50,000.

Section 2.03. 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 Adjusted Eurocurrency Rate Loans shall be made upon irrevocable notice by the Borrower to the Administrative Agent (provided that notices in respect of Term Loan Borrowings and/or the Revolving Loan Borrowing (x) to be made on the Closing Date may be conditioned on the closing of the Closing Date Merger

and (y) to be made in connection with any permitted acquisition, permitted Investment or irrevocable repayment or redemption of Indebtedness may be conditioned on the closing of such permitted acquisition, permitted Investment or permitted irrevocable repayment or redemption of Indebtedness). Each such notice must be in in the form of a written Borrowing Request, appropriately completed and signed by a Responsible Officer of the Borrower and must be received by the Administrative Agent (by hand delivery, fax or other electronic transmission (including ".pdf" or ".tif")) not later than 12:00 p.m. (i) three Business Days prior to the requested day of any Borrowing of, conversion to or continuation of Adjusted Eurocurrency Rate Loans and (ii) one Business Day prior to the requested day of any Borrowing of or conversion to ABR 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 Adjusted Eurocurrency Rate Loans having an Interest Period of other than one, two, three or six months in duration 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. five Business Days prior to the requested date of the relevant Borrowing (or such later time as is reasonably acceptable to the Administrative Agent), conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the appropriate Lenders of such request and determine whether the requested Interest Period is available to them and (B) the Administrative Agent shall promptly 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 Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate Borrowing, no later than one Business Day following receipt of a Borrowing Request in accordance with this Section.

Section 2.04. [Reserved].

Section 2.05. Letters of Credit.

(a) General.

(i) 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 for the account of the Borrower and/or any of its Subsidiaries (provided that the Borrower will be the applicant) and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.05(b), and (B) to honor drafts under the Letters of Credit, and (ii) the Revolving Lenders severally agree to participate in the Letters of Credit issued pursuant to Section 2.05(d).

(ii) No Issuing Bank shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any Requirement of Law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such Issuing Bank in good faith deems material to it;

(B) the issuance of such Letter of Credit would not violate one or more policies of such Issuing Bank applicable generally to all letters of credit issued by it;

(C) except as otherwise agreed by the Administrative Agent and such Issuing Bank, such Letter of Credit is in an initial stated amount less than $25,000;

(D) such Letter of Credit is to be denominated in a currency other than Dollars; and

(E) such Letter of Credit contains any provision for automatic reinstatement of the stated amount after any drawing thereunder.

(iii) No Issuing Bank shall be under any obligation to amend or extend any Letter of Credit if (A) such Issuing Bank would have no obligation at such time to issue the Letter of Credit in its amended form in accordance with the terms hereof or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment thereto.

(b) 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 five 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, which shall specify whether such Letter of Credit will be denominated in Dollars. 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 (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 together with its Letter of Credit Request. 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 inconsistent herewith 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 inconsistent herewith, 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 on 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 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. Promptly after the delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable Issuing Bank will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) 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 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 103% of the then-available face amount thereof is Cash collateralized or backstopped on or before the date that such Letter of Credit is extended beyond the date referred to in clause (B) above pursuant to arrangements reasonably satisfactory to the relevant Issuing Bank) as long as each of the Borrower and such Issuing Bank have the option to prevent such renewal before the expiration of such term or any such period.

(d) 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 (e) 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.

(e) 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 if the Borrower receives notice of such LC Disbursement under Section 2.05(g) on any Business Day, 1:00 p.m. on the next Business Day immediately following the date on which the Borrower receives notice of such LC Disbursement; provided that the Borrower may, without satisfying 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 (a "Letter of Credit Reimbursement Loan") in an equivalent amount and, to the extent so financed, the obligation of the Borrower to make such payment shall be discharged and replaced by the resulting ABR Revolving Loan Borrowing. 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 amounts owing under this clause (ii) shall be conclusive absent manifest error.

(f) Obligations Absolute. The obligation of the Borrower to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute and unconditional, irrevocable 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 (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) 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 documents presented which appear on their 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 documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) 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. 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.

(h) Interim Interest. If any Issuing Bank makes any LC Disbursement, 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 the Initial Revolving Loans that are ABR Loans of the applicable Class; provided that if the Borrower fails to reimburse such LC Disbursement when due pursuant to Section 2.05(e), 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 (e) 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).

(i) Replacement or Resignation of an Issuing Bank or Designation of New Issuing Banks.

(i) Any Issuing Bank may be replaced with the consent of the Administrative Agent (not to be unreasonably withheld or delayed) 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, the Borrower shall pay all unpaid fees accrued 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. 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, and, with respect to such Letters of Credit, such term shall thereafter apply to the other Issuing Bank and such Revolving Lender.

(ii) Notwithstanding anything to the contrary contained herein, any Issuing Bank may, upon ten 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 ten days after the delivery of such written notice); it being understood that in the event of any such resignation, any Letter of Credit then outstanding shall remain outstanding (irrespective of whether any amounts have been drawn at such time). In the event of any such resignation as an Issuing Bank, the Borrower shall be entitled to appoint any Revolving Lender that accepts such appointment in writing as successor 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.

(j) Cash Collateralization.

(i) If any Event of Default exists and the Loans have been declared due and payable in accordance with Article 7, then on the Business Day 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 deliver to the Administrative Agent, for deposit by the Administrative Agent in an account 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 103% of the LC Exposure as of such date (minus the amount then on deposit from the Borrower in accordance with this Section 2.05(j)(i) and Sections 2.19(b) and 7.01(l) in the LC Collateral Account); provided that the obligation to deliver such Cash collateral shall become effective immediately, and such delivery 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 (j). 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 (or, if the LC Collateral Account is not in the name of the Borrower, in the cash from the Borrower in accordance with Sections 2.05(j)(i), 2.19(b) and 7.01(l) located 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.

Section 2.06. [Reserved].

Section 2.07. Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder not later than (i) 1:00 p.m., in the case of Adjusted Eurocurrency Rate Loans, and (ii) 2:00 p.m., in the case of ABR Loans, 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. 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, (i) 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 or (ii) the Administrative Agent may, on behalf of such Lender, make available to the Borrower a corresponding amount. Such Lender shall reimburse the Administrative Agent on demand for all funds disbursed on its behalf by the Administrative Agent, or if the Administrative Agent so requests, such Lender will remit to the Administrative Agent its share of any Borrowing before the Administrative Agent disburses the same to the Borrower. In the case of any such event set forth in the first sentence of this Section 2.07(b), 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 (x) 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 (y) 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. Nothing in this Section 2.07(b) shall be deemed to require the Administrative Agent, in its capacity as such, to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that the Administrative Agent, any Lender or the Borrower may have against any Lender as a result of any default by such Lender.

Section 2.08. Type; Interest Elections.

(a) Each Borrowing shall initially be of the Type specified in the applicable Borrowing Request and, in the case of any Adjusted Eurocurrency Rate Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert any Borrowing to a Borrowing of a different Type or to continue such Borrowing and, in the case of an Adjusted Eurocurrency Rate 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.

(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 of the applicable election to the Administrative Agent.

(c) If any such Interest Election Request requests an Adjusted Eurocurrency Rate 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.

(d) 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.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to an Adjusted Eurocurrency Rate 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. Notwithstanding anything to the contrary herein, if an Event of Default exists and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as such Event of Default exists (i) no outstanding Borrowing may be converted to or continued as an Adjusted Eurocurrency Rate Borrowing and (ii) unless repaid, each Adjusted Eurocurrency Rate Borrowing shall be converted to an ABR Borrowing at the end of the then-current Interest Period applicable thereto.

(f) It is understood and agreed that any Borrowing may only be made in the form of, or converted into, or continued as, an Adjusted Eurocurrency Rate Revolving Loan or an ABR Revolving Loan. No Loan may be converted into or continued as a Loan denominated in a different currency.

Section 2.09. 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 Delayed Draw Term Loan Commitments shall automatically terminate (A) in the event an Initial Delayed Draw Term Loan is funded, upon the making of such Initial Delayed Draw Term Loan in a corresponding amount and (B) in any event, on the Initial Delayed Draw Term Loan Commitment Termination Date (iii) the Initial Revolving Credit Commitments shall automatically terminate on the Initial Revolving Credit Maturity Date, (iv) 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 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 Incremental Facility Amendment.

(b) (i) 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, 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 Additional Revolving Credit Commitment, 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.

(ii) 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 Initial Delayed Draw Term Loan Commitments of any Class; provided each reduction of the Initial Delayed Draw Term Loan 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.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce any Revolving Credit Commitment or Initial Delayed Draw Term Loan Commitment, as applicable, under Section 2.09(b) 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 or the Initial Delayed Draw Term Lenders, as applicable, of each applicable Class of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.09(c) shall be irrevocable; provided that any such notice may state that it is conditioned upon the effectiveness of other transactions, 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. Any termination or reduction of any Revolving Credit Commitment or Initial Delayed Draw Term Loan Commitment, as applicable, pursuant to this Section 2.09(c) 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 such reduction amount. Upon any reduction of any Initial Delayed Draw Term Loan Commitment, the Initial Delayed Draw Term Loan Commitment of each Initial Delayed Draw Term Lender of the relevant Class shall be reduced by such Delayed Draw Lender's Applicable Initial Delayed Draw Term Loan Percentage of such reduction amount.

Section 2.10. 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 Initial Term Lender (A) commencing with the Fiscal Quarter ending on December 31, 2017, on the last Business Day of each Fiscal

Quarter prior to the Initial Term Loan Maturity Date (each such date being referred to as a "Loan Installment Date"), in each case in an amount equal to 0.25% of the original principal amount of the Initial Term Loans (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 in accordance with Section 9.05(g) or increased as a result of any increase in the amount of such Initial Term Loans pursuant to Section 2.22(a)), and (B) on the Initial Term Loan Maturity Date, in an amount equal to the remainder of the principal amount of the 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.

(ii) The Borrower hereby unconditionally promises to repay the outstanding principal amount of each Borrowing of Initial Delayed Draw Term Loans to the Administrative Agent for the account of each Initial Delayed Draw Term Lender (A) commencing with the first Loan Installment Date after the first full Fiscal Quarter after such Borrowing, in each case in an amount equal to 0.25% of the original principal amount of such Borrowing of Initial Delayed Draw Term Loans (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 in accordance with Section 9.05(g) or increased as a result of any increase in the amount of such Initial Delayed Draw Term Loans pursuant to Section 2.22(a)), and (B) on the Initial Term Loan Maturity Date, in an amount equal to the remainder of the principal amount of the Initial Delayed Draw 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.

(iii) 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 Incremental Facility Agreement 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 (i) 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 and (ii) 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.

(ii) 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 each outstanding Letter of Credit, furnish to the Administrative Agent a Cash deposit (or if reasonably satisfactory to the relevant Issuing Bank, a "backstop" letter of credit) equal to 103% of the amount of the LC Exposure (minus any amount then on deposit in any Cash collateral account established for the benefit of the relevant Issuing Bank) as of such date, 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 shall not exceed the Revolving Credit Commitments of such other Class then in effect, and (B) make payment in full in Cash 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 and Type 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 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; provided, further, that 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.

(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 reasonably satisfactory to the Borrower.

Section 2.11. 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 (A) in the case of Borrowings of Initial Loans only, to Section 2.12(f) and (B) if applicable, to Section 2.16); provided that prepayments of the Initial Loans shall be made on a pro rata basis among the Initial Loans and, to the extent required by the terms of any Additional Term Loans (which may require participation on a pro rata or less than pro rata basis), in accordance with Section 2.22(a)(xi), such Additional Term Loans. 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, in Dollars, any Borrowing of Revolving Loans of any Class, in whole or in part without premium or penalty (but subject to Section 2.16); provided that 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. 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 in writing of any prepayment under this Section 2.11(a) (i) in the case of any prepayment of any Adjusted Eurocurrency Rate Borrowing, not later than 12:00 p.m. three Business Days before the date of prepayment or (ii) in the case of any prepayment of an ABR Borrowing, not later than 11:00 a.m. on the same Business Day of prepayment. 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, 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) No later than the fifth Business Day after the date on which the financial statements with respect to each Fiscal Year of the Borrower are required to be delivered pursuant to Section 5.01(b), commencing with the Fiscal Year ending on December 30, 2018, the Borrower shall prepay the outstanding principal amount of Initial Loans and Additional Term Loans then subject to ratable prepayment requirements in accordance with clause (vi) of this Section 2.11(b) below in an aggregate principal amount (the "ECF Prepayment Amount") equal to (A) the Required Excess Cash Flow Percentage of Excess Cash Flow of the Borrower and its Subsidiaries for the Excess Cash Flow Period then ended, minus (B) at the option of the Borrower, (x) the aggregate principal amount of any Term Loans and/or Revolving Loans prepaid pursuant to Section 2.11(a) prior to such date and (y) the amount of any reduction in the outstanding amount of any Term Loans resulting from any assignment made in accordance with Section 9.05(g) of this Agreement (including in connection with any Dutch Auction) prior to the date such payment is due and, in each case under this clause (z), based upon the actual amount of cash paid in connection with the relevant assignment, in each case, excluding any such optional prepayments made during such Fiscal Year that reduced the amount required to be prepaid pursuant to this Section 2.11(b)(i) in the prior Fiscal Year (in the case of any prepayment of Revolving Loans, to the extent accompanied by a permanent reduction in the relevant commitment, and in the case of all such prepayments, to the extent that such prepayments were not financed with the proceeds of other Indebtedness (other than revolving Indebtedness) of the Borrower or its Subsidiaries); provided that no prepayment under this Section 2.11(b) shall be required unless and to the extent that the amount thereof exceeds $1,000,000; provided, further, that if at the time that any such prepayment would be required, the Borrower (or any Subsidiary of the Borrower) is also required to prepay any Indebtedness that is secured on a *pari passu* basis with any Secured Obligation that is secured on a first lien basis 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") with any portion of the ECF Prepayment Amount, then the Borrower may apply such portion of the ECF Prepayment Amount on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Loans and the relevant Other Applicable Indebtedness at such time; provided, that the portion of such ECF Prepayment Amount allocated to the Other Applicable Indebtedness shall not exceed the amount of such ECF Prepayment Amount required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such ECF Prepayment Amount shall be allocated to the Term Loans in accordance with the terms hereof) to the prepayment of the Term Loans and to the prepayment of the relevant Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.11(b)(i) shall be reduced accordingly; provided, further, that to the extent the holders of Other Applicable Indebtedness decline to have such indebtedness prepaid, the declined amount shall promptly (and in any event within ten Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof.

(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 $3,500,000 in any Fiscal Year, the Borrower shall apply an amount equal to 100% of the Net Proceeds or Net Insurance/Condemnation Proceeds received with respect thereto in excess of such threshold (collectively, the "Subject Proceeds") to prepay the outstanding principal amount of Initial Loans and Additional Term Loans then subject to ratable prepayment requirements (the "Subject Loans") in accordance with clause (vi) below; provided that (A) if prior to the date any such prepayment is required to be made, the Borrower notifies the Administrative Agent of its intention to reinvest the Subject Proceeds in the business of the Borrower and/or any subsidiary (to the extent such Investment is permitted or not restricted under Section 6.06) (other than in Cash or Cash Equivalents), then so long as no Event of Default exists, the Borrower shall not be required to make a mandatory prepayment under this clause (ii) in respect of the Subject Proceeds to the extent (x) the Subject Proceeds are so reinvested within 365 days following receipt thereof, or (y) the Borrower or any of its subsidiaries has committed to so reinvest the Subject Proceeds during such 365-day period and the Subject Proceeds are so reinvested within 180 days after the expiration of such 365-day period; it being understood that if the 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 Subject Proceeds not so reinvested as set forth above (without regard to the immediately preceding proviso) and (B) if, at the time that any such prepayment would be required hereunder, the Borrower or any of its Subsidiaries is required to repay or repurchase any 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 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 ten Business Days after the date of such rejection) be applied to prepay the Subject Loans in accordance with the terms hereof.

(iii) In the event that the Borrower or any of its Subsidiaries receives Net Proceeds from the issuance or incurrence of Indebtedness by the Borrower or any of its Subsidiaries (other than Indebtedness that is permitted to be incurred under Section 6.01, the Borrower shall, promptly upon (and in any event not later than two Business Days thereafter) the receipt thereof of such Net Proceeds by the Borrower or its applicable Subsidiary, apply 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 any amount that would otherwise be required to be paid pursuant to Sections 2.11(b)(i) or (ii) above to the extent that the relevant Excess Cash Flow is generated by any Foreign Subsidiary, the relevant Prepayment Asset Sale is consummated by any Foreign Subsidiary or the relevant Net Insurance/Condemnation Proceeds are received by any Foreign Subsidiary, as the case may be, for so long as the repatriation to the Borrower of any such amount would violate or conflict with any Requirement of Law or conflict with the fiduciary duties of such Foreign Subsidiary's directors, 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 Foreign Subsidiary (it being understood and agreed that (i) solely within 365 days following the end of the applicable Excess Cash Flow Period or the event giving rise to the relevant Subject Proceeds, the Borrower shall take all commercially reasonable actions required by applicable Requirements of Law to permit such repatriation and (ii) if the repatriation of the relevant affected Excess Cash Flow or Subject Proceeds, as the case may be, is permitted under the applicable Requirement of Law and, to the extent applicable, would no longer conflict with the fiduciary duties of such director, or result in, or be reasonably expected to result in, a material risk of personal or criminal liability for the Persons described above, in either case, within 365 days following the end of the applicable Excess Cash Flow Period or the event giving rise to the relevant Subject Proceeds, the relevant Foreign Subsidiary will promptly repatriate the relevant Excess Cash Flow or Subject Proceeds, as the case may be, and the repatriated Excess Cash Flow or Subject Proceeds, as the case may be, will be promptly (and in any event not later than two Business Days after such repatriation) applied (net of additional Taxes payable or reserved against such Excess Cash Flow or such Subject Proceeds as a result thereof) to the repayment of the Term Loans pursuant to this Section 2.11(b) to the extent required herein (without regard to this clause (iv)),

(B) the Borrower shall not be required to prepay any amount that would otherwise be required to be paid pursuant to Sections 2.11(b)(i) or (ii) to the extent that the relevant Excess Cash Flow is generated by any joint venture or the relevant Subject Proceeds are received by any joint venture, in each case, for so long as the distribution to the Borrower of such Excess Cash Flow or Subject Proceeds would be prohibited under the Organizational Documents governing such joint venture; it being understood that if the relevant prohibition ceases to exist within the 365-day period following the end of the applicable Excess Cash Flow Period or the event giving rise to the relevant Subject Proceeds, the relevant joint venture will promptly distribute the relevant Excess Cash Flow or the relevant Subject Proceeds, as the case may be, and the distributed Excess Cash Flow or Subject Proceeds, as the case may be, will be promptly (and in any event not later than two Business Days after such distribution) applied to the repayment of the Term Loans pursuant to this Section 2.11(b) to the extent required herein (without regard to this clause (iv)),

(C) if the Borrower determines in good faith that the repatriation (or other intercompany distribution) to the Borrower, directly or indirectly, from a Foreign Subsidiary as a distribution or dividend of any amounts required to mandatorily prepay the Term Loans pursuant to Sections 2.11(b)(i) or (ii) above would result in a material and adverse Tax liability (including any withholding Tax) (such amount, a "Restricted Amount"), the amount that the Borrower shall be required to mandatorily prepay pursuant to Sections 2.11(b)(i) or (ii) above, as applicable, shall be reduced by the Restricted Amount; provided that to the extent that the repatriation (or other intercompany distribution) of the relevant Subject Proceeds or Excess Cash Flow, directly or indirectly, from the relevant Foreign Subsidiary would no longer have a material adverse tax consequence within the 365-day period following the event giving rise to the relevant Subject Proceeds or the end of the applicable Excess Cash Flow Period, as the case may be, an amount equal to the Subject Proceeds or Excess Cash Flow, as applicable and to the extent available, not previously applied pursuant to this clause (C), shall be promptly applied to the repayment of the Term Loans pursuant to Section 2.11(b) as otherwise required above; and

(D) the Borrower shall not be required to prepay any amount that would otherwise be required to be paid pursuant to Sections 2.11(b)(i) or (ii) to the extent that such prepayment would violate the terms of any material contract binding on the Borrower or any of its Subsidiaries; it being understood that if the relevant prohibition in such contract ceases to exist, the relevant Person will promptly distribute such prepayment to be applied to the Term Loans pursuant to Section 2.11(b) to the extent required herein (without regard to this clause (iv)).

(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"), in which case such Declined Proceeds may be retained by the Borrower. If any Lender fails to deliver a 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 Incremental Facility Amendment or any Extension Amendment (provided, that such Incremental Facility Amendment or Extension Amendment may not provide that the applicable Class of Term Loans receive a greater than pro rata portion of mandatory prepayments 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 applied ratably to each Class of Term Loans then outstanding which is *pari passu* with the Initial Loans in right of payment and with respect to security. With respect to each relevant Class of Term Loans, all accepted prepayments under this Section 2.11(b) shall be applied against the remaining scheduled installments of principal due in respect of such 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 such Term Loans 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 waive 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 that are ABR Loans to the full extent thereof and then to the then outstanding Term Loans that are Adjusted Eurocurrency Rate Loans in a manner that minimizes the amount of any payments required to be made by the Borrower pursuant to Section 2.16.

(vii) (A) In the event that the Revolving Credit Exposure of any Class exceeds the amount of the 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 and/or reduce LC Exposure in an aggregate amount sufficient to reduce such Revolving Credit Exposure as of the date of such payment to an amount not to exceed 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: (x) prepaying Revolving Loans or (y) with respect to any excess LC Exposure, depositing Cash in a Cash collateral account established for the benefit of the relevant Issuing Bank or "backstopping" or replacing the relevant Letters of Credit, in each case, in an amount equal to 103% of such excess LC Exposure (minus any amount then on deposit in any Cash collateral account established for the benefit of the relevant Issuing Bank).

(B) 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.

(C) Notwithstanding the foregoing, for the avoidance of doubt, no prepayment shall be required pursuant to this Section 2.11(b)(vii) that would otherwise be required solely as a result of any amount being added to the outstanding principal balance of any Revolving Loan pursuant to the provisos of Section 2.13(a) or (b).

(viii) Prepayments made under this Section 2.11(b) shall be (A) accompanied by accrued interest as required by Section 2.13, (B) subject to Section 2.16 and (C) in the case of prepayments of Initial Loans under clause (iii) above, subject to Section 2.12(f) (but shall otherwise be without premium or penalty).

Section 2.12. Fees.

(a) (i) 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 Revolving Commitment Fee Rate applicable to the Revolving Credit Commitments of such Class on the average 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 the last Business Day of each Fiscal Quarter (commencing with the Fiscal Quarter ending on September 24, 2017) for the quarterly period then ended (or, in the case of the payment made on September 24, 2017, 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 only, the Revolving Credit Commitment of any Class of any Revolving Lender shall be deemed to be used to the extent of Revolving Loans of such Class of such Revolving Lender and the LC Exposure of such Revolving Lender attributable to its Revolving Credit Commitment of such Class.

(ii) The Borrower agrees to pay to the Administrative Agent for the account of each Initial Delayed Draw Term Lender of any Class (other than any Defaulting Lender) a commitment fee, which shall accrue at a rate equal to the Initial Delayed Draw Term Loan Commitment Fee Rate applicable to the Initial Delayed Draw Term Loan Commitments of such Class on the average daily amount of the unused Initial Delayed Draw Term Loan Commitments of such Class of such Initial Delayed Draw Term Lender during the period from and including the Closing Date to the date on which such Lender's Initial Delayed Draw Term Loan Commitment of such Class terminates. Accrued commitment fees shall be payable in arrears on the last Business Day of each Fiscal Quarter (commencing with the Fiscal Quarter ending on September 24, 2017) for the quarterly period then ended (or, in the case of the payment made on September 24, 2017, for the period from the Closing Date to such date) and the Initial Delayed Draw Term Loan Commitment Termination Date.

(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 participations in Letters of Credit, which shall accrue at the Applicable Rate used to determine the interest rate applicable to Revolving Loans of such Class that are Adjusted Eurocurrency Rate Loans on the daily face amount of such Lender's LC Exposure attributable to its Revolving Credit Commitment of such Class (excluding any portion thereof that is attributable to unreimbursed LC Disbursements), 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 customary fronting fee, in respect of each Letter of Credit issued by such Issuing Bank for the period from the date of issuance of such Letter of Credit to the earlier of (A) the expiration date of such Letter of Credit, (B) the date on which such Letter of Credit terminates or (C) the Termination Date), computed at a rate equal to an amount per annum of the daily face amount of such Letter of Credit to be agreed by the Borrower and the applicable Issuing Bank (which rate shall be customary and in no event greater than the prevailing rate charged by such Issuing Bank to similarly situated borrowers), as well as such Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees shall accrue to but excluding the last Business Day of each Fiscal Quarter and be payable in arrears for the quarterly period then ended (or, in the case of the payment made on September 24, 2017, for the period from the Closing Date to such date) on the last Business Day of each Fiscal Quarter (commencing, if applicable, with the Fiscal Quarter ending on September 24, 2017); 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 shall be payable on demand. Any other fees 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 dates 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 circumstances 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) In the event that, after the First Amendment Effective Date and prior to December 31, 2019, the Borrower (i) prepays pursuant to Section 2.11(a)(i) or (ii) prepays or refinances any Initial Loans pursuant to Section 2.11(b)(iii) (it being understood and agreed for the avoidance of doubt that (x) prepayments as a result of assignments made to Affiliated Lenders pursuant to Section 9.05(g) and (y) terminations or reductions of the Delayed Draw Term Loan Commitments pursuant to Section 2.09(b)(ii), in each case, shall not be subject to this Section 2.12(f)), the Borrower shall pay to the Administrative Agent, for the ratable account of each of the applicable Term Lenders (including any Non-Consenting Lender whose Initial Loans are repaid or replaced pursuant to Section 2.19(b)(iv)) a premium of 1.00% of the aggregate principal amount of the Initial Loans so prepaid, repaid or replaced. All such amounts shall be due and payable on the date of the relevant prepayment pursuant to Sections 2.11(a)(i) or 2.11(b)(iii). For the avoidance of doubt, no prepayment premium shall be payable hereunder in connection with any prepayment with respect to Initial Loans on or after December 31, 2019.

(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 a fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.13. Interest.

(a) The Term Loans and Revolving Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate~~.~~; provided that any interest accrued on any Loan at the PIK Rate shall be paid in kind by being added to the outstanding principal amount of such Loan on the applicable Interest Payment Date, and thereafter, the amount of interest so capitalized shall be treated as principal of such Loan for all purposes of this Agreement, including for purposes of calculating interest on such Loan on subsequent Interest Payment Dates.

(b) The Term Loans and Revolving Loans comprising each Adjusted Eurocurrency Rate Borrowing shall bear interest at the applicable Adjusted Eurocurrency Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate~~.~~; provided that any interest accrued on any Loan at the PIK Rate shall be paid in kind by being added to the outstanding principal amount of such Loan on the applicable Interest Payment Date, and thereafter, the amount of interest so capitalized shall be treated as principal of such Loan for all purposes of this Agreement, including for purposes of calculating interest on such Loan on subsequent Interest Payment Dates.

~~(c) [Reserved].~~

(c) Any amount added to the outstanding principal balance of the Revolving Loans pursuant to the provisos of Sections 2.13(a) or (b) shall be disregarded for purposes of determining usage of the Revolving Credit Commitment and/or calculating Revolving Credit Exposure, shall not reduce availability under the Revolving Credit Commitments (including, for the avoidance of doubt, the Letter of Credit Sublimit) and shall not be treated as outstanding principal when calculating Liquidity or any commitment fee (including, for the avoidance of doubt, in respect of any Letters of Credit). In addition to the foregoing, notwithstanding anything herein to the contrary, no mandatory prepayment that would otherwise be required pursuant to this Agreement solely as a result of any such amounts being added to the outstanding principal balance of the Revolving Loans pursuant to this Section 2.13 shall be required.

(d) Notwithstanding the foregoing but in all cases subject to Section 9.05(f), (i) if any principal of or interest on any Term Loan or Revolving Loan, any LC Disbursement or any premium or fee payable by the Borrower hereunder is not, in each case, paid or reimbursed when due, whether at stated maturity, upon acceleration or otherwise, or an Event of Default or Default under Section 7.01(f) or 7.01(g) has occurred and is continuing, 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 (A) in the case of (x) any overdue principal or interest of any Term Loan, Revolving Loan or unreimbursed LC Disbursement or (y) any Term Loan, Revolving Loan or unreimbursed LC Disbursement when an Event of Default or Default under Section 7.01(f) or 7.01(g) has occurred and is continuing, in each case, 2.00% plus the rate otherwise applicable to such Term Loan, Revolving Loan or LC Disbursement as provided in the preceding paragraphs of this Section or (B) in the case of any other amount, 2.00% plus the rate applicable to Revolving Loans that are ABR Loans as provided in Section 2.13(a); 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 payable to a Defaulting Lender so long as such Lender is a Defaulting Lender.

(e) Accrued interest on each Term Loan and Revolving Loan shall be payable ~~in~~(including by way of being paid in kind as specified in Sections 2.13(a) and (b)) in arrears on each Interest Payment Date for such Term Loan and Revolving Loan and (i) on the Maturity Date applicable to such Loan and (ii) in the case of a Revolving Loan of any Class, upon termination of the Revolving Credit Commitments of such Class; provided that (A) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (B) in the event of any repayment or prepayment of any Term Loan or Revolving Loan, (other than an ABR Revolving Loan of any Class prior to the termination of the Revolving Credit Commitments of such Class), 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 Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate 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 2.14. Alternate Rate of Interest. If at least two Business Days prior to the commencement of any Interest Period for an Adjusted Eurocurrency Rate Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted Eurocurrency Rate for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted Eurocurrency 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 promptly give notice thereof to the Borrower and the Lenders by telephone or facsimile as promptly as practicable thereafter 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, an Adjusted Eurocurrency Rate Borrowing shall be ineffective and such Borrowing shall be converted to an ABR Borrowing on the last day of the Interest Period applicable thereto, and (ii) if any Borrowing Request requests an Adjusted Eurocurrency Rate Borrowing, such Borrowing shall be made as an ABR Borrowing.

Section 2.15. 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 Adjusted Eurocurrency Rate) or Issuing Bank;

(ii) subject 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 market any other condition (other than Taxes) affecting this Agreement or Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate 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, the Borrower will pay 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 other than due to Taxes (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 capital adequacy or liquidity), then within 30 days of receipt by the Borrower of the certificate contemplated by paragraph (c) of this Section the Borrower will pay 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 a Lender or an Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days 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 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.16. Break Funding Payments. Subject to Section 9.05(f), in the event of (a) the conversion or prepayment of any principal of any Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate Loan on the date or in the amount specified in any notice delivered pursuant hereto or (c) the assignment of any Adjusted Eurocurrency Rate 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 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 Adjusted Eurocurrency Rate Loans, but excluding loss of anticipated profit) that such Lender may incur or sustain 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 2.17. Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction for any Taxes, except as required by applicable Requirements of Law. If any applicable Requirement of Law 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 all required deductions or withholdings have been made (including 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 make such deductions and (iii) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(b) In addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(c) 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 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)) 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 such Loan Party 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, the Borrower shall not 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) 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 payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation 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 Sections 2.17(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if, in the applicable 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 U.S. Lender shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such U.S. 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 original copies of IRS Form W-9 certifying that such Lender is not subject to U.S. federal backup withholding;

(B) each Foreign Lender shall 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 U.S. is a party, two executed original copies of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing any available exemption from, or reduction of, U.S. federal withholding Tax;

(2) two executed original 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 original copies of a certificate substantially in the form of Exhibit N-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" 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 U.S. trade or business (a "U.S. Tax Compliance Certificate") and (y) two executed original 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 original 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 U.S. Tax Compliance Certificate substantially in the form of Exhibit N-2, Exhibit N-3 or Exhibit N-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 U.S. Tax Compliance Certificate substantially in the form of Exhibit N-2 on behalf of each such direct or indirect partner(s);

(C) each Foreign Lender shall 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 original copies of any other form prescribed by applicable Requirements of Law as a basis for claiming exemption from or a reduction in U.S. 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 U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in 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) and 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 paragraph (D), "FATCA" shall include any amendments made to Section 1471 through 1474 of the Code after the date of this Agreement.

For the avoidance of doubt, if a Lender is an entity disregarded from its owner for U.S. 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 (including any specific documentation required above in this Section 2.17(f)) it previously delivered expires or becomes obsolete or inaccurate in any respect, 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.

Notwithstanding anything to the contrary in this Section 2.17(f), no Lender shall be required to provide any documentation that such Lender is not legally eligible to deliver.

(g) 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 the Borrower has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower 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 Borrower, 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 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.

(j) Certain Documentation. On or before the date the Administrative Agent becomes a party to this Agreement, the Administrative Agent shall deliver to Borrower whichever of the following is applicable: (x) if the Administrative Agent is a "United States person" within the meaning of Section 7701(a)(30) of the Code, two executed original copies of IRS Form W-9 certifying that such Administrative Agent is exempt from U.S. federal backup withholding or (ii) if the Administrative Agent is not a "United States person" within the meaning of Section 7701(a)(30) of the Code, (A) with respect to payments received for its own account, two executed original copies of IRS Form W-8ECI and (ii) with respect to payments received on account of any Lender, two executed original copies of IRS Form W-8IMY (together with all required accompanying documentation) certifying that the Administrative Agent is a U.S. branch and may be treated as a United States person for purposes of applicable U.S. federal withholding Tax. At any time thereafter, 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 eligible to deliver as a result of a Change in Law after the Closing Date.

Section 2.18. 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 1:00 p.m. on the date when due, in immediately available funds, 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 any payment made pursuant to Sections 2.15, 2.16, 2.17 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) and 2.20, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest in respect of 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 (including accrued interest) hereunder shall be made in Dollars. 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 each applicable Acceptable 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, 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, second, on a pro rata basis, to pay any fees, indemnities or expense reimbursements then due to the Administrative Agent (other than those covered

in clause first above) or to any Issuing Bank from the Borrower constituting Secured Obligations, 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 from the Borrower in accordance with Sections 2.05(j)(i), 2.19(b) and 7.01 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, fourth, as provided in any applicable Acceptable Intercreditor Agreement, and 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 of its Loans of any Class or participations in LC Disbursements 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 and accrued interest thereon than the proportion received by any other Lender with Loans of such Class and participations in LC Disbursements, 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 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; provided that (i) if any such participations are 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 (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by any Lender as consideration for the assignment of or sale of a participation in any of its Loans to any permitted assignee or participant, including any payment made or deemed made in connection with Sections 2.22, 2.23 and/or Section 9.05. If any Lender obtains payment (whether voluntary, involuntary, through exercise of any right of set-off or otherwise) in respect of any principal of or interest on any of its Loans of any Class that is junior in right of payment to any other Class of Loans that has not been repaid in full, and such payment is made in violation of the relevant subordination provisions applicable to such junior Class of Loans, such Lender shall promptly remit such payment to the Administrative Agent for application is accordance with clause (b). 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 against the Borrower rights of set-off and counterclaim 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 purchases or repayments. 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. For purposes of subclause (c) of the definition of “Excluded Taxes”, any Lender that acquires a participation pursuant to this Section 2.18(c) shall be treated as having acquired such participation on the earlier date(s) on which such Lender acquired the applicable interest(s) in the Commitment(s) and/or Loan(s) to which such participation relates.

(d) Unless the Administrative Agent has received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of any Lender 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 applicable Lender or Issuing Bank the amount due. In such event, if the Borrower has not in fact made such payment, then each Lender or the applicable Issuing Bank severally agrees

to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank 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 (i) the Federal Funds Effective Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(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 amounts 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 2.19. Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15 or determines it can no longer make or maintain Adjusted Eurocurrency Rate 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 Adjusted Eurocurrency Rate 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", "each Initial Delayed Draw Term Lender", "each Initial 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, Required Initial Lender, Required Delayed Draw 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 (each such Lender described in this clause (iv), 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, 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 and delegation); 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, 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 payments required to be made pursuant to Section 2.17, such assignment would result in a reduction in such compensation or payments 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, in each case, 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 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 2.20. 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 Adjusted Eurocurrency Rate, or to determine or charge interest rates based upon the Adjusted Eurocurrency Rate, 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 Adjusted Eurocurrency Rate Loans or to convert ABR Loans to Adjusted Eurocurrency Rate 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 Eurocurrency Rate 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 Eurocurrency Rate 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), prepay or convert all of such Lender's Adjusted Eurocurrency Rate Loans to ABR Revolving Loans (the interest rate on which ABR Revolving Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Alternate Base Rate) and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate, the Administrative Agent shall during the period of such suspension compute the Alternate Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. 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 2.21. 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 provisions of this Agreement or other Loan Document.

(b) 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 Delayed Draw Lenders, the Required Initial 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 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 amounts 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 amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any applicable Issuing Bank 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 amounts owing to the non-Defaulting Lenders or Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any non-Defaulting Lender or any Issuing Bank 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 amounts 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 Loans of, or LC Exposure owed to, such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to any Defaulting Lender that are applied (or held) to pay amounts 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 LC Exposure exists at the time any Lender becomes a Defaulting Lender then:

(i) the 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. No reallocation pursuant to this clause (i) shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a 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 103% of such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to paragraph (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 with respect to such LC Exposure and obligations to fund participations. 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 LC Exposure among non-Defaulting Lender 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 Revolving 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, no Issuing Bank shall be required to issue, extend, create, incur, amend or increase any Letter of Credit unless it is reasonably satisfied that the related exposure will be 100% covered by the Revolving Credit Commitments of the non-Defaulting Lenders, Cash collateral provided pursuant to Section 2.21(c) and/or Cash collateral provided in accordance with Section 2.21(d), and participating interests in any such or newly issued, extended or created Letter of Credit 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 Lender to be a Defaulting Lender, then the Applicable Revolving Credit Percentage of LC Exposure of the Revolving Lenders shall be readjusted to reflect the inclusion of such Lender'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 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 Lender to be a Defaulting Lender, (x) no adjustments 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 Lender's having been a Defaulting Lender.

Section 2.22. Incremental Credit Extensions.

(a) The Borrower may, at any time, on one or more occasions pursuant to an Incremental Facility Amendment (i) 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 loans made pursuant to an Incremental Term Facility, "Incremental Term Loans") and/or (ii) 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, "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 margin, pricing, maturity and fees), (A) the terms of any Incremental Term Facility, if not substantially consistent with those applicable to any then-existing Term Loans, must be reasonably acceptable to the Administrative Agent (it being agreed that any terms contained in such Incremental Term Facility (x) which are applicable only after the then-existing Latest Term Loan Maturity Date and/or (y) that 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 the Administrative Agent, as applicable, pursuant to the applicable Incremental Facility Amendment shall be deemed satisfactory to the Administrative Agent) and (B) the terms of any Incremental Revolving Facility shall be identical (including with respect to pricing, maturity and fees) to the terms of the then-existing Class of Revolving Facility such Incremental Revolving Facility increases,

(v) the Effective Yield (and the components thereof) applicable to any Incremental Facility shall be determined by the Borrower and the lender or lenders providing such Incremental Facility; provided that the Effective Yield applicable to any Incremental Facility may not be more than 0.50% higher than the Effective Yield applicable to the Initial Loans and Initial Revolving Loans unless the Applicable Rate (and/or, as provided in the proviso below, the Alternate Base Rate floor or Adjusted Eurocurrency Rate floor) with respect to the Initial Loans or Initial Revolving Loans, as applicable, is adjusted such that the Effective Yield on such Initial Loans or Initial Revolving Loans is not more than 0.50% per annum less than the Effective Yield with respect to such Incremental Facility; provided, further, that any increase in Effective Yield applicable to any Initial Loan due to the application or imposition of an Alternate Base Rate floor or Adjusted Eurocurrency Rate floor on any Incremental Term Loan may, at the election of the Borrower, be effected through an increase in the Alternate Base Rate floor or Adjusted Eurocurrency Rate floor applicable to such Initial Loan,

(vi) (A) the final maturity date with respect to any Incremental Term Loans shall be no earlier than the Latest Term Loan Maturity Date and (B) no Incremental Revolving Facility may have a final maturity date earlier than (or require scheduled amortization or mandatory commitment reductions prior to) the Latest Revolving Credit Maturity Date,

(vii) 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),

(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 fees payable in connection with any Incremental Facility shall be determined by the Borrower and the arrangers and/or lenders providing such Incremental Facility,

(x) each Incremental Facility shall (A) rank *pari passu* with the Initial Term Loans and Initial Revolving Loans in right of payment and security, (B) be guaranteed only by the Loan Parties and (C) be secured only by the Collateral,

(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) no Event of Default under Section 7.01(a), (f) or (g) shall exist immediately prior to or after giving effect to such Incremental Facility,

(xiii) the proceeds of any Incremental Facility may be used for working capital and/or purchase price adjustments and other general corporate purposes (including capital expenditures, acquisitions, Investments, Restricted Payments, Restricted Debt Payments and related fees and expenses) and any other use not prohibited by this Agreement, and

(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 Interest Periods (the duration of which may be less than one month) that begin during an Interest Period then applicable to outstanding Adjusted Eurocurrency Rate Loans of the relevant Class and which end on the last day of such Interest Period.

(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, any Issuing Bank) shall have a right to consent (such consent not to be unreasonably withheld 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 such 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 Loans, (i) upon its request, the Administrative Agent shall be entitled to receive customary written opinions of counsel, as well as such reaffirmation agreements, supplements and/or amendments as it shall reasonably require, (ii) the Administrative Agent shall be entitled to receive, from each Incremental Lender, an Administrative Questionnaire and such other documents as it shall reasonably require from such Incremental Lender, (iii) the Administrative Agent shall have received, on behalf of the Incremental Lenders, the amount of any fees payable to the Incremental Lenders in respect of such Incremental Facility or Incremental Loans, (iv) 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 additional condition precedent to the availability of the relevant Incremental Loans) and (v) the Administrative Agent shall be entitled to receive a certificate of the Borrower signed by a Responsible Officer thereof:

(A) 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, and

(B) to the extent applicable, certifying that the condition set forth in clause (a)(xii) above has been satisfied.

(e) 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 such that, after giving effect to each deemed assignment and assumption of participations, all of the Revolving Lenders' (including each Incremental Revolving Facility Lender) (A) participations hereunder in Letters of Credit shall 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 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 (e).

(f) On the date of effectiveness of any Incremental Revolving Facility, the maximum amount of LC Exposure permitted hereunder shall increase by an amount, if any, agreed upon by the Borrower, the Administrative Agent and the relevant Issuing Bank.

(g) The Lenders hereby irrevocably authorize the Administrative Agent to enter into any Incremental Facility Amendment and/or any amendment to this Agreement or any other Loan Document as may be necessary in order to establish new Classes or sub-Classes in respect of Loans or commitments pursuant to this Section 2.22 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 Incremental Facility and the loans and/or commitments thereunder, in each case on terms consistent with this Section 2.22.

(h) Notwithstanding anything to the contrary in this Section 2.22 or in any other provision of any Loan Document, (i) any conditions to availability of funding of any Incremental Facility shall be determined by the relevant Incremental Lenders providing such Incremental Facility and (ii) if the proceeds of any Incremental Facility are intended to be applied to finance an acquisition or other Investment and the lenders providing such Incremental Facility so agree, the availability thereof shall be subject to customary "SunGard" or "certain funds" conditionality (including the making and accuracy of the Specified Representations as conformed for such acquisition).

(i) This Section 2.22 shall supersede any provision in Sections 2.18 or 9.02 to the contrary.

Section 2.23. Extensions of Loans and Revolving 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) interest rates, fees and final maturity (which shall, subject to 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 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 pursuant to the applicable Extension Amendment, and (C) any covenants or other provisions applicable only to periods 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 (x) to the extent more than one Revolving Facility exists after giving effect to any such Extension, (1) the borrowing and repayment (except for (A) payments of interest and fees at different rates on the Revolving Facilities (and related outstandings), (B) repayments required upon the Maturity Date of any Revolving Facility and (C) repayments made in connection with a permanent repayment and termination of Revolving Credit Commitments under any Revolving Facility (subject to clause (3) below)) 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 with all other Revolving Facilities,

(2) all Letters of Credit shall be participated on a pro rata basis by all Revolving Lenders and (3) 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 with respect to such Extended Revolving Loans on a pro rata basis or less than pro rata basis with all other Revolving Facilities, except that the Borrower shall be permitted to permanently repay Revolving Loans and terminate Revolving Credit Commitments of any Revolving Facility on a greater than pro rata basis as compared to any other Revolving Facilities with a later Maturity Date than such Revolving Facility and (y) at no time shall there be Revolving Credit Commitments hereunder (including the Initial Revolving Credit Commitments, Incremental Revolving Commitments and Extended Revolving Credit Commitments) which have more than two (2) different maturity dates;

(ii) except as to (A) interest rates, fees, amortization, final maturity date, 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 more favorable to the lenders or the agent of such Extended Term Loans 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 pursuant to the applicable Extension Amendment and (C) any covenants or other provisions applicable only to periods 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 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 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 $2,000,000;

(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 any Issuing Bank with respect to Letters of Credit without the consent of such Issuing Bank (or, in the case of an Issuing Bank that is a financial institution selected by the Administrative Agent as provided in the definition thereof, the Administrative Agent) (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 Issuing Bank 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 amendments 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 ten 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 Section 4.01 or 4.02, as applicable, Holdings (solely with respect to Sections 3.01, 3.02, 3.03, 3.07, 3.08, 3.09, 3.13, 3.14, 3.16 and 3.17) and the Borrower hereby represent and warrant to the Lenders that:

Section 3.01. Organization; Powers. Holdings, the Borrower and each of its Subsidiaries (a) is (i) duly organized 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) with respect to the Borrower and clause (b) with respect to the Borrower and its Subsidiaries) where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 3.02. Authorization; Enforceability. The execution, delivery and performance of each Loan Document are within each applicable Loan Party's corporate or other organizational power and 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 3.03. Governmental Approvals; No Conflicts. The execution and delivery of each Loan Document by each Loan Party thereto and the performance by such Loan Party thereof (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 could 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), could reasonably be expected to have a Material Adverse Effect and (c) will not violate or result in a default under any other material Contractual Obligation to which such Loan Party is a party which violation, in the case of this clause (c), could reasonably be expected to result in a Material Adverse Effect.

Section 3.04. Financial Condition; No Material Adverse Effect.

(a) After the Closing Date, 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, (x) except as otherwise expressly noted therein, (y) subject, in the case of quarterly financial statements, to the absence of footnotes and normal year-end adjustments and (z) except as may be necessary to reflect any differing entity 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 could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.05. Properties.

(a) As of the Closing Date, Schedule 3.05 sets forth the address of each Material Real Estate Asset (or each set of such assets that collectively comprise one operating property) that is owned in fee simple by any Loan Party.

(b) The Borrower and each of its 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 title to their personal property and assets, 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 or (ii) where the failure to have such title would not reasonably be expected to have a Material Adverse Effect.

(c) The Borrower and its 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") used 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 3.06. Litigation and Environmental Matters.

(a) There are no actions, suits, investigations, audits 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 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 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 Subsidiaries and (ii) neither the Borrower nor any of its 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 the Borrower nor any of its 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 3.07. Compliance with Laws. Each of Holdings, the Borrower and each of its 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 below.

Section 3.08. 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 3.09. Taxes. Each of Holdings, the Borrower and each of its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed 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 (or any requirement to file Tax returns with respect thereto) that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (b) 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 3.10. 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 or is reasonably expected to occur 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 3.11. Disclosure.

(a) As of the Closing Date, with respect to information relating to the Target and its subsidiaries, to the knowledge of the Borrower, all written information (other than the Projections, financial estimates, other forward-looking information and/or projected information and information of a general economic or industry-specific nature) concerning Holdings, the Borrower and their respective subsidiaries that was made available by or on behalf of Holdings, the Borrower or its subsidiaries and made available to any Initial Lender, any Arranger or the Administrative Agent in connection with the Transactions on or before the Closing Date (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 are made (after giving effect to all supplements and updates thereto from time to time).

(b) 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 3.12. Solvency. As of the Closing Date and after giving effect to the Transactions and the incurrence of the Indebtedness and obligations being incurred in connection with this Agreement and the Transactions, (i) the sum of the debt (including contingent liabilities) of the Borrower and its Subsidiaries, taken as a whole, does not exceed the fair value of the assets of the Borrower and its Subsidiaries, taken as a whole, (ii) the present fair saleable value of the assets (on a going concern basis) of the Borrower and its Subsidiaries, taken as a whole, is not less than the amount that will be required to pay the probable liabilities of the Borrower and its Subsidiaries, taken as a whole, on their debts as they become absolute and matured in accordance with their terms; (iii) the capital of the Borrower and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Borrower and its Subsidiaries, taken as a whole, contemplated as of the Closing Date; and (iv) the Borrower and its 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 debt as they mature in accordance with their terms. For purposes of this Section 3.12, it is assumed that the Indebtedness and other obligations under the Credit Facilities will come due at their respective maturities.

Section 3.13. Capitalization and Subsidiaries. Schedule 3.13 sets forth, in each case as of the Closing Date, (a) a correct and complete list of the name of each subsidiary of Holdings and the ownership interest therein held by Holdings or its applicable subsidiary, and (b) the type of entity of Holdings and each of its subsidiaries.

Section 3.14. Security Interest in Collateral. Subject to the terms of the last 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, 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 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 effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Capital Stock of any Foreign Subsidiary, or as to the rights and remedies of the Administrative Agent or any Lender with respect thereto, under foreign Requirements of Law, (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 or the last paragraph of Section 4.01(a), 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 pursuant to the final paragraph of Section 4.01(a).

Section 3.15. 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, slowdowns, work stoppages, boycotts, pickets, job actions, material grievances, unfair labor practice charges, or other material labor disputes against the Borrower or any of its Subsidiaries pending or, to the knowledge of the Borrower or any of its Subsidiaries, threatened, (b) the hours worked by and payments made to employees of the Borrower and its Subsidiaries have not been in violation of the Fair Labor Standards Act ("FLSA") or any other applicable Requirements of Law dealing with such matters, (c) all employees of Borrower and its Subsidiaries are properly classified under the FLSA and all similar Requirements of Law, and (d) all independent contractors of Borrower and its Subsidiaries are properly classified as such.

Section 3.16. 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, incidentally or ultimately, for any purpose that results in a violation of the provisions of Regulation U.

Section 3.17. OFAC; PATRIOT ACT and FCPA.

(a) (i) None of Holdings, the Borrower nor any of its Subsidiaries nor, to the knowledge of the Borrower, any director, officer or employee of any of the foregoing is the target of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"); 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 target of any U.S. sanctions administered by OFAC, except to the extent licensed or otherwise approved by OFAC or in compliance with applicable exemptions 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) Except to the extent that the relevant violation could not reasonably be expected to have a Material Adverse Effect, (i) neither the Borrower nor any of its Subsidiaries nor, to the knowledge of the Borrower, any director, officer, agent (solely to the extent acting in its capacity as an agent for Holdings or any of its subsidiaries) or employee of the Borrower or any Subsidiary, has taken any action, directly or 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, without limitation, 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 any applicable anti-corruption Requirement of Law of any Governmental Authority; and (ii) the Borrower has not directly or, to its knowledge, indirectly, used the proceeds of the Loans or Letters of Credit or otherwise made 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 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 anti-terrorism, anti-corruption or anti-money laundering that is applicable to such Foreign Subsidiary in its relevant local jurisdiction of organization.

Section 3.18. PPP Debt. As of the Third Amendment Effective Date, to the Borrower's knowledge, each Loan Party and/or Restricted Subsidiary that has applied for PPP Debt, as of the date of such application, met the eligibility criteria set forth in the CARES Act with respect to the incurrence of such PPP Debt.

ARTICLE 4

CONDITIONS

Section 4.01. Closing Date. The obligations of (i) each Lender to make Loans and (ii) any Issuing Bank to issue Letters of Credit 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 each Loan Party, to the extent party thereto, (i) a counterpart signed by 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, (B) the Security Agreement, (C) any Intellectual Property Security Agreement, (D) the Loan Guaranty, and (E) 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, (i) a customary written opinion of Weil, Gotshal & Manges LLP, in its capacity as special counsel for the Loan Parties and (ii) customary written opinions of local counsel to the Loan Parties organized in Colorado, each dated the Closing Date and addressed to the Administrative Agent, the Lenders and each Issuing Bank.

(c) Financial Statements and Pro Forma Financial Statements. The Administrative Agent shall have received:

(i) the audited consolidated balance sheets of the Target as of the Fiscal Years ended December 27, 2015 and December 25, 2016, together with the audited consolidated statements of operations and comprehensive income (loss), cash flows and stockholders' equity of the Target for the Fiscal Years then ended;

(ii) the unaudited consolidated balance sheet of the Target as of June 25, 2017, together with the related unaudited consolidated statement of operations and comprehensive income (loss), cash flows and stockholders' equity of the Target for the four-month period then ended; and

(iii) a pro forma consolidated balance sheet of the Target as of June 25, 2017 and a related consolidated statement of operations and comprehensive income (loss) of the Target for the 12-month period then ended, in each case prepared in good faith after giving effect to the Transactions as if the Transactions had occurred as of June 25, 2017 in the case of the balance sheet or the first date of such 12-month period then ended in the case of the statement of operations and comprehensive income (loss); provided that, it is understood and agreed that no financial statements or pro forma financial statements required by this clause (c) shall be required to include any adjustments for purchase accounting (including adjustments of the type contemplated by Financial Accounting Standards Board Accounting Standard Codification 805, Business Combinations (formerly SFAS 141R)).

(d) Secretary's Certificate and Good Standing Certificates. The Administrative Agent (or its counsel) shall have received (i) a certificate of each Loan Party, dated the Closing Date and executed by a secretary, assistant secretary or other Responsible Officer thereof, which shall (A) certify that (w) attached thereto is a true and complete copy of the certificate or articles of incorporation, formation or organization of such Loan Party, certified by the relevant authority of its jurisdiction of organization, (x) the certificate or articles of incorporation, formation or organization of such Loan Party attached thereto has not been amended (except as attached thereto) since the date reflected thereon, (y) attached thereto is a true and correct copy of the by-laws or operating, management, partnership or similar agreement of such Loan Party, together with all amendments thereto as of the Closing Date and such by-laws or operating, management, partnership or similar agreement are in full force and effect and (z) attached thereto is a true and complete copy of the resolutions or written consent, as applicable, of its board of directors, board of managers, sole member or other applicable governing body authorizing the execution and delivery of the Loan Documents, which resolutions or consent have not been modified, rescinded or amended (other than as attached thereto) and are in full force and effect, and (B) identify by name and title and bear the signatures of the officers, managers, directors or other authorized signatories of such Loan Party who are authorized to sign the Loan Documents to which such Loan Party is a party on the Closing Date and (ii) a good standing (or equivalent) certificate for such Loan Party from the relevant authority of its jurisdiction of organization, dated as of a recent date.

(e) Representations and Warranties. (i) The Specified Merger Agreement Representations shall be true and correct to the extent required by the terms of the definition thereof and (ii) the Specified Representations shall be true and correct in all material respects on and as of the Closing Date; provided that (A) in the case of any Specified Representation which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects as of the respective date or for the respective period, as the case may be and (B) if any Specified Representation is qualified by or subject to a "material adverse effect", "material adverse change" or similar term or qualification, (1) the definition thereof shall be the definition of "Closing Date Material Adverse Effect" for purposes of the making or deemed making of such Specified Representation on, or as of, the Closing Date (or any date prior thereto) and (2) such Specified Representation 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 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) Equity Contribution. Prior to or substantially concurrently with the initial funding of the Loans hereunder, the Equity Contribution shall be consummated.

(h) Refinancing. Substantially concurrently with the initial funding of the Loans hereunder, including by use of the proceeds thereof, the Refinancing shall be consummated.

(i) [Reserved].

(j) Solvency. The Administrative Agent (or its counsel) shall have received a certificate in substantially the form of Exhibit O from the chief financial officer (or other officer with reasonably equivalent responsibilities) of the Borrower dated as of the Closing Date and certifying as to the matters set forth therein.

(k) 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 each Loan Party, together with all attachments contemplated thereby.

(l) Pledged Stock and Pledged Notes. Subject to the final paragraph of this Section 4.01, the Administrative Agent (or its counsel) shall have received (i) the certificates representing the Capital Stock required to be pledged pursuant to the Security Agreement, together with an undated stock power or similar instrument of transfer for each such certificate endorsed in blank by a duly authorized officer of the pledgor thereof, and (ii) each Material Debt Instrument (if any) endorsed (without recourse) in blank (or accompanied by an transfer form endorsed in blank) by the pledgor thereof.

(m) Filings Registrations and Recordings. Subject to the final paragraph of this Section 4.01, each document (including any UCC (or similar) financing statement) required by any Collateral Document or under applicable Requirements of Law to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral required to be delivered pursuant to such Collateral Document, shall be in proper form for filing, registration or recordation.

(n) Closing Date Merger. Substantially concurrently with the initial funding of the Loans hereunder, the Closing Date Merger shall be consummated in accordance with the terms of the Merger Agreement, but without giving effect to any amendment, waiver or consent by Holdings or the Merger Sub that is materially adverse to the interests of the Arrangers or the Initial Lenders in their respective capacities as such without the consent of the Initial Lenders, such consent not to be unreasonably withheld, delayed or conditioned.

(o) Closing Date Material Adverse Effect. Since the date of the Merger Agreement, there shall not have occurred, and the Target has not incurred or suffered, any Closing Date Material Adverse Effect.

(p) 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 ten 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.

(q) Officer’s Certificate. The Administrative Agent shall have received a certificate from a Responsible Officer of the Borrower certifying satisfaction of the conditions precedent set forth in Sections 4.01(e), (n) and (o).

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, (a) 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 and (b) a pledge of the Capital Stock of the Borrower and any material Subsidiary Guarantor with respect to which a Lien may be perfected on the Closing Date by the delivery of a stock or equivalent certificate (together with a stock power or similar instrument endorsed in blank for the relevant certificate) (other than the Capital Stock of any subsidiary of the Target with respect to which the certificate evidencing such Capital Stock has not been delivered to Merger Sub at least two Business Days prior to the Closing Date, to the extent Merger Sub has used commercially reasonable efforts to procure delivery thereof, which Capital Stock may instead be delivered within two Business Days after the Closing Date (or such later date as the Administrative Agent may reasonably agree))), in each case after Merger Sub's use of commercially reasonably efforts to do so without undue burden or expense, 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.

Section 4.02. Each Credit Extension. After the Closing Date, the obligation of each Revolving Lender 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 or (ii) in the case of the issuance of any Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance of such Letter of Credit as required by Section 2.05(b).

(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, however, that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates or for such periods.

(c) At the time of and immediately after giving effect to the applicable Credit Extension, no Event of Default or Default has occurred and is continuing.

(d) In the case of the making of any Initial Revolving Loan or the issuance of any Letter of Credit under the Initial Revolving Facility, at the time of and immediately after giving effect to such Credit Extension (and the use of proceeds thereof), the aggregate amount of Cash and Cash Equivalent-s of the Borrower and its Subsidiaries (exclusive of any such Cash and Cash Equivalents deposited in accounts the primary function of which is to serve as a payroll account (so long as such payroll account is a zero balance account or is funded no earlier than the Business Day immediately prior to the date of any payroll disbursements and in an amount not exceeding the same)) would not exceed ~~$15,000,000~~ 20,000,000.

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), (c) and (d) of this Section; provided, however, that the conditions set forth in this Section 4.02 shall not apply to (A) any Incremental Loan made in connection with any acquisition, other Investment or irrevocable repayment or redemption of Indebtedness and/or (B) any Credit Extension under any Incremental Amendment and/or Extension Amendment unless in each case the lenders in respect thereof have required satisfaction of the same in the applicable Incremental Amendment or Extension Amendment, as applicable.

Section 4.03. Each Initial Delayed Draw Term Loan Extension. The obligation of each Initial Delayed Draw Lender to make any Initial Delayed Draw Term Loan Extension is subject to the satisfaction of the following conditions:

(a) The Administrative Agent shall have received (i) a Borrowing Request as required by Section 2.03 and (ii) at least 10 days' (or such shorter number of days as may reasonably be agreed with the Administrative Agent) prior notice from the Borrower of its intention to request Initial Delayed Draw Term Loans.

(b) The Total Leverage Ratio, calculated on a Pro Forma Basis, would not exceed 5.00:1.00.

(c) At the time of and immediately after giving effect to the applicable Initial Delayed Draw Term Loan Extension, no Event of Default has occurred and is continuing.

(d) 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 Initial Delayed Draw Lender Term Loan Extension with the same effect as though such representations and warranties had been made on and as of the date of such Initial Delayed Draw Lender Term Loan 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, however, that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates or for such periods.

(e) In the case of the making of any Initial Delayed Draw Term Loan Extension, at the time of and immediately after giving effect to such Initial Delayed Draw Term Loan Extension (and the use of proceeds thereof), the aggregate amount of Cash and Cash Equivalents of the Borrower and its Subsidiaries (exclusive of any such Cash and Cash Equivalents deposited in accounts the primary function of which is to serve as a payroll account (so long as such payroll account is a zero - balance account or is funded no earlier than the Business Day immediately prior to the date of any payroll disbursements and in an amount not exceeding the same)) would not exceed $15,000,000.

Each Initial Delayed Draw Term Loan Extension shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in clauses (b), (c), (d) and (e) of this Section; provided, however, that notwithstanding anything to the contrary in this Section 4.03 or in any other provision of any Loan Document, if the proceeds of any Initial Delayed Draw Term Loan Extension are intended to be applied to finance an acquisition or other Investment, the conditions in paragraph (b) above shall, at the Borrower's option, be satisfied as of the date of the related acquisition agreement or the date of the relevant Borrowing.

ARTICLE 5

AFFIRMATIVE COVENANTS

From the Closing Date until the date on which all 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 contingent indemnification obligations for which no claim or demand has been made) have been paid in full in Cash and all Letters of Credit have expired or have been terminated (or have been (x) collateralized or back-stopped by a letter of credit or otherwise in a manner reasonably satisfactory to the relevant Issuing Bank or (y) deemed reissued under another agreement in a manner reasonably acceptable to the applicable Issuing Bank and the Administrative Agent) and all LC Disbursements have been reimbursed (such date, the "Termination Date"), Holdings (solely with respect to Sections 5.02, 5.03, 5.12, and 5.14) and the Borrower hereby covenant and agree with the Lenders that:

Section 5.01. 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. As soon as available, and in any event within 45 days (or, in the case of the first three full Fiscal Quarters ending after the Closing Date, 75 days) after the end of each Fiscal Quarter of each Fiscal Year (commencing with the Fiscal Quarter ending on December 31, 2017) (or, in each case, such later date as the Administrative Agent may reasonably agree from time to time), the consolidated balance sheet of the Borrower as at the end of such Fiscal Quarter and the related consolidated statements of 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, together with a Responsible Officer Certification (which may be included in the applicable Compliance Certificate) with respect thereto; provided, however, that such financial statements shall only be required to reflect the Borrower's good faith estimate of any purchase accounting adjustments relating to (A) the Closing Date Merger for any Fiscal Quarter ending on or prior to December 31, 2017 and/or (B) any acquisition or similar Investment consummated after the Closing Date until the Fiscal Quarter ending on or about March 31 of the Fiscal Year following the Fiscal Year in which the relevant acquisition or similar Investment was consummated;

(b) Annual Financial Statements. As soon as available, and in any event within 120 days (or, (x) in the case of the Fiscal Year ending on December 31, 2017, 150 days and (y) in the case of the Fiscal Year ending on December 31, 2019, on or before May 27, 2020) 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 operations, stockholders' equity and cash flows of the Borrower for such Fiscal Year and, commencing after the completion of the second full Fiscal Year ended after the Closing Date, setting forth, in reasonable detail, in comparative form the corresponding figures for the previous Fiscal Year 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 "going concern" explanatory paragraph or like statement (except as resulting from (A) the impending maturity of any Indebtedness prior to the end of the fourth Fiscal Quarter following the relevant audit date, and/or (B) any breach or anticipated breach of any financial covenant, and/or (C) in the case of such report for such consolidated financial statements for the Fiscal Year ending on December 31, 2019, the actual or potential impacts of COVID-19 (including the actual or potential impacts of the government- mandated closures of restaurants and other measures taken to combat the spread of COVID-19) on the business, operations and/or financial condition of the Borrower and its Subsidiaries) or 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 income and cash flows for the periods indicated in conformity with GAAP;

(c) Compliance Certificate. Together with each delivery of financial statements of the Borrower pursuant to Sections 5.01(a) and (b), a duly executed and completed Compliance Certificate;

(d) Together with each delivery of the financial statements of the Borrower pursuant to Section 5.01(a), a Narrative Report;

(e) Notice of Default. 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 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), could 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 could reasonably be expected to have a Material Adverse Effect, a written notice specifying the nature thereof;

(h) Financial Plan. As soon as available and in any event no later than 90 days after the beginning of each Fiscal Year, commencing with the Fiscal Year beginning on January 1, 2018, an annual operating budget for such Fiscal Year prepared by management of the Borrower;

(i) Information Regarding Collateral. Prompt (and, in any event, within 90 days of the relevant change) written notice of any change (i) in any Loan Party's legal name, (ii) in any Loan Party's type of organization, (iii) in any Loan Party's jurisdiction of organization or (iv) in any 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;

(j) Lender Calls. To the extent reasonably requested by the Administrative Agent following the delivery of financial statements pursuant to Section 5.01(b) for any Fiscal Year (provided, that such request shall be made by the Administrative Agent within 30 days of such delivery), the Borrower will host a conference call with the Lenders at a time to be mutually agreed between the Borrower and the Administrative Agent, to review the financial information presented therein, provided that the Administrative Agent shall not request, and the Borrower shall not be required to host, a conference call more than once during any Fiscal Year;

(k) Certain Reports. Promptly upon their becoming available and without duplication of any obligations with respect to any such information that is otherwise required to be delivered under the provisions of any Loan Document, copies of (i) following a Qualifying IPO, all financial statements, reports, notices and proxy statements sent or made available generally by Holdings or its applicable Parent Company to 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, filed by 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;

(l) Other Information. Such other certificates, reports and information (financial or otherwise) as the Administrative Agent may reasonably request from time to time regarding the financial condition or business of the Borrower and its Subsidiaries; provided, however, that none of Holdings, the Borrower nor any Subsidiary shall be required to disclose or provide any information (a) that constitutes non-financial trade secrets or non-financial proprietary information of Holdings, the Borrower or any of its subsidiaries or any of their respective customers and/or suppliers, (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 or (d) in respect of which Holdings, the Borrower or any Subsidiary owes confidentiality obligations to any third party (provided such confidentiality obligations were not entered into in contemplation of the requirements of this Section 5.01(l);

(m) Cash Flow Forecasts. Until ~~December 31, 2020, (i) on May 1, 2020 and (ii) thereafter~~(i) the first date on or after June 27, 2021 on which a Compliance Certificate is delivered pursuant to Section 5.01(c) demonstrating compliance with the Financial Covenant Level applicable at such time (such date, the "Bi- Weekly Cash Flow Reporting End Date"), no later than the 15th day of each calendar month and the last day of each calendar month and (ii) from and after the Bi-Weekly Cash Flow Reporting End Date until the first date on

which a Compliance Certificate is delivered pursuant to Section 5.01(c) demonstrating that the Total Leverage Ratio for the then most recently ended Test Period is not greater than 7.00:1.00 (such date, the "Cash Flow Reporting End Date"), no later than the last day of each calendar month, in each case, a 13-week forecast of cash flows of the Borrower and its Subsidiaries prepared by management of the Borrower, in form and substance substantially similar to the forecast contained in the lender presentation titled "COVID-19 Lender Update" and delivered to the Administrative Agent and the Lenders on April 16, 2020;

(n) Monthly Financial Statements. Until ~~December 31, 2020~~the Cash Flow Reporting End Date, as soon as available, and in any event within 30 days after the end of each calendar month of each Fiscal Year (commencing with the calendar month ended April 30, 2020) (or such later date as the Administrative Agent may reasonably agree from time to time), the consolidated balance sheet of the Borrower as at the end of such calendar month and the related consolidated statements of operations and cash flows of the Borrower for such calendar month and for the period from the beginning of the then current Fiscal Year to the end of such calendar month; and

(o) Monthly Lender Calls. Promptly following the delivery of financial statements pursuant to Section 5.01(n), Borrower will host a conference call with the Lenders at a time to be mutually agreed between the Borrower and the Administrative Agent, to review the financial information presented therein.; and

(p) Liquidity Reporting. During the Liquidity Period, no later than 3 Business Days after each Liquidity Test Date, a calculation of Liquidity (determined in good faith by the Borrower) (the "Liquidity Calculation"), as of such Liquidity Test Date.

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 date (i) on which the Borrower (or a representative thereof) (x) posts such documents or (y) provides a link thereto at the website address listed on Schedule 9.01; provided that, other than with respect to items required to be delivered pursuant to Section 5.01(k) above, the Borrower shall promptly notify (which notice may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents at the website address listed on Schedule 9.01 and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents; (ii) 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); (iii) on which such documents are faxed to the Administrative Agent (or electronically mailed to an address provided by the Administrative Agent); or (iv) in respect of the items required to be delivered pursuant to Section 5.01(k) above in respect of information filed by Holdings or its applicable Parent Company with any securities exchange or with the SEC or any analogous governmental or private regulatory authority with jurisdiction over matters relating to securities (other than Form 10-Q Reports and Form 10-K reports described in Sections 5.01(a) and (b), respectively), 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.

Notwithstanding the foregoing, the obligations in paragraphs (a), (b) and (h) of this Section 5.01 may be satisfied with respect to any financial statements of the Borrower by furnishing (A) the applicable financial statements of Holdings (or any other Parent Company) or (B) Holdings' (or any other Parent Company's), 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; provided that, with respect to each of clauses (A) and (B), (i) to the extent such financial statements relate to any Parent Company, such financial statements shall be accompanied by consolidating information that summarizes in reasonable detail the differences between the information relating to such Parent Company, on the one hand, and the information relating to the Borrower and its consolidated subsidiaries on a standalone basis, on the other hand, which consolidating information shall be certified by a Responsible Officer of the Borrower as having been fairly presented in all material respects and (ii) to the extent such 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 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) as if the references to "the Borrower" therein were references to such Parent Company.

No financial statement required to be delivered pursuant to Section 5.01(a) or (b) shall be required to include acquisition accounting adjustments relating to the Transactions or any Permitted Acquisition or other Investment to the extent it is not practicable to include any such adjustments in such financial statement.

Section 5.02. Existence. Except as otherwise permitted under Section 6.07, Holdings and the Borrower will, and the Borrower will cause each of its 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 nor the Borrower nor any of the Borrower's Subsidiaries shall be required to preserve any such existence (other than with respect to the preservation of existence of 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 5.03. Payment of Taxes. Holdings and the Borrower will, and the Borrower will cause each of its 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, however, that no such Tax need be paid if (a) 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 or (b) 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 5.04. Maintenance of Properties. The Borrower will, and will cause each of its 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 Subsidiaries and from time to time will make or cause to be made all needed and appropriate repairs, renewals and replacements thereof 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 5.05. Insurance. 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 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, including flood insurance with respect to each Flood Hazard Property, in each case in compliance with the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 (where applicable). 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) (A) to the extent available from the relevant insurance carrier in the case of each casualty insurance policy (excluding any business interruption insurance policy), contain a loss payable clause or endorsement that names the Administrative Agent, on behalf of the Secured Parties as the loss payee thereunder and (B) to the extent available from the relevant insurance carrier after submission of a request by the applicable Loan Party to obtain the same, 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 premiums thereunder).

Section 5.06. Inspections. The Borrower will, and will cause each of its 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 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) at the expense of the Borrower, 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 and (b) except as expressly set forth in the proviso below during the continuance of an Event of Default, the Administrative Agent shall not exercise such rights more often than one time during any calendar year; provided, further, that when an Event of Default 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; provided, further, that notwithstanding anything to the contrary herein, neither the Borrower nor any Subsidiary shall be required to disclose, permit the inspection, examination or making of copies of or taking abstracts from, or discuss any document, information, or other matter (A) that constitutes non-financial trade secrets or non-financial proprietary information of the Borrower and its subsidiaries and/or any of its customers and/or suppliers, (B) in respect of which disclosure to the Administrative Agent or any Lender (or any of their respective representatives or contractors) is prohibited by applicable Requirements of Law, (C) that is subject to attorney-client or similar privilege or constitutes attorney work product or (D) in respect of which Holdings, the Borrower or any Subsidiary owes confidentiality obligations to any third party (provided such confidentiality obligations were not entered into in contemplation of the requirements of this Section 5.06).

Section 5.07. Maintenance of Book and Records. The Borrower will, and will cause its 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 Subsidiaries that are full, true and correct in all material respects and permit the preparation of consolidated financial statements in accordance with GAAP.

Section 5.08. Compliance with Laws. The Borrower will comply, and will cause each of its Subsidiaries to comply, (a) with the requirements of all applicable Requirements of Law (including applicable ERISA and all Environmental Laws), except to the extent the failure of the Borrower or the relevant Subsidiary to comply could not reasonably be expected to have a Material Adverse Effect and (b) in all material respects with the requirements of OFAC, the USA PATRIOT Act and the FCPA; provided that the requirements set forth in this Section 5.08, as they pertain to compliance by any Foreign Subsidiary with OFAC, 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.

Section 5.09. 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 Subsidiaries, a copy of any and all written communications with respect to (A) any Environmental Claim that, individually or in the aggregate, has a reasonable possibility of giving rise to a Material Adverse Effect, (B) any Release required to be reported by the Borrower or any of its Subsidiaries to any federal, state or local governmental or regulatory agency or other Governmental Authority that reasonably could be expected to have a Material Adverse Effect, (C) any request made to the Borrower or any of its Subsidiaries for information from any governmental agency that suggests such agency is investigating whether the Borrower or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity which is reasonably expected to have a Material Adverse Effect and (D) subject to the limitations set forth in the proviso to Section 5.01(l), 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 Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by the Borrower or its 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 could 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 Subsidiaries and discharge any obligations it may have to any Person thereunder, in each case, where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.10. Cash Management. The Loan Parties shall use commercially reasonable efforts to maintain cash management arrangements consistent with past practice, including arrangements for their deposit accounts that are operating accounts to be swept to one or more concentration accounts on a daily or other periodic basis.

Section 5.11. Use of Proceeds. The Borrower shall use the proceeds of the Revolving Loans (a) on the Closing Date, (i) to finance the payment of Transaction Costs in an aggregate principal amount not to exceed $5,000,000 in the aggregate and/or (ii) for working capital needs and (b) after the Closing Date, to finance Transaction Costs, working capital needs and other general corporate purposes of the Borrower and its subsidiaries (including for capital expenditures, acquisitions, Investments, working capital and/or purchase price adjustments (including in connection with the Closing Date Merger), Restricted Payments, Restricted Debt Payments and related fees and expenses) and any other purpose not prohibited by the terms of the Loan Documents. The Borrower shall use the proceeds of the Initial Term Loans solely to finance a portion of the Transactions (including working capital and/or purchase price adjustments under the Merger Agreement and the payment of Transaction Costs). Letters of Credit may be issued (i) on the Closing Date to replace or provide credit support for any letter of credit, bank guarantee and/or surety, customs, performance or similar bond of the Target and its subsidiaries or any of their respective 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. The Borrower shall use the proceeds of the Initial Delayed Draw Term Loans solely (i) to finance growth-related capital expenditures, (ii) for expenditures related to remodeling, refurbishing, rebuilding and/or conversions of restaurants or other Unit Locations, (iii) in connection with acquisitions and other similar Investments, (iv) to repay any Revolving Loans and/or Cash collateralize any Letters of Credit, or replenish Cash on the balance sheet, in each case to the extent, in the case of outstanding Revolving Loans, Cash collateral and Cash replenishment, such proceeds of such Borrowings or such Cash, as applicable, were used for the purposes described in the foregoing clauses (i), (ii) and/or (iii) of this sentence, and (v) for working capital.

Section 5.12. Covenant to Guarantee Obligations and Give Security.

(a) Upon (i) the formation or acquisition after the Closing Date of any Subsidiary that is a Domestic Subsidiary, (ii) any Subsidiary that is a Domestic Subsidiary ceasing to be an Immaterial Subsidiary or (iii) any Subsidiary that was an Excluded Subsidiary ceasing to be an Excluded Subsidiary, on or before the date on which financial statements are required to be delivered pursuant to Section 5.01(a) 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 Subsidiary (other than any Excluded Subsidiary) to comply with the requirements set forth in clause (a) of the definition of "Collateral and Guarantee Requirement" and (B) upon the reasonable request of the Administrative Agent, cause the relevant Subsidiary (other than any Excluded Subsidiary) to deliver to the Administrative Agent a signed copy of a customary opinion of counsel for such Subsidiary, addressed to the Administrative Agent and the other relevant Secured Parties.

(b) Within 90 days after the acquisition by any Loan Party of any Material Real Estate Asset other than any Excluded Asset (or such longer period as the Administrative Agent may reasonably agree), the Borrower shall cause such Loan Party to comply with the requirements set forth in clause (b) of the definition of "Collateral and Guarantee Requirement"; it being understood and agreed that, with respect to any Material Real Estate Asset owned by any Subsidiary at the time such Subsidiary is required to become a Loan Party under Section 5.12(a) above, such Material Real Estate Asset shall be deemed to have been acquired by such Subsidiary on the first day of the time period within which such Subsidiary is required to become a Loan Party under Section 5.12(a).

(c) 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 apply retroactively) for the creation and perfection of security interests in, or obtaining of title insurance, legal opinions, surveys or other deliverables with respect to, particular assets or the provision of any Loan Guaranty by any Subsidiary (in connection with assets acquired, or Subsidiaries formed or acquired, after the Closing Date), 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" shall be subject to the exceptions and limitations set forth in the Collateral Documents;

(iii) perfection by control shall not be required with respect to assets requiring perfection through control agreements or other control arrangements (other than, in each case to the extent the same otherwise constitute Collateral, control of pledged Capital Stock, Material Debt Instruments, and deposit accounts of the Loan Parties that are concentration accounts);

(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, other than, subject to the terms of the last paragraph of Section 4.01, as expressly set forth on Schedule 5.15;

(v) no Loan Party will be required to (A) take any action outside of the U.S. in order to create or perfect any security interest in any asset located outside of the U.S., (B) execute any foreign law security agreement, pledge agreement, mortgage, deed or charge or (C) make any foreign intellectual property filing, conduct any foreign intellectual property search or prepare any foreign intellectual property schedule, in each case other than with respect to a Foreign Subsidiary designated as a Subsidiary Guarantor pursuant to the last sentence of the definition of "Subsidiary Guarantor";

(vi) in no event will the Collateral include any Excluded Asset;

(vii) no action shall be required to perfect any Lien with respect to (1) any vehicle or other asset subject to a certificate of title, (2) Letter-of-Credit Rights, (3) the Capital Stock of any Immaterial Subsidiary and/or (4) the Capital Stock of any Person that is not a subsidiary, which Person, if a subsidiary, would constitute an Immaterial Subsidiary, 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;

(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 (1) 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), (2) 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 law or (3) 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 Requirements of Law notwithstanding the relevant prohibition, violation or termination right;

(ix) (A) no Loan Party shall be required to perfect a security interest 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) the Administrative Agent and the Secured Parties shall not enforce any security interest (including foreclosure, taking possession, storage, sale, distribution or otherwise), or right or remedy with respect to any Collateral that may be limited or restricted by any Requirement of Law in violation of such Requirement of Law, or requires any consent, authorization approval or license under any Requirement of Law that has not been obtained;

(x) any joinder or supplement to any Loan Guaranty, any Collateral Document and/or any other Loan Document executed by any Subsidiary that is required to become 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) (A) no Loan Party shall be required to take any action required under the Federal Assignment of Claims Act and (B) no Secured Party will be permitted to exercise any right of setoff in respect of any account maintained solely for the purpose of receiving and holding government receivables;

(xii) for the avoidance of doubt, in no event shall any person that is not a subsidiary or that constitutes an Excluded Subsidiary be required to provide a Guaranty of any Secured Obligation or comply with any other requirement of this Section 5.12;

(xiii) no Loan Party shall be required to provide any leasehold Mortgages; and

(xiv) the Administrative Agent shall not require the taking of a Lien on, or require the perfection of any Lien granted in, those assets 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.

Section 5.13. [Reserved].

Section 5.14. Further Assurances. Promptly upon request of the Administrative Agent and subject to the limitations described in Section 5.12:

(a) Holdings and the Borrower will, and will cause each other Loan Party to, execute any and all further documents, financing statements, agreements, instruments, certificates, notices and acknowledgments and take all such further actions (including the filing and recordation of financing statements, fixture filings, Mortgages and/or amendments thereto and other documents), that may be required under any applicable Requirements 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.

(b) Holdings and the Borrower will, and will cause each other 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, certificates, 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 5.15. Post-Closing Covenant. Prior to the date that is set forth on Schedule 5.15 (or such longer period as the Administrative Agent may reasonably agree), the Borrower shall complete the items specified on Schedule 5.15.

Section 5.16. PPP Debt.

(a) The Loan Parties shall use the proceeds of the PPP Debt only for the purposes permitted under Section 1102 of the CARES Act.

(b) The Borrower shall use commercially reasonable efforts to seek to obtain forgiveness of the PPP Debt within the time periods set forth, and to the extent provided, in Section 1106 of the CARES Act.

(c) The Borrower shall deliver to Administrative Agent prompt written notice of (i) its application to the PPP Debt Lender and/or the Small Business Administration for forgiveness of the PPP Debt and (ii) any determination by the PPP Debt Lender and/or the Small Business Administration regarding the amount of the PPP Debt that is eligible to be forgiven.

(d) The Borrower shall provide the Administrative Agent, promptly upon the Administrative Agent's reasonable request therefor (which requests shall not be made more than twice in any calendar month), with copies of records of the Borrower and its Subsidiaries' utilization of the proceeds of the PPP Debt.

ARTICLE 6

NEGATIVE COVENANTS

From the Closing Date and until the Termination Date, Holdings (solely with respect to Section 6.14) and the Borrower covenant and agree with the Lenders that:

Section 6.01. Indebtedness. The Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or otherwise become or remain liable with respect to any Indebtedness, except:

(a) the Secured Obligations (including any Additional Term Loans and any Additional Revolving Loans);

(b) Indebtedness of the Borrower to Holdings and/or any Subsidiary and/or of any Subsidiary to Holdings, the Borrower and/or any other Subsidiary; provided that in the case of any Indebtedness of any Subsidiary that is not a Loan Party owing to any Subsidiary that is a Loan Party, such Indebtedness shall be permitted as an Investment under Section 6.06; provided, further, that any Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party must be unsecured and expressly subordinated to the Obligations of such Loan Party on terms that are reasonably acceptable to the Administrative Agent (including pursuant to any Intercompany Note);

(c) [Reserved];

(d) Indebtedness arising from any agreement providing for indemnification, adjustment of purchase price or similar obligations (including contingent earn-out obligations) incurred in connection with any Disposition permitted hereunder, any acquisition permitted hereunder or consummated prior to the Closing Date or any other purchase of assets or Capital Stock, and 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 Subsidiary pursuant to any such agreement;

(e) Indebtedness of the Borrower and/or any Subsidiary (i) 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 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 Subsidiary in respect of 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 and any arrangements or services similar to any of the foregoing and/or otherwise in connection with Cash management and Deposit Accounts, including Banking Services Obligations and incentive, supplier finance or similar programs;

(g) (i) guaranties by the Borrower and/or any Subsidiary of the lease obligations of suppliers, customers, franchisees and licensees in the ordinary course of business and in an aggregate outstanding principal amount not to exceed $2,500,000, (ii) guaranties by the Borrower and/or any Subsidiary of leases (other than Capital Leases) or other obligations not constituting Indebtedness, (iii) Indebtedness incurred in the ordinary course of business in respect of obligations of the Borrower and/or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services and (iv) 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 Subsidiary of Indebtedness or other obligations of the Borrower, any 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 Subsidiary existing, or pursuant to commitments existing, on the Closing Date and described on Schedule 6.01;

(j) Indebtedness of Subsidiaries that are not Loan Parties; provided that the aggregate outstanding principal amount of such Indebtedness incurred pursuant to this clause 6.01(j), together with the aggregate amount of Investments made pursuant to Section 6.06(b)(iii) and the aggregate amount of Investments made in reliance on clause (b) of the proviso to the definition of "Permitted Acquisition" shall not exceed $12,500,000 in the aggregate;

(k) Indebtedness of the Borrower and/or any 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 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 Subsidiary with respect to Capital Leases and purchase money Indebtedness in an aggregate outstanding principal amount not to exceed the greater of $7,500,000 and 25% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(n) Indebtedness of any Person that becomes a Subsidiary or Indebtedness assumed in connection with an acquisition permitted hereunder after the Closing Date; provided that (i) such Indebtedness was not created or incurred in anticipation thereof, (ii) no Event of Default under Section 7.01(a), (f) or (g) exists and (iii) such Indebtedness does not exceed $7,500,000 in the aggregate;

(o) Indebtedness consisting of promissory notes issued by the Borrower or any 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 (i), (m), (n), (r), (u) and (y) 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 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) the terms of any Refinancing Indebtedness with an original principal amount in excess of the Threshold Amount (excluding, to the extent applicable, pricing, fees, premiums, rate floors, optional prepayment, redemption terms or subordination terms and, with respect to Refinancing Indebtedness incurred in respect of Indebtedness permitted under clause (a) above, security), are not, taken as a whole (as reasonably determined by the Borrower), more favorable to the lenders providing such Indebtedness than those applicable to the Indebtedness being refinanced, refunded or replaced (other than (A) any covenants or other provisions applicable only to periods after the applicable maturity date of the debt then-being refinanced as of such date or (B) any covenants or provisions which are then-current market terms for the applicable type of Indebtedness,

(iii) in the case of Refinancing Indebtedness with respect to Indebtedness permitted under clauses (j), (m), (n), (r), (u) and (y) of this Section 6.01, the incurrence thereof shall be without duplication of any amounts 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, and

(iv) (A) 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 if the Liens securing such Indebtedness were originally contractually subordinated to the Liens on the Collateral securing the Initial Loans, the Liens securing such Indebtedness are subordinated to the Liens on the Collateral securing the Initial Loans on terms not materially less favorable (as reasonably determined by the Borrower), taken as a whole, to the Lenders than those (x) applicable to the Liens securing the Indebtedness being refinanced, refunded or replaced, taken as a whole, or (y) set forth in an Acceptable Intercreditor Agreement, (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 (x) Holdings may not be the primary obligor in respect of the applicable Refinancing Indebtedness if Holdings was not the primary obligor in respect of the relevant refinanced Indebtedness and (y) 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), (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 (D) as of the date of the incurrence of such Indebtedness and after giving effect thereto, no Event of Default exists

(q) [Reserved];

(r) Indebtedness of the Borrower and/or any Subsidiary in an aggregate outstanding principal amount not to exceed 100% of the amount of Net Proceeds received by the Borrower from (i) the issuance or sale of Qualified Capital Stock or (ii) any cash contribution to its common equity with the Net Proceeds from the issuance and sale by any Parent Company of its Qualified Capital Stock or a contribution to the common equity of any Parent Company, in each case, (A) other than any Net Proceeds received from the sale of Capital Stock to, or contributions from, the Borrower or any of its Subsidiaries, (B) to the extent the relevant Net Proceeds have not otherwise been applied to make (w) Capital Expenditures or repurchases, in each case, in reliance on the proviso set forth in Section 6.03, (x) Investments, (y) Restricted Payments or (z) Restricted Debt Payments hereunder and (C) other than any Cure Amount, any Liquidity Cure Amount or the Fourth Amendment Equity Contribution Amount; provided that, immediately before and after giving effect to the incurrence of such Indebtedness, no Event of Default under Section 7.01(a), (f) or (g) exists (the amount of any Net Proceeds or contribution utilized to incur Indebtedness in reliance on this clause (r), a "Contribution Indebtedness Amount");

(s) Indebtedness of the Borrower and/or any Subsidiary under any Derivative Transaction not entered into for speculative purposes;

(t) Indebtedness of the Borrower and/or any 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 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 Subsidiary in an aggregate outstanding principal amount not to exceed the greater of $10,000,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period; provided that, during the Restricted Period, the aggregate outstanding principal amount of Indebtedness incurred in reliance on this clause (u) shall not exceed $1,000,000; provided, further, that, for so long as the PPP Debt remains outstanding (the principal amount of such PPP Debt outstanding at any time, the "Outstanding PPP Amount"), the Borrower and/or any Subsidiary shall not be permitted to borrow or incur Indebtedness in reliance on this clause (u) in an aggregate outstanding principal amount equal to the then outstanding Outstanding PPP Amount;

(v) to the extent constituting Indebtedness, obligations arising under the Merger Agreement;

(w) [Reserved];

(x) [Reserved];

(y) Indebtedness of the Borrower and/or any Subsidiary incurred in connection with Sale and Lease-Back Transactions permitted pursuant to Section 6.08;

(z) [Reserved];

(aa) Indebtedness (including obligations in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments with respect to such Indebtedness) incurred by the Borrower and/or any Subsidiary in respect of workers compensation claims, unemployment insurance (including premiums related thereto), other types of social security, pension obligations, vacation pay, health, disability or other employee benefits;

(bb) [Reserved];

(cc) Indebtedness of the Borrower and/or any Subsidiary in respect of any letter of credit or bank guarantee issued in favor of any Issuing Bank to support any Defaulting Lender's participation in Letters of Credit issued hereunder;

(dd) Indebtedness of the Borrower or any Subsidiary supported by any Letter of Credit;

(ee) unfunded pension fund and other employee benefit plan obligations and liabilities incurred by the Borrower and/or any 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);

(ff) 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;

(gg) 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 Subsidiary hereunder; and

(hh) Indebtedness of the Borrower incurred pursuant to the "paycheck protection program" of the CARES Act in an aggregate principal amount not to exceed $10,000,000 (the "PPP Debt"), which Indebtedness constitutes a "covered loan" under, and as defined in, Section 1102 of the CARES Act.

Section 6.02. Liens. The Borrower shall not, nor shall it permit any of its 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 created pursuant to the Loan Documents;

(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 30 days, (ii) for amounts that are overdue by more than 30 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) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

(d) Liens incurred (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 (x) any liability for reimbursement or indemnification obligations of insurance carriers providing property, casualty, liability or other insurance to Holdings, the Borrower and its subsidiaries or (y) 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 easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not, in the aggregate, materially interfere with the ordinary conduct of the business of the Borrower and/or its Subsidiaries, taken as a whole, or the use of the affected property for its intended purpose;

(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 (including as part of any escrow arrangement) made by the Borrower and/or any of its 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 relating solely to operating leases or consignment or bailee arrangements entered into in the ordinary course of business, and (ii) Liens arising from precautionary UCC financing statements or similar filings;

(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 or similar Requirement of Law or right reserved to or vested in any Governmental Authority to control or regulate the use of any or dimensions of real property or the structure 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 (x) Indebtedness permitted pursuant to Sections 6.01(i), (m), (n), (u) and (y) and (y) 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 of the applicable Lien granted in reliance on this clause (y)));

provided that (i) no such Lien extends to any asset not covered by the Lien securing the Indebtedness that is being refinanced and (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 Acceptable Intercreditor Agreement and (iii) no such Lien shall be senior in priority as compared to the Lien securing the Indebtedness being refinanced; provided, further, that no Liens shall be granted to any Person (other than the Administrative Agent or any Secured Party) pursuant to this clause (k) on Deposit Accounts or Securities Accounts unless the Borrower or its Subsidiary, as applicable, grants a first priority Lien on such Deposit Accounts or Securities Accounts, as applicable, in favor of the Administrative Agent, for the benefit of the Secured Parties;

(l) Liens described on Schedule 6.02 and any modification, replacement, refinancing, renewal or extension thereof; provided 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, 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 6.08;

(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 Subsidiary; provided that no such Lien (x) extends to or covers any other assets (other than the proceeds or products thereof, replacements, accessions or additions thereto and improvements thereon) or (y) was created in contemplation of the applicable acquisition of assets or Capital Stock; provided, further, that no Liens shall be granted to any Person (other than the Administrative Agent or any Secured Party) pursuant to this clause (o) on Deposit Accounts or Securities Accounts to secure Indebtedness in an aggregate outstanding principal amount in excess of $5,000,000 unless the Borrower or its Subsidiary, as applicable, grants a first priority Lien on such Deposit Accounts or Securities Accounts, as applicable, in favor of the Administrative Agent, for the benefit of the Secured Parties;

(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 Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Subsidiary, (C) purchase orders and other agreements entered into with customers of the Borrower or any 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 and (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;

(q) Liens on assets and Capital Stock of Subsidiaries that are not Loan Parties (including Capital Stock owned by such Persons) securing Indebtedness of 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 (i) operating, reciprocal easement or similar agreements entered into in the ordinary course of business of the Borrower and/or its Subsidiaries and (ii) any other agreement or arrangement that is customary in the operation of the business of the Borrower and/or its Subsidiaries;

(s) [Reserved];

(t) [Reserved];

(u) Liens on assets securing Indebtedness or other obligations in an aggregate principal amount not to exceed the greater of $10,000,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period; provided, that any Lien on any Collateral granted in reliance on this clause (u) that is pari passu with or junior to the Lien on the Collateral securing the Secured Obligations shall be subject to an Acceptable Intercreditor Agreement; provided, further, that no Liens shall be granted pursuant to this clause (u) on Deposit Accounts or Securities Accounts of Loan Parties unless the applicable Loan Party grants a first priority Lien on such Deposit Accounts or Securities Accounts, as applicable, in favor of the Administrative Agent, for the benefit of the Secured Parties;

(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) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not secure any Indebtedness;

(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 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 Subsidiary that is not a Loan Party, in the case of clauses (i) and (ii), securing intercompany Indebtedness permitted (or not restricted) under Section 6.01 or Section 6.09; provided that no Liens shall be granted pursuant to this clause (aa) on Deposit Accounts or Securities Accounts;

(bb) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(cc) 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;

(dd) 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);

(ee) (i) Liens on Capital Stock of joint ventures securing capital contributions to, or obligations of, such Persons 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;

(ff) Liens on cash or Cash Equivalents arising in connection with the defeasance, discharge or redemption of Indebtedness;

(gg) Liens consisting of the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(hh) Liens disclosed in any Mortgage Policy delivered pursuant to Section 5.12 with respect to any Material Real Estate Asset and any replacement, extension or renewal thereof; provided that no such replacement, extension or renewal Lien shall cover any property other than the property that was subject to such Lien prior to such replacement, extension or renewal (and additions thereto, improvements thereon and the proceeds thereof); and

(ii) Liens securing the PPP Debt, solely to the extent consisting of a contractual possessory security interest in, and/or a contractual right of setoff against, all of the Borrower's right, title and interest in and to, all of the Borrower's deposits, moneys, securities and other properties in the possession of or on deposit with, or in transit to, the PPP Debt Lender (or any affiliate thereof).

~~Section 6.03. [Reserved].~~

Section 6.03. Capital Expenditures for New Restaurant Openings; Repurchase of Franchised Unit Locations. On and after the Fourth Amendment Effective Date, the Borrower shall not, nor shall it permit any of its Subsidiaries to (a) make Capital Expenditures in respect of the opening of new facilities, stores, restaurants and/or other Unit Locations or (b) repurchase one or more franchised Unit Locations, in each case, unless Liquidity calculated after giving effect to such Capital Expenditure or repurchase, as applicable, is greater than or equal to $10,000,000; provided that the foregoing restrictions shall not apply to any such Capital Expenditure or repurchase, in each case, to the extent funded with the proceeds of capital contributions in respect of Qualified Capital Stock of the Borrower or any Parent Company (to the extent such proceeds are contributed in respect of Qualified Capital Stock to the Borrower or any Subsidiary) made after the Fourth Amendment Effective Date (excluding, for the avoidance of doubt, the Fourth Amendment Equity Contribution Amount), in each case, (i) other than any Net Proceeds received from the sale of Capital Stock to, or contributions from, the Borrower or any of its Subsidiaries, (ii) to the extent the relevant Net Proceeds have not otherwise been applied to (A) increase the Available Amount, (B) make Investments, Restricted Payments or Restricted Debt Payments hereunder or (C) prepay any Loans hereunder and (iii) other than any Cure Amount or Liquidity Cure Amount.

Section 6.04. Restricted Payments; Restricted Debt Payments.

(a) The Borrower shall not pay or make, directly or indirectly, any Restricted Payment, except that:

(i) the Borrower may make Restricted Payments to the extent necessary to permit any Parent Company:

(A) to pay general administrative costs and expenses (including corporate overhead, legal or similar expenses and customary salary, bonus and other benefits payable to directors, officers, employees, members of management, managers and/or consultants of any Parent Company) and franchise Taxes, and similar fees and expenses, required to maintain the organizational existence of such Parent Company, in each case, which are reasonable and

customary and incurred in the ordinary course of business, plus any reasonable and customary indemnification claims made by directors, officers, members of management, managers, employees or consultants of any Parent Company, in each case, to the extent attributable to the ownership or operations of any Parent Company (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 the Borrower and/or its subsidiaries), and/or its subsidiaries;

(B) (x) for any taxable period for which the Borrower is a member of a consolidated, combined, unitary or similar tax group for U.S. federal and/or applicable state or local tax purposes of which such Parent Company is the common parent, to discharge the consolidated, combined, unitary or similar Tax liabilities of such Parent Company and its subsidiaries when and as due, to the extent such liabilities are attributable to the income of the Borrower and/or any subsidiary of the Borrower; provided that the amount of such payments in respect of any taxable year do not exceed the amount of such Tax liabilities that the Borrower and/or its applicable subsidiaries would have paid had such Tax liabilities been paid as standalone companies or as a standalone group and (y) for any taxable period for which the Borrower is a partnership or disregarded entity for U.S. federal income tax purposes that is wholly-owned (directly or indirectly) by a C corporation for U.S. federal and/or applicable state or local tax purposes, distributions to any direct or indirect parent of the Borrower in an amount not to exceed the amount of any Tax that the Borrower and/or its applicable subsidiaries would have paid had such Tax been paid as standalone companies or as a standalone group (and assuming for purposes of such calculation that the Borrower is classified as a domestic corporation for U.S. federal income tax purposes);

(C) to pay audit and other accounting and reporting expenses of such Parent Company to the extent attributable to any Parent Company (but excluding, for the avoidance of doubt, the portion of any such expenses, 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 its subsidiaries;

(D) for the payment of insurance premiums to the extent attributable to any Parent Company (but excluding, for the avoidance of doubt, the portion of any such premiums, 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 its subsidiaries;

(E) to pay (x) fees and expenses related to debt or equity offerings, investments or acquisitions (whether or not consummated) and expenses and indemnities of any trustee, agent, arranger, underwriter or similar role, and (y) after the consummation of an initial public offering or an offering of public debt securities, Public Company Costs;

(F) to finance any Investment permitted under Section 6.06 (provided that (x) any Restricted Payment under this clause (a)(i)(F) shall be made substantially concurrently with 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 Subsidiaries, or (II) the merger, consolidation or amalgamation of the Person formed or acquired into the Borrower or one or more of its Subsidiaries, in each case, in order to consummate such Investment in compliance with the applicable requirements of Section 6.06 as if undertaken as a direct Investment by the Borrower or the relevant 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 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) so long as no Event of Default under Sections 7.01(a), 7.01(f) or 7.01(g) exists at the time of the payment thereof or would result therefrom, 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 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 $2,000,000 in any Fiscal Year, which, if not used in such Fiscal Year, shall be carried forward to succeeding Fiscal Years;

(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 (to the extent such proceeds are contributed in respect of Qualified Capital Stock to the Borrower or any Subsidiary) in each case, (1) other than any Net Proceeds received from the sale of Capital Stock to, or contributions from, the Borrower or any of its Subsidiaries, (2) to the extent the relevant Net Proceeds have not otherwise been applied to make (w) Capital Expenditures or repurchases, in each case, in reliance on the proviso set forth in Section 6.03, (x) Investments, (y) Restricted Payments or (z) Restricted Debt Payments hereunder and (3) other than any Cure Amount, any Liquidity Cure Amount or the Fourth Amendment Equity Contribution Amount; or

(C) with the net proceeds of any key-man life insurance policies;

(iii) the Borrower may make Restricted Payments in an amount not to exceed the portion, if any, of the Available Amount on such date that the Borrower elects to apply to this clause (iii)(A);

(iv) the Borrower may make Restricted Payments (i) to any Parent Company to enable such Parent Company to make Cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of such Parent Company and (ii) consisting of (A) 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 or any Parent Company or any of their respective Immediate Family Members and/or (B) repurchases of Capital Stock in consideration of the payments described in subclause (A) above, including demand repurchases in connection with the exercise of stock options;

(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 (i) on the Closing Date, solely to effect the consummation of the Transactions, (ii) on and after the Closing Date, to satisfy any payment obligations owing under the Merger Agreement (including payment of working capital and/or purchase price adjustments) and to pay Transaction Costs, in each case, with respect to the Transactions and (iii) to direct or indirect holders of Capital Stock of the Borrower (immediately prior to giving effect to the Transactions) in connection with, or as a result of any working capital and purchase price adjustments, in each case, with respect to the Transactions;

(vii) so long as no Event of Default under Sections 7.01(a), 7.01(f) or 7.01(g) exists at the time of payment thereof or would result therefrom, following the consummation of the first Qualifying IPO, the Borrower may (or may make Restricted Payments to any Parent Company to enable it to) make Restricted Payments with respect to any Capital Stock in an amount of 6.00% per annum of the net Cash proceeds received by or contributed to the Borrower from any Qualifying IPO;

(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 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 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 Subsidiary in respect of Qualified Capital Stock ("Refunding Capital Stock") 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 Subsidiary) of any Refunding Capital Stock;

(ix) to the extent constituting a Restricted Payment, the Borrower may consummate any transaction permitted by Section 6.06 (other than Sections 6.06(j) and (t)), Section 6.07 (other than Section 6.07(g)) and Section 6.09 (other than Sections 6.09(d) and (j));

(x) so long as no Event of Default exists at the time of the payment thereof or would result therefrom, the Borrower may make Restricted Payments in an aggregate amount not to exceed (A) $5,000,000, minus (B) the outstanding amount of Investments made by the Borrower or any Subsidiary in reliance on Section 6.06(q)(i)(B) minus (C) the amount of Restricted Debt Payments made by the Borrower or any Subsidiary in reliance on Section 6.04(b)(iv)(B); provided that, during the Restricted Period, the aggregate amount of Restricted Payments made in reliance on this clause (x) shall not exceed $500,000; and

(xi) the Borrower may make Restricted Payments so long as (i) no Event of Default exists at the time of the payment thereof or would result therefrom and (ii) the Total Leverage Ratio, calculated on a Pro Forma Basis for the Test Period then most recently ended, would not exceed 3.75:1.00.;

provided that, notwithstanding anything in this Section 6.04(a), the Borrower shall not be permitted to make any Restricted Payments to the Sponsor; provided that, notwithstanding the foregoing, the Borrower may make Restricted Payments to the Sponsor in an aggregate amount not to exceed $20,000,000 so long as (1) no Event of Default exists at the time of payment thereof or would result therefrom, (2) the Total Leverage Ratio calculated on a Pro Forma Basis for each of the two then most recently ended consecutive Test Periods (ending on or after December 31, 2021) is not greater than 6.00:1.00, and (3) Liquidity calculated after giving effect to such Restricted Payment is greater than or equal to $10,000,000; provided, further, that this paragraph shall not prohibit Restricted Payments of the type described in Section 6.04(a)(i) (other than clause (F) thereof).

(b) The Borrower shall not, nor shall it permit any Subsidiary to, make any prepayment in Cash in respect of principal of or interest on any Junior Indebtedness (other than Indebtedness among Holdings, the Borrower and/or its subsidiaries), Junior Lien Indebtedness or Junior Unsecured Indebtedness (such Indebtedness, the "Restricted Debt"), including any sinking fund or similar deposit, on account of the 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) [Reserved];

(ii) as part of an applicable high yield discount obligation catch-up payment;

(iii) payments of regularly scheduled interest (including any penalty interest, if applicable) and payments of fees, expenses and indemnification obligations as and when due (other than payments with respect to Junior Indebtedness that are prohibited by the subordination provisions thereof);

(iv) so long as no Event of Default exists at the time of the payment thereof or would result therefrom, Restricted Debt Payments in an aggregate amount not to exceed (A) $7,500,000, plus (B) at the election of the Borrower, the amount of any Restricted Payments then permitted to be made by the Borrower in reliance on Section 6.04(a)(x)(A) minus (C) the outstanding amount of Investments made by the Borrower or any Subsidiary in reliance on Section 6.06(q)(i)(C); provided that, during the Restricted Period, the aggregate amount of Restricted Debt Payments made in reliance on this clause (iv) shall not exceed $0;

(v) (A) Restricted Debt Payments in exchange for, or with proceeds of any issuance of, Qualified Capital Stock of the Borrower and/or any capital contribution in respect of Qualified Capital Stock of the Borrower, (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 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 the portion, if any, of the Available Amount on such date that the Borrower elects to apply to this clause (vi)(A);

(vii) Restricted Debt Payments in an unlimited amount; provided that (A) no Event of Default exists at the time of the payment thereof or would result therefrom and (B) the Total Leverage Ratio, calculated on a Pro Forma Basis, would not exceed 3.75:1.00;

(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)(viii) of the definition of "Available Amount" to the extent so applied); and

(ix) Restricted Debt Payments of PPP Debt made within 5 Business Days of the Third Amendment Effective Date.

Section 6.05. Burdensome Agreements. Except as provided herein or in any other Loan Document and/or in any agreement with respect to any refinancing, renewal or replacement of such Indebtedness that is permitted by Section 6.01, the Borrower shall not, nor shall it permit any of its Subsidiaries to, enter into or cause to exist any agreement restricting the ability of (x) any Subsidiary of the Borrower that is not a Loan Party to pay dividends or other distributions to the Borrower or any Loan Party, (y) any Subsidiary that is not a Loan Party to make cash loans or advances to the Borrower or any Loan Party or (z) any Loan Party to create, permit or grant a Lien on any of its properties or assets to secure the Secured Obligations, except restrictions:

(a) set forth in any agreement evidencing (i) Indebtedness of a 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 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), (q), (r), (u), (w) and/or (y) of Section 6.01), (q), (r), (u), (w) and/or (y) 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 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 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 and were not created in contemplation thereof;

(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 relating to any Banking Services Obligation (and/or any other obligation of the type described in 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 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;

(n) set forth in any agreement relating to any Permitted Lien that limit the right of the Borrower or any Subsidiary to Dispose of or encumber the assets subject thereto; and/or

(o) 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 (n) 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 6.06. Investments. The Borrower shall not, nor shall it permit any of its 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) Investments:

(i) existing on the Closing Date in the Borrower or in any subsidiary,

(ii) made after the Closing Date among the Borrower and/or one or more Subsidiaries that are Loan Parties,

(iii) made after the Closing Date by any Loan Party in any Subsidiary that is not a Loan Party in an aggregate outstanding amount, together with the aggregate amount of Indebtedness incurred pursuant to Section 6.01(j) and the aggregate amount of Investments made in reliance on clause (b) of the proviso to the definition of "Permitted Acquisition" made in reliance of Section 6.06(e), shall not exceed $12,500,000 in the aggregate,

(iv) made by any Subsidiary that is not a Loan Party in any Loan Party and/or any other Subsidiary that is not a Loan Party, and/or

(v) made by any Loan Party and/or any Subsidiary that is not a Loan Party in the form of any contribution or Disposition of the Capital Stock of any Person that is not a Loan Party;

(c) Investments (i) constituting deposits, prepayments and/or other credits to suppliers, (ii) made in connection with obtaining, maintaining or renewing client and customer contracts and/or (iii) in the form of advances made to 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 Subsidiary;

(d) Investments in any Similar Business (including any joint venture) in an aggregate outstanding amount not to exceed the greater of $5,000,000 and 17.5% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period; provided that, during the Restricted Period, the aggregate outstanding amount of Investments made in reliance on this clause (d) shall not exceed $500,000;

(e) (i) Permitted Acquisitions and (ii) any Investment in any Subsidiary that is not a Loan Party in an amount required to permit such Subsidiary to consummate a Permitted Acquisition (in compliance, if applicable, with any cap on Investments in non-Loan Parties that is set forth in the relevant carve-out from this Section 6.06), which amount is actually applied by such Subsidiary to consummate such Permitted Acquisition;

(f) Investments (i) existing on, or contractually committed to or contemplated as of, the Closing Date and 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, either (i) in an aggregate principal amount not to exceed $1,000,000 at any one time outstanding or (ii) so long as the proceeds of such loan or advance are substantially contemporaneously 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, repurchases of franchised Unit Locations permitted under Section 6.03, 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)(y) of the proviso thereto), Section 6.07(b) (if made in reliance on clause (ii) therein), Section 6.07(c)(ii) (if made in reliance on clause (B) therein) and Section 6.07(g));

(k) Investments in the ordinary course of business (i) consisting of endorsements for collection or deposit and customary trade arrangements with customers and (ii) to secure performance of operating leases and other contractual obligations that do not constitute Indebtedness;

(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 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 solely with Capital Stock of any Parent Company or Qualified Capital Stock of the Borrower or any Subsidiary, in each case, to the extent not resulting in a Change of Control;

(o) (i) Investments of any Subsidiary acquired after the Closing Date, or of any Person acquired by, or merged into or consolidated or amalgamated with, the Borrower or any 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 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 Subsidiaries in an aggregate amount at any time outstanding not to exceed:

(i) (A) the greater of $10,000,000 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 or any Subsidiary in reliance on Section 6.04(a)(x)(A), plus (C) at the election of the Borrower, the amount of Restricted Debt Payments then permitted to be made by the Borrower or any Subsidiary in reliance on Section 6.04(b)(iv)(A); provided that, during the Restricted Period, the amount set forth in this clause (i) shall be deemed to be $1,000,000, plus

(ii) in the event that (A) the Borrower or any of its Subsidiaries makes any Investment after the Closing Date in any Person that is not a Subsidiary and (B) such Person subsequently becomes a Subsidiary, an amount equal to 100% of the fair market value of such Investment as of the date on which such Person becomes a Subsidiary;

(r) Investments made after the Closing Date by the Borrower and/or any of its Subsidiaries in an aggregate outstanding amount not to exceed the portion, if any, of the Available Amount on such date that the Borrower elects to apply to this clause (r);

(s) (i) Guarantees of leases (other than Capital Leases) or of other obligations not constituting Indebtedness and (ii) Guarantees of the lease obligations of suppliers, customers, franchisees and licensees of Holdings and/or its Subsidiaries, in each case of this clause (ii), in the ordinary course of business and in an aggregate outstanding principal amount not to exceed $2,500,000;

(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); 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 made by any Subsidiary that is not a Loan Party with the proceeds received by such Subsidiary from an Investment made by any Loan Party in such Subsidiary pursuant to this Section 6.06 (other than Investments made pursuant to Section 6.06(e)(ii));

(v) Investments in subsidiaries in connection with internal reorganizations and/or restructurings and activities related to tax planning; provided that, after giving effect to any such reorganization, restructuring or activity, 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 any Derivative Transaction of the type permitted under Section 6.01(s);

(x) Investments to acquire and hold accounts receivable and/or notes receivable from franchisees in the ordinary course of business to prevent or limit loss in an aggregate amount not to exceed $1,000,000;

(y) other than during the Restricted Period, 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 Subsidiary and/or joint venture in connection with intercompany cash management arrangements and related activities in the ordinary course of business;

(bb) Investments so long as, after giving effect thereto on a Pro Forma Basis, the Total Leverage Ratio as of the most recently ended Test Period does not exceed 4.25:1.00;

(cc) Investments in franchisees in an aggregate amount not to exceed $2,000,000 in any Fiscal Year; and

(dd) Investments consisting of the licensing or contribution of IP Rights pursuant to joint marketing arrangements with other Persons.

Section 6.07. Fundamental Changes; Disposition of Assets. Other than the Closing Date Merger and the other Transactions, the Borrower shall not, nor shall it permit any of its Subsidiaries to, enter into any transaction of merger, consolidation or amalgamation, or liquidate, wind up or dissolve themselves (or suffer any liquidation or dissolution), or make any Disposition of any assets having a fair market value in excess of $1,750,000 in a single transaction or a series of related transactions and in excess of $7,500,000 in the aggregate for all such transactions, except:

(a) any Subsidiary may be merged, consolidated or amalgamated with or into the Borrower or any other Subsidiary; provided that (i) in the case of any such merger, consolidation or amalgamation with or into 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 or amalgamation is not the Borrower (any such Person, the "Successor Borrower"), (x) the Successor Borrower shall be an entity organized or existing under the law of the U.S., any state thereof or the District of Columbia, (y) the Successor Borrower shall expressly assume the Obligations of the Borrower in a manner reasonably satisfactory to the Administrative Agent and (z) 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 (x) through (z) 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, either (A) the Borrower or a Subsidiary Guarantor shall be the continuing or surviving Person or the continuing or surviving Person 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 Subsidiary (upon voluntary liquidation or otherwise); provided that any such Disposition made by any Loan Party to any Person that is not a Loan Party shall be (i) for fair market value (as reasonably determined by such Person) with at least 75% of the consideration for such Disposition consisting of Cash or Cash Equivalents at the time of such Disposition or (ii) treated as an Investment and otherwise made in compliance with Section 6.06 (other than in reliance on clause (j) thereof);

(c) (i) the liquidation or dissolution of any Subsidiary if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower, is not materially disadvantageous to the Lenders, and the Borrower or any Subsidiary receives any assets of the relevant dissolved or liquidated Subsidiary; provided that in the case of any liquidation or dissolution of any Loan Party that results in a distribution of assets to any 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 or consolidation, 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 and (iii) the conversion of the Borrower or any Subsidiary into another form of entity, so long as such conversion does not 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 reasonable judgment of the Borrower, is (A) no longer useful in its business (or in the business of any Subsidiary of the Borrower) or (B) otherwise economically impracticable to maintain;

(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 (w) Investments permitted by Section 6.06 (other than Section 6.06(j)), (x) Permitted Liens, (y) Restricted Payments permitted by Section 6.04(a) (other than Section 6.04(a)(ix)) and (z) Sale and Lease-Back Transactions permitted by Section 6.08;

(h) so long as no Event of Default under Sections 7.01(a), 7.01(f) or 7.01(g) exists on the date on which the agreement governing the relevant Disposition is executed, Dispositions for fair market value; provided that with respect to any such Disposition with a purchase price in excess of $2,500,000, at least 75% of the consideration for such Disposition shall consist of Cash or Cash Equivalents (provided that for purposes of the 75% Cash consideration requirement, (i) 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 Subsidiary) of the Borrower or any 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 and for which the Borrower and/or its applicable Subsidiary have been validly released by all relevant creditors in writing, (ii) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection with such Disposition, (iii) any Security received by the Borrower or any Subsidiary from such transferee that is 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 (iv) 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 (iv) and Section 6.08(B)(1) that is at that time outstanding, not in excess of $2,500,000, in each case, shall be deemed to be Cash); provided, further, that the Net Proceeds of such Disposition shall be applied and/or reinvested as (and to the extent) required by Section 2.11(b)(ii);

(i) 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 of notes receivable or accounts receivable in the ordinary course of business (including any discount and/or forgiveness thereof) or in connection with the collection or compromise thereof;

(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 Subsidiaries 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) to the extent constituting a Disposition, the consummation of the other Transactions;

(q) Dispositions of non-core assets acquired in connection with any acquisition permitted hereunder and sales of Real Estate Assets acquired in any acquisition permitted hereunder which, within 90 days of the date of such acquisition, are designated in writing to the Administrative Agent as being held for sale and not for the continued operation of the Borrower or any of its Subsidiaries or any of their respective businesses; provided that no Event of Default 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 reasonably determined by the Borrower) for like assets; provided that upon the consummation of any such exchange or swap by any Loan Party, to the extent the assets received do not constitute an Excluded Asset, the Administrative Agent has a perfected Lien with the same priority as the Lien held on the assets so exchanged or swapped;

(s) Dispositions of assets that do not constitute Collateral for fair market value; provided that the Net Proceeds of such Disposition shall be applied and/or reinvested as (and to the extent) required by Section 2.11(b)(ii);

(t) (i) licensing and cross-licensing arrangements involving any technology, intellectual property or IP Rights of the Borrower or any Subsidiary (including pursuant to any franchise agreement) in the ordinary course of business and (ii) Dispositions, abandonments, cancellations or lapses of IP Rights, or issuances or registrations, or applications for issuances or registrations, of IP Rights, which, in the reasonable good faith determination of the Borrower, are not material to the conduct of the business of the Borrower or its Subsidiaries, or are no longer economical to maintain in light of its use;

(u) terminations or unwinds of Derivative Transactions;

(v) the granting of any franchise with respect to any facility, store, restaurant or other Unit Location (and any Dispositions of property in connection therewith) to any franchisee meeting the reasonable qualifications of the Borrower and/or its Subsidiaries; provided that (i) such Disposition is made for fair market value and (ii) such Disposition is on terms that are no less favorable to the Borrower or the applicable Subsidiary than might be obtained at the time in a comparable arm's length transaction; provided, further, that if the granting of a franchise relates to a facility, store, restaurant or other Unit Location then owned by a Loan Party, (A) no Event of Default shall exist on the date on which the agreement governing the relevant Disposition is executed, (B) the Total Leverage Ratio calculated on a Pro Forma Basis after giving effect thereto shall be less than or equal to 6.00:1.00 and (C) the number of Unit Locations then owned by the Loan Parties immediately after giving effect to such Disposition shall be greater than or equal to 75% of the number of facilities, stores, restaurants or other Unit Locations owned by the Loan Parties immediately prior to giving effect to such Disposition (or series of related Dispositions);

(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 Subsidiary;

(x) Dispositions made to comply with any order of any Governmental Authority or any applicable Requirement of Law;

(y) any merger, consolidation, Disposition or conveyance the sole purpose of which is to reincorporate or reorganize (i) any Domestic Subsidiary in another jurisdiction in the U.S. and/or (ii) any Foreign Subsidiary in the U.S. 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; and

(aa) Dispositions involving assets having a fair market value (as reasonably determined by the Borrower at the time of the relevant Disposition) of not more than $7,500,000 in any Fiscal Year, which, if not used in such Fiscal Year, shall be carried forward to the next succeeding Fiscal Year.

To the extent that any Collateral is Disposed of as expressly permitted by this Section 6.07 to any Person other than a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, which Liens shall be automatically released upon the consummation of such Disposition; it being understood and agreed that the Administrative Agent shall be authorized to take, and shall take, any actions deemed appropriate in order to effect the foregoing in accordance with Article 8.

Section 6.08. Sale and Lease-Back Transactions. The Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which the Borrower or the relevant Subsidiary (a) has sold or transferred or is to sell or to transfer to any other Person (other than the Borrower or any of its Subsidiaries) and (b) intends to use for substantially the same purpose as the property which has been or is to be sold or transferred by the Borrower or such Subsidiary to any Person (other than the Borrower or any of its Subsidiaries) in connection with such lease (such a transaction, a "Sale and Lease-Back Transaction"); provided that any other Sale and Lease-Back Transaction shall be permitted so long as (1) the relevant Sale and Lease-Back Transaction is consummated in exchange for cash consideration (provided that for purposes of the foregoing cash consideration requirement, (w) 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 Subsidiary) of the Borrower or any 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 and for which the Borrower and/or its applicable Subsidiary have been validly released by all relevant creditors in writing, (x) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection with such Disposition, (y) any Securities received by the Borrower or any Subsidiary from such transferee that are 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 (z) any Designated Non- Cash Consideration received in respect of the relevant Sale and Lease-Back Transaction having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (z) and Section 6.07(h) that is at that time outstanding, not in excess of $5,000,000, shall be deemed to be Cash), (2) the Borrower or its applicable Subsidiary would otherwise be permitted to enter into, and remain liable under, the applicable underlying lease and (3) the aggregate fair market value of the assets sold subject to all Sale and Lease-Back Transactions under this Section 6.08 shall not exceed the greater of $7,500,000 and 25% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period.

Section 6.09. Transactions with Affiliates. The Borrower shall not, nor shall it permit any of its Subsidiaries to, enter into any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) involving payment in excess of $1,000,000 in any individual transaction with any of their respective Affiliates on terms that are less favorable to the Borrower or such Subsidiary, as the case may be (as reasonably determined by the Borrower), than those that might be obtained at the time in a comparable arm's-length transaction from a Person who is not an Affiliate; provided that the foregoing restriction shall not apply to:

(a) any transaction between or among the Borrower and/or one or more Loan Parties (or any entity that becomes a Loan Party as a result of such transaction) to the extent permitted or not restricted by this Agreement;

(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 Subsidiary;

(c) (i) any collective bargaining, employment or severance agreement or compensatory (including profit sharing) arrangement entered into by the Borrower or any of its 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) transactions 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 6.01(d), (o) and (ee), 6.04 and 6.06(h), (m), (o), (t), (v), (y) and (aa) and (ii) issuances of Capital Stock and issuances and incurrences of Indebtedness not 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 to the Lenders than the relevant transaction in existence on the Closing Date;

(f) (i) so long as no Event of Default exists or would result therefrom, the payment of management, monitoring, consulting, advisory and similar fees to any Investor in an amount not to exceed the greater of $500,000 and 2% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period in each case, per Fiscal Year; provided that, if any Event of Default exists at the time of, or would result from, any payment of such fees, such fees may continue to accrue and become payable upon the waiver, termination or cure of such 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, including the payment of Transaction Costs and payments required under the Merger Agreement;

(h) ordinary course compensation to 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 and/or Section 6.06;

(j) transactions among Holdings, the Borrower and/or its Subsidiaries that are otherwise permitted (or not restricted) under this 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 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 Subsidiary in the good faith determination of the board of directors (or similar governing body) of the Borrower or the senior management thereof 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 Holdings to the Borrower and/or any Subsidiary; and/or

(o) any transaction 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 is on terms that are no less favorable to the Borrower or the applicable Subsidiary than might be obtained at the time in a comparable arm's length transaction from a Person who is not an Affiliate.

Section 6.10. Conduct of Business. From and after the Closing Date, the Borrower shall not, nor shall it permit any of its Subsidiaries to, engage in any material line of business other than (a) the businesses engaged in by the Borrower or any Subsidiary on the Closing Date and similar, incidental, complementary, ancillary or related businesses and (b) such other lines of business to which the Administrative Agent may consent.

Section 6.11. Amendments or Waivers of Certain Documents. The Borrower shall not, nor shall it permit any Subsidiary Guarantor to, amend or modify their respective Organizational Documents, in each case in a manner that is materially adverse to the Lenders (in their capacities as such), taken as a whole, without obtaining the prior written consent of the Administrative Agent; provided that, for purposes of clarity, it is understood and agreed that the Borrower and/or any Subsidiary Guarantor may effect a change to its organizational form and/or consummate any other transaction that is permitted under Section 6.07.

Section 6.12. Amendments of or Waivers with Respect to Restricted Debt. The Borrower shall not, nor shall it permit any of its Subsidiaries to, amend or otherwise modify the terms of any Restricted Debt (or the documentation governing any Restricted Debt) (a) if the effect of such amendment or modification, together with all other amendments or modifications made, is materially adverse to the interests of the Lenders (in their capacities as such), taken as a whole, or (b) in violation of any Acceptable Intercreditor Agreement or the subordination terms set forth in the definitive documentation governing any Restricted Debt; provided that, for purposes of clarity, it is understood and agreed that the foregoing limitation shall not otherwise prohibit any other replacement, refinancing, amendment, supplement, modification, extension, renewal, restatement or refunding of any Restricted Debt that is permitted under this Agreement in respect thereof.

Section 6.13. Fiscal Year. The Borrower shall not change its Fiscal Year-end to a date other than the last Sunday of the calendar year; provided that the Borrower may, upon written notice to the Administrative Agent, change the Fiscal Year-end of the Borrower to another date, in which case the Borrower and the Administrative Agent will, and are hereby authorized to, make any adjustments to this Agreement that are necessary to reflect such change in Fiscal Year.

Section 6.14. Permitted Activities of Holdings. Holdings shall not:

(a) incur any Indebtedness for borrowed money other than (i) the Indebtedness permitted to be incurred by Holdings under the Loan Documents or otherwise in connection with the Transactions and (ii) Guarantees of Indebtedness or other obligations of the Borrower and/or any Subsidiary that are otherwise permitted hereunder;

(b) 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, in each case, to which it is a party, (ii) any other Lien created in connection with the Transactions, (iii) Permitted Liens on the Collateral that are secured on a *pari passu* or junior basis with the Secured Obligations, so long as such Permitted Liens secure Guarantees permitted under clause (a)(ii) above and the underlying Indebtedness subject to such Guarantee is 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 debt for borrowed money); or

(c) consolidate or amalgamate with, or merge with or into, or convey, sell or otherwise transfer all or substantially all of its assets to, any Person; provided that, so long as no Default or Event of Default exists or would result therefrom, Holdings may consolidate or amalgamate with, or merge with or into, any other Person (other than the Borrower or any of its subsidiaries) so long as Holdings is the continuing or surviving Person.

Section 6.15. Financial Covenant.

(a) Total Leverage Ratio. On the last day of any Test Period (it being understood and agreed that this Section 6.15(a) shall not apply (i) earlier than the last day of the first full Fiscal Quarter ending after the Closing Date or (ii) during the Covenant Suspension Period), the Borrower shall not permit the Total Leverage Ratio to be greater than the applicable ratio set forth opposite the relevant period below (the "Financial Covenant Level"):

Fiscal Quarter Ending On:	**Total Leverage Ratio:**
December 31, 2017 to and including September 29, 2019	7.75:1.00
December 29, 2019 to and including ~~December 27~~March 29, 2020	7.25:1.00
June 27, 2021	10.00:1.00
September 26, 2021	8.25:1.00
~~March 28, 2021 to and including~~ December 26, 2021	7.00:1.00
March 27, 2022	6.50:1.00
~~March 27~~ June 26, 2022 and thereafter	6.00:1.00

From and after the end of the Covenant Suspension Period, for purposes of calculating compliance with the foregoing financial covenant, Consolidated Adjusted EBITDA shall be determined by annualizing Consolidated Adjusted EBITDA for each of the first three Fiscal Quarters completed after the end of the Covenant Suspension Period (i.e., (A) Consolidated Adjusted EBITDA for the Test Period ending June 27, 2021 shall equal Consolidated Adjusted EBITDA for the Fiscal Quarter ending June 27, 2021 multiplied by four, (B) Consolidated Adjusted EBITDA for the Test Period ending September 26, 2021 shall equal Consolidated Adjusted EBITDA for the Fiscal Quarter ending June 27, 2021 plus Consolidated Adjusted EBITDA for the

Fiscal Quarter ending September 26, 2021 multiplied by two, and (C) Consolidated Adjusted EBITDA for the Test Period ending December 26, 2021 shall equal Consolidated Adjusted EBITDA for the Fiscal Quarter ending June 27, 2021 plus Consolidated Adjusted EBITDA for the Fiscal Quarter ending September 26, 2021 plus Consolidated Adjusted EBITDA for the Fiscal Quarter ending December 26, 2021 multiplied by 4/3) and thereafter shall be calculated based on actual Consolidated Adjusted EBITDA for each Fiscal Quarter comprising the applicable Test Period.

(b) Financial Cure. Notwithstanding anything to the contrary in this Agreement (including Article 7), upon the occurrence of an Event of Default as a result of the Borrower's failure to comply with Section 6.15(a) above for 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 (the "Cure Amount"), and thereupon the Borrower's compliance with Section 6.15(a) shall be recalculated giving effect to a pro forma increase in the amount of Consolidated Adjusted EBITDA by 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 6.15(a) 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 6.15(a) would be satisfied, then the requirements of Section 6.15(a) shall be deemed satisfied as of the end of the relevant Fiscal Quarter with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of Section 6.15(a) that had occurred (or would have occurred) shall be deemed cured for the purposes of this Agreement. Notwithstanding anything herein to the contrary, (i) in each four consecutive Fiscal Quarter period there shall be at least two Fiscal Quarters (which may, but are not required to be, consecutive) in which the Cure Right is not exercised, (ii) during the term of this Agreement, the Cure Right shall not be exercised more than five times, (iii) the Cure Amount shall be no greater than the amount required for the purpose of complying with Section 6.15(a), (iv) upon the Administrative Agent's receipt of a written notice from the Borrower that the Borrower intends to exercise the Cure Right (a "Notice of Intent to Cure") until the 15th Business Day following the date on which financial statements for the Fiscal Quarter to which such Notice of Intent to Cure relates are required to be delivered pursuant to Section 5.01(a) or (b), as applicable, neither the Administrative Agent (nor any sub-agent therefor) nor any Lender shall exercise any right to accelerate the Loans or terminate the Commitments, and none of the Administrative Agent (nor any sub-agent therefor) nor any Lender or Secured Party shall exercise any right to foreclose on or take possession of the Collateral or any other right or remedy under the Loan Documents solely on the basis of the relevant Event of Default under Section 6.15(a), (v) 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 6.15(a) 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 repay Indebtedness), (vi) during any Test Period in which any Cure Amount is included in the calculation of Consolidated Adjusted EBITDA as a result of any exercise of the Cure Right, such Cure Amount shall be disregarded for purposes of determining whether any financial ratio-based condition to the availability of any carve-out set forth in Article 6 of this Agreement has been satisfied and (vii) no Revolving Lender, Issuing Bank or Initial Delayed Draw Term Lender under the Initial Delayed Draw Term Facility shall be required to make any Revolving Loan, issue any Letter of Credit or fund any Initial Delayed Draw Term Loan, as applicable, from and after such time as the Administrative Agent has received the Notice of Intent to Cure unless and until the Cure Amount is actually received.

Section 6.16. Minimum Liquidity Covenant.

(a) Minimum Liquidity. On any Liquidity Test Date occurring solely during the Liquidity Period, the Borrower shall not permit Liquidity to be less than $10,000,000.

(b) Financial Cure. Notwithstanding anything to the contrary in this Agreement (including Article 7), upon the occurrence of an Event of Default as a result of the Borrower's failure to comply with Section 6.16(a) above as of any Liquidity Test Date, the Borrower shall have the right (the "Liquidity Cure Right") (at any time prior to the date that is 5 Business Days after the date on which the Liquidity Calculation is required to be delivered pursuant to Section 5.01(p)) 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 (the "Liquidity Cure Amount"), and thereupon the Borrower's compliance with Section 6.16(a) shall be recalculated giving effect to a pro forma increase in the amount of Liquidity. If, after giving effect to the foregoing recalculation, the requirements of Section 6.16(a) would be satisfied, then the requirements of Section 6.16(a) shall be deemed satisfied as of the relevant Liquidity Test Date with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of Section 6.16(a) that had occurred (or would have occurred) shall be deemed cured for the purposes of this Agreement. Notwithstanding anything herein to the contrary, (i) in any period comprising any four consecutive Liquidity Test Dates, the Liquidity Cure Right shall not be exercised more than two times, (ii) during the term of this Agreement, the Liquidity Cure Right shall not be exercised more than five times, (iii) upon the Administrative Agent's receipt of a written notice from the Borrower that the Borrower intends to exercise the Liquidity Cure Right (a "Notice of Intent to Exercise Liquidity Cure Right") until the 5th Business Day following the date on which the Liquidity Calculation for the Liquidity Test Date to which such Notice of Intent to Exercise Liquidity Cure Right relates are required to be delivered pursuant to Section 5.01(p), neither the Administrative Agent (nor any sub-agent therefor) nor any Lender shall exercise any right to accelerate the Loans or terminate the Commitments, and none of the Administrative Agent (nor any sub-agent therefor) nor any Lender or Secured Party shall exercise any right to foreclose on or take possession of the Collateral or any other right or remedy under the Loan Documents solely on the basis of the relevant Event of Default under Section 6.16(a), (iv) the Liquidity Cure Amount shall be disregarded for purposes of the calculation of Consolidated Adjusted EBITDA and (v) no Revolving Lender, Issuing Bank or Initial Delayed Draw Term Lender under the Initial Delayed Draw Term Facility shall be required to make any Revolving Loan, issue any Letter of Credit or fund any Initial Delayed Draw Term Loan, as applicable, from and after such time as the Administrative Agent has received the Notice of Intent to Exercise Liquidity Cure Right unless and until the Liquidity Cure Amount in respect of such Liquidity Test Period is actually received.

Section 6.17. Payment of Management Fees. Notwithstanding anything herein to the contrary, (a) during the Restricted Period, the Borrower shall not be permitted to pay any management fees to the Sponsor and (b) thereafter, the Borrower may pay management fees to the Sponsor so long as (i) no Event of Default exists at the time of the payment thereof or would result therefrom, (ii) the Total Leverage Ratio calculated on a Pro Forma Basis for the Test Period then most recently ended is not greater than the Financial Covenant Level as of such date and (iii) Liquidity calculated after giving effect to such payment is greater than or equal to $10,000,000.

ARTICLE 7

EVENTS OF DEFAULT

Section 7.01. 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 of its Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in clause (a) above) with an aggregate 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 of its Subsidiaries with respect to any other term of (A) one or more items of Indebtedness with an aggregate 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 any Loan Party or any 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 clause (ii) of this paragraph (b) shall not apply to any 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; provided, further, that 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 Article 7; or

(c) Breach of Certain Covenants. Failure of any Loan Party, as required by the relevant provision, to perform or comply with any term or condition contained in Section 5.01(e)(i); provided that the delivery of any notice of Default or Event of Default at any time will cure any Event of Default arising from the failure to timely comply with Section 5.01(e)(i), Section 5.02 (as it applies to the preservation of the existence of the Borrower) or Article 6; it being understood and agreed that (A) any breach of Section 6.15(a) is subject to cure as provided in Section 6.15(b), and no Event of Default may arise under Section 6.15(a) until (i) the 15th Business Day after the day 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 been exercised five times over the life of this Agreement and/or the Cure Right has been exercised twice in the applicable four consecutive Fiscal Quarter period), and then only to the extent the Notice of Intent to Cure has not been received on or prior to such 15th Business Day after the day on which financial statements are required to be delivered for the relevant Fiscal Quarter under Sections 5.01(a) or (b), as applicable and (ii) the 15th Business Day after the day 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 been exercised five times over the life of this Agreement and/or the Cure Right has been exercised twice in the applicable four consecutive Fiscal Quarter period) if the applicable Notice of Cure has been timely received but the applicable Cure Amount has not been received on or prior to the 15th Business Day after the day on which financial statements are required to be delivered for the relevant Fiscal Quarter under Sections 5.01(a) or (b), as applicable; ~~or~~ and (B) any breach of Section 6.16(a) is subject to cure as provided in Section 6.16(b), and no Event of Default may arise under Section 6.16(a) until (i) the 5th Business Day after the date on which the Liquidity Calculation is required to be delivered pursuant to Section 5.01(p), and then only to the extent the Notice of Intent to Exercise Liquidity Cure Right 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 any breach of any representation, warranty or certification resulting from the failure of the Administrative Agent to file any Uniform Commercial Code continuation statement shall not result in an Event of Default under this Section 7.01(d) or any other provision of any Loan Document; or

(e) Other Defaults Under Loan Documents. Default by any Loan Party in the performance of or compliance with (i) Section 5.01(a) or (b), which default has not been remedied or waived within 10 Business Days, (ii) Section 5.01(m), Section 5.01(n) ~~and~~, Section 5.01(o) and Section 5.01(p), which default has not been remedied or waived within 5 Business Days, or (iii) any other 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 the earlier of (A) receipt by the Borrower of written notice thereof from the Administrative Agent or (B) the date on which a Responsible Officer of any Loan Parties becomes aware of such Default; 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 of its Subsidiaries (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 shall be granted under any applicable federal, state or local Requirements of Law, which relief is not stayed; or (ii) the commencement of an involuntary case against Holdings, the Borrower or any of its Subsidiaries (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 of its Subsidiaries (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 of its Subsidiaries (other than any Immaterial Subsidiary) for all or a material part of its property, which remains, in any case under this clause (f), undismissed, unvacated, unbounded or unstayed pending appeal for 60 consecutive days; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) The entry against Holdings, the Borrower or any of its Subsidiaries (other than any Immaterial Subsidiary) of an order for relief, the commencement by Holdings, the Borrower or any of its Subsidiaries (other than any Immaterial Subsidiary) of a voluntary case under any Debtor Relief Law, or the consent by Holdings, the Borrower or any of its Subsidiaries (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 of its Subsidiaries (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 its property; (ii) the making by Holdings, the Borrower or any of its Subsidiaries (other than any Immaterial Subsidiary) of a general assignment for the benefit of creditors; or (iii) the admission by Holdings, the Borrower or any of its Subsidiaries (other than any Immaterial Subsidiary) in writing of their inability to pay their respective debts as such debts become due; 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 Holdings, the Borrower or any of its Subsidiaries or any of their respective 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, by self-insurance (if applicable) or by insurance as to which the relevant third party insurance company has been notified and not denied coverage), which judgment, writ, warrant or similar process remains unpaid, undischarged, unvacated, unbonded or unstayed pending appeal for a period of 60 consecutive days; or

(i) Employee Benefit Plans. The occurrence of one or more ERISA Events, which individually or in the aggregate result in liability of Holdings, the Borrower or any of its Subsidiaries 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 Collateral created under any

Collateral Document ceases to be perfected with respect to a material portion of the Collateral (other than (A) Collateral consisting of Material Real Estate Assets to the extent that the relevant losses are covered by a lender's title insurance policy and such insurer has not denied coverage or (B) solely by reason of (w) such perfection not being required pursuant to the Collateral and Guarantee Requirement, the Collateral Documents, this Agreement or otherwise, (x) 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 continuation statements, (y) a release of Collateral in accordance with the terms hereof or thereof or (z) 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 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 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; or

(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 Junior Lien Indebtedness in excess of the Threshold Amount 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 (x) an event with respect to the Borrower described in clause (f) or (g) of this Article or (y) any Event of Default arising under Section 6.15(a)), and 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 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 from the Borrower in accordance with Section 2.05(j)(i), Section 2.19(b) and this Section 7.01 in the LC Collateral Account); provided that upon the occurrence of an event with respect to the Borrower described in clauses (f) or (g) of this Article, 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

Each of the Lenders and the Issuing Banks, each, on behalf of itself and its applicable Affiliates and in their respective capacities as such and as Hedge Banks and/or Cash Management Banks, as applicable, hereby irrevocably appoints Golub Capital (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.

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. The Administrative Agent and its Affiliates may accept fees and other consideration from any Loan Party in its sole discretion for services in connection with this Agreement or otherwise without having to account for same to Lenders.

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 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 to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity and (d) the Administrative Agent (solely in its capacity as such) shall not have any liability for, or have any duty to ascertain, inquire into, monitor or enforce compliance with the provisions hereof relating to compliance by Affiliated Lenders with the terms hereof relating to Affiliated Lenders. 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. Without limitation of the generality of the foregoing, the Administrative Agent and its Affiliates and their respective directors, officers, agents or employees: (a) may treat the payee of any note as the holder thereof until it receives written notice of the assignment or transfer thereof signed by such payee and in form satisfactory to the Administrative Agent and (b) make no warranty or representation to any Lender. 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 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.

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 (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Loan Guaranty; it being understood that any right 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 , and (ii) 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 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.

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.

Each of the Lenders hereby irrevocably authorizes (and by entering into a Hedge Agreement with respect to any Secured Hedging Obligation or by entering into documentation in connection with any Banking Services Obligation, each of the other Secured Parties hereby authorizes and shall be deemed to authorize) the Administrative Agent, on behalf of all Secured Parties to take any of the following actions upon the instruction of the Required Lenders:

(a) consent to the Disposition of all or any portion of the Collateral free and clear of the Liens securing the Secured Obligations in connection with any Disposition pursuant to the applicable provisions of the Bankruptcy Code, including Section 363 thereof;

(b) credit bid all or any portion of the Secured Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any Disposition of all or any portion of the Collateral pursuant to the applicable provisions of the Bankruptcy Code, including under Section 363 thereof;

(c) credit bid all or any portion of the Secured Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any Disposition of all or any portion of the Collateral pursuant to the applicable provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC;

(d) credit bid all or any portion of the Secured Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any foreclosure or other Disposition conducted in accordance with applicable law following the occurrence of an Event of Default, including by power of sale, judicial action or otherwise; or

(e) estimate the amount of any contingent or unliquidated Secured Obligations of such Lender or other Secured Party;

it being understood that no Lender shall be required to fund any amount in connection with any purchase of all or any portion of the Collateral by the Administrative Agent pursuant to the foregoing clause (b), (c) or (d) without its prior written consent.

Each Secured Party agrees that the Administrative Agent 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; provided that, in connection with any credit bid or purchase described under clause (b), (c) or (d) of the preceding paragraph, the Secured Obligations owed to all of the Secured Parties (other than with respect to contingent or unliquidated liabilities as set forth in the next succeeding paragraph) may be, and shall be, credit bid by the Administrative Agent on a ratable basis.

With respect to each contingent or unliquidated claim that is a Secured Obligation, the Administrative Agent is hereby authorized, but is not required, to estimate the amount thereof for purposes of any credit bid or purchase described in the second preceding paragraph so long as the estimation of the amount or liquidation of such claim would not unduly delay the ability of the Administrative Agent to credit bid the Secured Obligations or purchase the Collateral in the relevant Disposition. In the event that the Administrative Agent, in its sole and absolute discretion, elects not to estimate any such contingent or unliquidated claim or any such claim cannot be estimated without unduly delaying the ability of the Administrative Agent to consummate any credit bid or purchase in accordance with the second preceding paragraph, then any contingent or unliquidated claims not so estimated shall be disregarded, shall not be credit bid, and shall not be entitled to any interest in the portion or the entirety of the Collateral purchased by means of such credit bid.

Each Secured Party whose Secured Obligations are credit bid under clauses (b), (c) or (d) of the third preceding paragraph shall be entitled to receive interests in the Collateral or any other asset acquired in connection with such credit bid (or in the Capital Stock of the acquisition vehicle or vehicles that are used to consummate such acquisition) on a ratable basis in accordance with the percentage obtained by dividing (x) the amount of the Secured Obligations of such Secured Party that were credit bid in such credit bid or other Disposition, by (y) the aggregate amount of all Secured Obligations that were credit bid in such credit bid or other Disposition.

In addition, in case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, each Secured Party agrees that the Administrative Agent (irrespective of whether the principal of any Loan or LC Exposure is then due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans or LC Exposure and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts to the extent due to the Lenders and the Administrative Agent under Sections 2.12 and 9.03) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same.

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 consents 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 amount due to the Administrative Agent under Sections 2.12 and 9.03.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or any Issuing Bank in any such proceeding.

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.

None of Administrative Agent and its Related Parties shall be liable to any Secured Party for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Secured Party hereby waives and shall not assert any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence or willful misconduct of Administrative Agent or, as the case may be, such Related Party (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein and each Secured Party hereby waives and shall not assert to the extent permitted by applicable Requirement of Law, any claim against the Administrative Agent and its Related Parties, 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.

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. The Administrative Agent and any such sub-agent 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 and to the Related Parties of the Administrative Agent and any such sub-agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent.

The Administrative Agent may resign at any time by giving ten days' 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 ten-day period, the Administrative Agent's resignation shall not be effective until the earlier to occur of (x) the date of the appointment of the successor agent or (y) the date that is 20 days after the last day of such ten-day period. 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 ten-day period, the Administrative Agent's removal shall, at the option of the Borrower, not be effective until the earlier to occur of (x) the date of the appointment of the successor agent or (y) the date that

is 20 days after the last day of such ten-day period. 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 an Arranger or a commercial bank, trust company or other Person reasonably acceptable to the Borrower with offices in the U.S. 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. If no successor has been appointed as provided above and accepted such appointment within ten days after the retiring Administrative Agent gives notice of its resignation or the Administrative Agent receives notice of removal, then (a) in the case of a retirement, the retiring 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 (b) 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 (x) in the case of a retirement, if the Administrative Agent notifies the Borrower, the Lenders and the Issuing Banks that no qualifying Person has accepted such appointment or (y) 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 this paragraph and (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent 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 retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) 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. 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 retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder (other than its obligations under Section 9.13 hereof). The fees payable by the Borrower to any successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor Administrative Agent. 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 retiring 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 while the relevant Person was acting as Administrative Agent (including for this purpose holding any collateral security following the retirement or removal of the Administrative Agent). Notwithstanding anything to the contrary herein, no Disqualified Institution (nor any Affiliate thereof) may be appointed as a successor Administrative Agent.

Each of each Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each of each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent 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 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.

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.

Each Secured Party irrevocably authorizes and instructs the Administrative Agent to, and the Administrative Agent shall:

(a) release 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 to be sold or transferred as part of or in connection with any Disposition permitted under the Loan Documents to a Person that is not a Loan Party, (iii) that does not constitute (or ceases to constitute) Collateral, (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 or (vi) if approved, authorized or ratified in writing by the Required Lenders in accordance with, and without modifying the requirements of Section 9.02;

(b) subject to Section 9.22, release any Subsidiary Guarantor from its obligations under the Loan Guaranty if such Person ceases to be a Subsidiary (or becomes an Excluded Subsidiary as a result of a single transaction or series of related transactions permitted hereunder and the Borrower has requested that such Subsidiary Guarantor cease to be a Subsidiary Guarantor); provided that the release of any Subsidiary Guarantor from its obligations under the Loan Guaranty if such Subsidiary Guarantor becomes an Excluded Subsidiary of the type described in clause (a) of the definition thereof shall only be permitted if at the time such Guarantor becomes an Excluded Subsidiary of such type (1) after giving pro forma effect to such release and the consummation of the transaction that causes such Person to be an Excluded Subsidiary of such type, the Borrower (or its applicable Subsidiary) is deemed to have made a new Investment in such Person for purposes of Section 6.06 (as if such Person were then newly acquired) in an amount equal to the portion of the fair market value of the net assets of such Person attributable to the Borrower's (or its applicable Subsidiary's) Capital Stock therein as reasonably estimated by the Borrower and such Investment is permitted by this Agreement at such time and (2) a Responsible Officer of the Borrower certifies to the Administrative Agent compliance with the preceding clause (1);

(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)(i) (other than any Lien on the Capital Stock of any Subsidiary Guarantor), 6.02(q), 6.02(r), 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 (i.e., the exceptions other than Section 6.02(u)) 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), to the extent the relevant Lien covers cash collateral posted to secure the relevant obligation), 6.02(ee), 6.02(ff), 6.02(gg) and/or 6.02(hh); provided, that the subordination of any Lien on any property granted to or held by the Administrative Agent shall only be required with respect to any Lien on such property that is permitted by Sections 6.02(l), 6.02(o), 6.02(q), 6.02(r), 6.02(u), 6.02(bb) and/or 6.02(hh) to the extent that the Lien of the Administrative Agent with respect to such property is required to be subordinated to the relevant Permitted Lien in accordance with the documentation governing the Indebtedness that is secured by such Permitted Lien; and

(d) enter into subordination, intercreditor, collateral trust and/or similar agreements with respect to Indebtedness (including any Acceptable Intercreditor Agreement and/or any amendment to any Acceptable Intercreditor Agreement) 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.

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), 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.

The Administrative Agent is authorized to enter into any Acceptable 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 to be subordinated hereunder 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 Acceptable Intercreditor Agreement and any other Additional Agreement, including any purchase option(s) contained therein, is binding upon them. Each Secured Party party hereto hereby (a) agrees that they will be bound by, and will not take any action contrary to, the provisions of any Acceptable Intercreditor Agreement or any other Additional Agreement and (b) authorizes and instructs the Administrative Agent to enter into any Acceptable 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 Secured Parties to extend credit to the Borrower, and the Secured Parties are intended third- party beneficiaries of such provisions and the provisions of any Acceptable Intercreditor Agreement and/or any other Additional Agreement.

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 which may be imposed on, asserted against or incurred by the Administrative Agent (or any Affiliate thereof) 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 (or such affiliate's) gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

To the extent required by any applicable Requirement 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 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, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent

shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this 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.

ARTICLE 9

MISCELLANEOUS

Section 9.01. 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 facsimile or 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.
8027 Cooper Creek Blvd
University Park, FL 34201
Attention: Chris Olson, SVP Finance
Email: colson@firstwatch.com

Telephone: 941-907-9800

with a copy to (which shall not constitute notice to any Loan Party):

Advent International Corporation
12 E. 49th Street, 45th Floor
New York, New York 10152
Attention: Ken Prince
Email: kprince@AdventInternational.com

and

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York
Attention: Allison R. Liff
Email: allison.liff@weil.com

Facsimile: (212) 310-8007

(ii) if to the Administrative Agent, at:

Golub Capital Markets LLC
150 South Wacker Drive
Chicago, Illinois 60606
Attention: Jocelyn Gay
Email: Loan_admin@golubcapital.com

Golub Capital Markets LLC
666 Fifth Avenue
New York, New York 10103
Attention: Evan Schepps
Email: eschepps@golubcapital.com

(iii) if to any Issuing Bank, at such address as may be specified in the documentation pursuant to which such Issuing Bank is appointed in its capacity as such.

(iv) if to any Lender, to it at its address or facsimile number 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).

(a) 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.

(b) 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, each Issuing Bank and each Lender.

(c) Each of Holdings and the Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders and the Issuing Bank 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 United States federal securities laws with respect to Holdings, the Borrower or their respective securities) (each, a "Public Lender"). At the request of the Administrative Agent, each of Holdings and 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," Holdings and 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 would (A) customarily be made publicly available, as determined in good faith by the Borrower, if Holdings or the

Borrower were to become public reporting companies 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 United States 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, the following Borrower Materials 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): (1) the Loan Documents, (2) any amendment to any Loan Document, (3) any information delivered pursuant to Section 5.01(a) or (b) and (4) the list of Disqualified Institutions (provided that the distribution thereof is subject in all respects to the requirements of Section 9.05(f)).

Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States Federal and state securities laws, to make reference to 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 United States 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 9.02. 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, the Issuing Banks and the Lenders 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) Subject to this Sections 9.02(b) and (d) below and to Section 9.05(f), 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:

(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 (i) 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 and (ii) only the consent of the relevant Initial Delayed Draw Term Lender (but not the consent of the Required Lenders or the Administrative Agent) shall be required to increase such Initial Delayed Draw Term Lender's Initial Delayed Draw Term Loan Commitment as provided in the definition thereof;

(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 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 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 Section 2.11(a), 2.18(b) or 2.18(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 and/or 9.05(g) or as otherwise provided in this Section 9.02);

(B) no such agreement shall:

(1) change (w) any of the provisions of Section 9.02(a) or Section 9.02(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, (x) the definition of "Required Revolving Lenders" 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"), (y) the definition of "Required Delayed Draw Lenders" without the prior written consent of each Initial Delayed Draw 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 Delayed Draw Lenders") or (z) the definition of "Required Initial Lender" without the prior written consent of each Initial 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 Initial Lenders");

(2) release all or substantially all of the Collateral from the Lien granted pursuant to the Loan 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

(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) (1) 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 Additional Revolving Loan;

(2) solely with the consent of the Required Delayed Draw 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 4.03 as it pertains to any Initial Delayed Draw Term Loan;

(D) solely with the consent of the relevant Issuing Bank (or, in the case of an Issuing Bank that is a financial institution selected by the Administrative Agent as provided in the definition thereof, the Administrative Agent) and, in the case of clause (x), the Administrative Agent, any such agreement may (x) increase or decrease the Letter of Credit Sublimit or (y) waive, amend or modify any condition precedent set forth in Section 4.02 hereof as it pertains to the issuance of any Letter of Credit; and

(E) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or any Issuing Bank hereunder without the prior written consent of the Administrative Agent or such Issuing Bank (or, in the case of an Issuing Bank that is a financial institution selected by the Administrative Agent as provided in the definition thereof, the Administrative Agent), as the case may be.

(c) [Reserved].

(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 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 (including Incremental Lenders) providing Loans under such Sections), effect amendments to this Agreement and the other Loan Documents as may be necessary in the reasonable opinion of the Borrower and the Administrative Agent to (A) effect the provisions of Sections 2.22, 2.23, 5.12 or 6.13, or any other provision 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), in connection with the addition of any Loan or Commitment hereunder 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 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 acting jointly,

(iv) the Administrative Agent and the Borrower may amend, restate, amend and restate or otherwise modify any Acceptable 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 or 2.23 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) and except that the Commitment of any Defaulting Lender may not be increased without the consent of such Defaulting Lender (it being understood that any Commitment or Loan held or deemed held by any Defaulting Lender shall be excluded from any vote hereunder that requires the consent of any Lender, except as expressly provided in 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 (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders, Required Revolving Lenders and/or Required Delayed Draw Lenders on substantially the same basis as the Lenders prior to such inclusion and

(viii) any amendment, waiver or modification of any term or provision that directly affects Lenders under one or more Classes and does not directly affect Lenders under one or more other Classes may be effected with the consent of Lenders owning 50% of the aggregate commitments or Loans of such directly affected Class in lieu of the consent of the Required Lenders.

Section 9.03. 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 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), but excluding solely in connection with any underwriting of commitments to provide the Credit Facilities on the Closing Date (with any expense reimbursement in connection therewith to be governed by the Commitment Letter, dated as of July 28, 2017, by and among, *inter alios*, Merger Sub and the Arrangers) and (ii) 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, 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 jurisdiction to all such Persons, taken as a whole) 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 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 jurisdiction to all Indemnitees, taken as a whole and solely in the case of an actual or perceived 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 Subsidiaries or any other Loan Party or any Environmental Liability related to the Borrower, any of

its 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 a third party or by 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 material breach of the Loan Documents 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. All amounts due under this paragraph (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 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 the written consent of the Borrower (which consent shall not be unreasonably withheld, delayed or conditioned), 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 9.04. Waiver of Claim. To the extent permitted by applicable Requirements of Law, no party to this Agreement shall assert, and each hereby waives, any claim against any other party hereto, any Arranger, 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 the terms of Section 9.03.

Section 9.05. 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 provided 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 and, with respect to any attempted assignment or transfer to any Disqualified Institution, 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 paragraph (e) of this Section, 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 or 2.23 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 or Term Commitments (other than any such assignment to a Disqualified Institution) unless it has objected thereto by written notice to the Administrative Agent within 15 Business Days after receipt of written notice thereof and (y) the consent of the Borrower shall not be required for any assignment of Term Loans or Term Commitments (1) to any Lender or any Affiliate of any Lender or an Approved Fund or (2) at any time when an Event of Default under Section 7.01(a) or Sections 7.01(f) or (g) (with respect to the Borrower) exists; it being understood and agreed that the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed) shall always be required for any assignment of Revolving Commitments and/or Revolving Loans; provided, further, that notwithstanding the foregoing, the Borrower may withhold its consent to any assignment to any Person (other than a Bona Fide Debt Fund) that is not a Disqualified Institution but is known by the Borrower to be an Affiliate of a Disqualified Institution regardless of whether such Person is identifiable as an Affiliate of a Disqualified Institution on the basis of such Affiliate's name;

(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 of any Term Loan or Initial Delayed Draw Term Loan to another Lender, any Affiliate of a Lender or any Approved Fund; and

(C) in the case of any Revolving Facility, each Issuing Bank (or, in the case of an Issuing Bank that is a financial institution selected by the Administrative Agent as provided in the definition thereof, the Administrative Agent), in each case, not to be unreasonably withheld, conditioned or delayed.

(ii) 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 and (y) $2,500,000 in the case of Revolving Loans and Revolving Credit Commitments, 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, including (except with respect to Initial Delayed Draw Term Loans that have been classified as a separate tranche of Term Loans by the Administrative Agent pursuant to Section 2.01(c)) unfunded Initial Delayed Draw Term Loan Commitments and funded Initial Delayed Draw Term Loans thereunder;

(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 Internal Revenue Service forms required under Section 2.17.

(iii) 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.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices 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.

(v) 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.

(vi) 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 Subsidiary or the performance or observance by the Borrower or any 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 an Eligible Assignee, legally authorized to enter into such Assignment Agreement; (D) the assignee confirms that it has received a copy of this Agreement and each applicable Acceptable 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 other than with respect to any participation to any Debt Fund Affiliate (any such participation to a Debt Fund Affiliate being subject to the limitation set forth in the first proviso of the last paragraph set forth in Section 9.05(g), as if the limitation applied to such participation), 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). Subject to paragraph (c)(ii) of this Section, the Borrower agree 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.

(ii) 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 sale of the participation to such Participant is made with the Borrower's prior written consent (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 participation.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and their respective successors and registered assigns, and the principal and interest amounts of each Participant's interest in the Loans or other obligations under the Loan Documents (a "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of any Participant Register (including the identity of any Participant or any information relating to any Participant'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) of the Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant 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) 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.

(ii) 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 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 U.S. 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 or participation by a Lender without the Borrower's consent (A) to any Disqualified Institution or any Affiliate thereof or (B) to the extent the Borrower's consent is required under this Section 9.05 (and not deemed to have been given pursuant to Section 9.05(b)(i)(A)), to any other Person, shall be null and void, and the Borrower shall be entitled to seek specific performance to unwind any such assignment or participation 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 remedies available to the Borrower at law or in equity; it being understood and agreed that Holdings, the Borrower and its subsidiaries will suffer irreparable harm if any Lender breaches any obligation under this Section 9.05 as it relates to any assignment, participation or pledge of any Loan or Commitment to any Disqualified Institution or any Affiliate thereof or any other 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. Upon the request of any Lender, the Administrative Agent may, and the Borrower will, make the list of Disqualified Institutions (other than any Disqualified Institution that is a reasonably identifiable Affiliate of another Disqualified Institution on the basis of such Person's name) available to such Lender so long as such Lender agrees to keep the list of Disqualified Institutions confidential in accordance with the terms hereof.

(ii) If any assignment or participation under this Section 9.05 is made to any Affiliate of any Disqualified Institution (other than any Bona Fide Debt Fund) 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 Loans, held by such Disqualified Person, purchase such Term Loans by paying the lesser of (x) par and (y) the amount that such Disqualified Person paid to acquire such Term Loans, 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, 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 Adjusted Eurocurrency Rate 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, then such excess amount shall either be (x) contributed to Holdings, 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 set forth in Section 2.13(d). Further, any Disqualified Person identified by the Borrower to the Administrative Agent (A) shall not be permitted to (x) receive information or reporting 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) shall not 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, the Required Revolving Lenders, Required Delayed Draw Lenders, majority Lenders under any Class or all Lenders have taken any action, and (y) shall be deemed to vote in the same proportion as Lenders that are not Disqualified Persons in any proceeding under any Debtor Relief Law commenced by or against the Borrower or any other Loan Party 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.

(iii) Notwithstanding anything to the contrary herein, each of Holdings, the Borrower and each Lender acknowledges and agrees that the Administrative Agent (solely in its capacity as such, and not in its (or any of its Affiliates') capacity as an Arranger, Lender, Issuing Bank or otherwise) shall not have any responsibility or obligation to ascertain, monitor, inquire as to or determine whether any Lender or participant or potential Lender is a Disqualified Institution or Disqualified Person, and the Administrative Agent (solely in its capacity as such, and not in its (or any of its Affiliates') capacity as an Arranger, Lender, Issuing Bank or otherwise) shall have no liability with respect to any assignment, participation or disclosure of confidential information made by any Person (other than the Administrative Agent) to any Disqualified Institution or Disqualified Person (regardless of whether the consent of the Administrative Agent is required thereto), and none of the Borrower, any Lender or their respective Affiliates will bring any claim to such 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 through Dutch Auctions open to all Lenders holding the relevant Term Loans on a pro rata basis, in each case, without the consent of the Administrative Agent; provided that:

(i) any Term Loans acquired by Holdings, the Borrower or any of its Subsidiaries shall 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 Loans acquired by any Non-Debt Fund Affiliate 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 be retired and cancelled promptly upon such contribution or exchanged for debt or equity securities that are otherwise permitted to be issued pursuant to this Agreement at the relevant time); provided that upon any such cancellation or exchange, 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 or exchanged, 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 Term Loans so contributed and cancelled or exchanged;

(iii) the relevant Affiliated Lender and assigning Lender shall have executed an Affiliated Lender Assignment Agreement;

(iv) after giving effect to the relevant assignment and to all other assignments to all Affiliated Lenders, the aggregate principal amount of all Term Loans and all other Indebtedness for borrowed money that is *pari passu* with the Initial Loans in right of payment and with respect to security then held by all Affiliated Lenders shall not exceed 25% of the aggregate principal amount of the Term Loans and such other Indebtedness then outstanding (after giving effect to any substantially simultaneous cancellations 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 Loans 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;

(v) in connection with any assignment effected pursuant to a Dutch Auction conducted by Holdings, the Borrower or any of its Subsidiaries, (A) the relevant Person may not use the proceeds of any Revolving Loans to fund such assignment and (B) no Default or Event of Default exists at the time of acceptance of bids for the Dutch Auction; 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 payments 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, the Borrower 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 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 on a non-pro rata basis through Dutch Auctions open to all applicable Lenders 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, Required Delayed Draw 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 action shall be deemed to be voted pro rata along with other Lenders that are not Debt Fund Affiliates. Any Loans acquired by any Debt Fund Affiliate may (but shall not be required to) be contributed to the Borrower or any of its subsidiaries for purposes of cancelling such Indebtedness or exchanging such Indebtedness for debt or equity securities that are otherwise permitted to be issued pursuant to this Agreement at the relevant time (it being understood that any Loans so contributed shall be retired and cancelled promptly upon thereof); provided, further, that upon any such cancellation or exchange, 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 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 Loans so contributed and cancelled.

Section 9.06. 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 9.07. 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 Acceptable Intercreditor Agreement (if any) and the Fee Letter and any separate letter agreements 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.

Section 9.08. 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 9.09. Right of Setoff. At any time when an Event of Default exists, upon the written consent of the Administrative Agent and 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 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. Any applicable Lender or Issuing Bank shall promptly notify the Borrower and the Administrative Agent of such set-off or application; 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.

Section 9.10. 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), SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK; PROVIDED, THAT (I) THE INTERPRETATION OF THE DEFINITION OF "CLOSING DATE MATERIAL ADVERSE EFFECT" AND THE DETERMINATION OF WHETHER A CLOSING DATE MATERIAL ADVERSE EFFECT HAS OCCURRED, (II) THE DETERMINATION OF THE ACCURACY OF ANY SPECIFIED MERGER AGREEMENT REPRESENTATION AND WHETHER AS A RESULT OF ANY INACCURACY THEREOF MERGER SUB OR ITS APPLICABLE AFFILIATE HAS A RIGHT TO TERMINATE ITS OBLIGATIONS UNDER THE MERGER AGREEMENT OR DECLINE TO CONSUMMATE THE CLOSING DATE MERGER AND (III) THE DETERMINATION OF WHETHER THE CLOSING DATE MERGER HAS BEEN CONSUMMATED

IN ACCORDANCE WITH THE TERMS OF THE MERGER AGREEMENT AND, IN ANY CASE, ANY CLAIM OR DISPUTE ARISING OUT OF ANY SUCH INTERPRETATION OR DETERMINATION OR ANY ASPECT THEREOF, SHALL IN EACH CASE BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF ANY U.S. 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 9.11. 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 9.12. 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 9.13. 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 Affiliates and/or funding and financing sources and its and their respective members, partners, directors, officers, managers, employees, 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 funding and financing sources' 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 or by any subpoena or similar legal process (in which case such Person shall (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 regulatory or Governmental Authority (including any self-regulatory body, such as the National Association of Insurance Commissioners) 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) 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 any other party to this Agreement, (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), (ii) any pledgee referred to in Section 9.05, (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 and (iv) subject to the Borrower's prior approval of the information to be disclosed, on a confidential basis, market data collectors and service providers to the Administrative Agent in connection with the administration and management of this Agreement and the Loan Documents, (f) with the prior written consent of the Borrower, (g) to the extent the Confidential Information (i) becomes publicly available other than as a result of a breach of this Section by such Person, its Affiliates or their respective Representatives or (ii) becomes available to such Person on a non-confidential basis from a source other than a Loan Party or a Person who provided such information on behalf of a Loan Party and not in violation of any confidentiality agreement or obligation owed to any Person, (h) to insurers, the CUSIP Service Bureau or

any similar agency or settlement services providers or any nationally recognized rating agency 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 any disclosure made in reliance on this clause (h) is limited to the general terms of this Credit Agreement and shall not include financial or other information relating to Holdings, any Borrower or any of their respective subsidiaries and (i) in connection with the exercise of any remedy or enforcement of any right under the Loan Documents. 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, the Borrower or any of its subsidiaries. For the avoidance of doubt, in no event shall any disclosure of any Confidential Information be made to Person that is a Disqualified Institution at the time of disclosure.

Section 9.14. 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 "Lenders"), 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 Lender, 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 Lenders, on the one hand, and the Loan Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender, 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 Lender 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 Lender, 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. To the fullest extent permitted by applicable Requirements of Law, each Loan Party waives any claim that it may have against any Lender with respect to any breach or alleged breach of fiduciary duty arising solely by virtue of this Agreement. 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 9.15. 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 9.16. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name 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.

Section 9.17. 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 9.18. 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 such 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 9.19. 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 9.20. Acceptable Intercreditor Agreement. REFERENCE IS MADE TO EACH ACCEPTABLE INTERCREDITOR AGREEMENT. EACH LENDER AND EACH ISSUING BANK HEREUNDER AGREES THAT IT WILL BE BOUND BY AND WILL TAKE NO ACTIONS CONTRARY TO THE PROVISIONS OF ANY ACCEPTABLE INTERCREDITOR AGREEMENT AND AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT TO ENTER INTO EACH ACCEPTABLE INTERCREDITOR AGREEMENT AS "FIRST LIEN AGENT" (OR OTHER APPLICABLE TITLE) AND ON BEHALF OF SUCH LENDER OR ISSUING BANK. THE PROVISIONS OF THIS SECTION 9.20 ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF ANY ACCEPTABLE INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO THE EACH ACCEPTABLE APPLICABLE INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER AND EACH ISSUING BANK IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF EACH ACCEPTABLE INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION TO ANY LENDER OR ISSUING BANK AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN ANY ACCEPTABLE INTERCREDITOR AGREEMENT.

Section 9.21. 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. In the case of any conflict or inconsistency between any Acceptable Intercreditor Agreement and any Loan Document, the terms of such Acceptable Intercreditor Agreement shall govern and control.

Section 9.22. 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 shall be automatically released) (i) upon the consummation of any permitted transaction or series of related transactions if as a result thereof such Subsidiary Guarantor ceases to be a Subsidiary (or becomes an

Excluded Subsidiary as a result of a single transaction or series of related transactions permitted hereunder)) and/or (ii) upon the occurrence of the Termination Date and (b) any Subsidiary Guarantor that qualified as an "Excluded Subsidiary" shall be released by the Administrative Agent promptly following the request therefor by the Borrower; provided that the release of any Subsidiary Guarantor from its obligations under the Loan Guaranty if such Subsidiary Guarantor becomes an Excluded Subsidiary of the type described in clause (a) of the definition thereof shall only be permitted if at the time such Guarantor becomes an Excluded Subsidiary of such type after giving pro forma effect to such release and the consummation of the transaction that causes such Person to be an Excluded Subsidiary of such type, the Borrower (or its applicable Subsidiary) is deemed to have made a new Investment in such Person for purposes of Section 6.06 (as if such Person were then newly acquired) in an amount equal to the portion of the fair market value of the net assets of such Person attributable to the Borrower's (or its applicable Subsidiary's) Capital Stock therein as reasonably estimated by the Borrower and such Investment is a permitted under this Agreement at such time. 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 9.23. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding of the parties hereto, each such party acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[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.

AI FRESH MERGER SUB, INC., as Merger Sub and, prior to the Closing Date Merger, as the Borrower

By: _____
Name: Kenneth L. Pendery, Jr.
Title: Vice President

AI FRESH PARENT, INC., as Holdings

By: _____
Name: Kenneth L. Pendery, Jr.
Title: Vice President

FWR HOLDING CORPORATION, following the Closing Date Merger, as the Borrower

By: _____
Name: Paul Hineman
Title: Chief Financial Officer

GOLUB CAPITAL MARKETS LLC, individually, as the Administrative Agent

By: _____
Name:
Title:

[•], individually, as a Lender

By: _____
Name:
Title:

Exhibit 10.4

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("Agreement") is made and entered into as of August 21, 2017 (the "Effective Date") between First Watch Restaurants, Inc., a Delaware corporation (together with its successors and assigns permitted hereunder, the "Company"), and Laura Sorensen (the "Executive").

RECITALS

WHEREAS, the Company and the Executive entered into that certain Employment Agreement effective November 10, 2016 (the "Prior Employment Agreement") which employment agreement is hereby terminated, cancelled and of no further force or effect; and

WHEREAS, the Board of Directors of the Company (the "Board") has determined that it is in the best interest of the Company and its stockholders to enter into this Agreement and to continue to employ the Executive on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the respective agreements and covenants set forth herein and other good and valuable consideration, the receipt of which is hereby acknowledged by both parties hereto, the parties hereto, intending to be legally bound, hereby agree as follows:

AGREEMENT

1. Employment Period. The Executive's term of employment hereunder shall commence on the Effective Date of this Agreement and continue until the first anniversary of the Effective Date, unless earlier terminated pursuant to Section 3 (the initial employment period and any extended employment period pursuant to this Section 1 shall be referred to herein as the "Employment Period"). Upon the first anniversary of the Effective Date, and on each anniversary thereafter, this Agreement shall automatically renew on the same terms and conditions set forth herein (as amended in writing from time to time by the parties) for one (1) year periods unless the Company or the Executive gives the other party written notice of its/Executive's election not to renew the Employment Period no later than thirty (30) days prior to the end of the Employment Period. If either party provides a notice not to renew pursuant to this Section 1 and the Executive continues to be employed by the Company after the Employment Period, for any reason, Executive will do so as an at will employee and not pursuant to this Agreement, provided that, the Executive's post-termination obligations pursuant to Sections 4, 5, 6, 8 and 10 of this Agreement (the "Continuing Obligations") shall survive any such continued at will employment and termination thereof.

2. Terms of Employment.

A. Position and Duties. During the Employment Period, the Executive shall serve as the Executive Vice President and Chief People Officer of the Company and, in so doing, shall perform all normal duties and responsibilities associated with such position, subject to the general direction, approval and control of the Chief Executive Officer of the Company and the Board. During the Employment Period, and excluding any periods of vacation or other leaves

to which the Executive is entitled, the Executive agrees to devote substantially all of Executive's business time to the business and affairs of the Company, to use Executive's best efforts to perform faithfully, effectively and efficiently Executive's duties and responsibilities, and to observe and comply with the Company's rules and policies as adopted by the Company from time to time. Provided, however, that the foregoing shall not prevent Executive from (i) maintaining the ownership interests that Executive has in other entities as of the Effective Date, or (ii) maintaining the positions that Executive holds on boards and with trade associations as of the Effective Date. During the Employment Period, the Executive will be employed by the Company on an at will basis, which means that either Executive or the Company can terminate the employment relationship at any time, with or without cause, subject to the terms and conditions set forth in Section 3.

B. Compensation.

(1) Annual Base Salary. During the Employment Period, the Executive shall receive an annual base salary in the amount of $290,000.00 less applicable deductions under federal, state and local laws (the "Annual Base Salary"), paid in accordance with the customary payroll practices of the Company. The Board, in its discretion, may at any time change the amount of the Annual Base Salary to such greater amount as it may deem appropriate, and the term "Annual Base Salary," as used in this Agreement, shall refer to the Annual Base Salary as it may so be changed.

(2) Annual Bonus. During the Employment Period, the Executive shall be eligible to participate in the Company's key employee bonus plan pursuant to the terms and conditions of that plan, as amended from time to time by the Board, but not within the bonus period ending on December 31, 2017. The Executive shall be eligible to receive an annual bonus of up to 70% of the Annual Base Salary, which will be based upon the achievement of certain clearly defined goals (including, without limitation, achieving EBITDA targets) established by the Board or its Compensation Committee (the "Annual Bonus"), and provided to the Executive prior to the commencement of each annual bonus period. The implementation, continuation and termination of any incentive plan referenced hereunder shall be within the sole discretion of the Board provided that the bonus plan shall not be terminated or materially reduced during the bonus period ending on December 31, 2017. The Annual Bonus, if any, shall be paid to the Executive as set forth in the annual incentive plan. The Executive shall only be eligible to receive the Annual Bonus if Executive is actively employed on the Annual Bonus payout date subject to Section 3.

(3) Equity. During the Employment Period, the Executive shall be eligible to participate in the equity incentive plan of AI Fresh Parent, Inc. ("Parent") maintained for senior executives pursuant to the terms and conditions of that plan, as amended from time to time.

(4) Benefits. During the Employment Period, the Executive shall be entitled to participate in each benefit plan sponsored by the Company to the extent such benefit plan is generally available to similarly-situated employees of the Company and the Executive is otherwise eligible under the terms of such benefit plan. The amount, eligibility, and extent of the benefits shall be governed by the applicable benefit plan or program of the Company. The Executive shall be entitled to accrue three (3) weeks of paid vacation per year on a pro-rata basis. Vacation days shall not accumulate from year to year and unused vacation days will not be paid upon termination subject to Section 3. Any vacation shall be taken at the reasonable and mutual convenience of the Company and the Executive.

(5) Supplemental Life Insurance Plan. The Executive shall be entitled to participate in a supplemental life insurance plan that may be provided by the Company from time to time, in accordance with the terms and conditions of such programs as administered by the Company.

(6) Expenses. During the Employment Period, the Company shall reimburse the Executive for all reasonable business expenses of types authorized by the Company and reasonably and necessarily incurred or paid for by the Executive in the performance of Executive's duties, responsibilities, and authorities hereunder. The Executive shall provide the Company with all documentation and receipts requested by the Company and required to establish the amount and nature of such expenses. The Executive shall comply with such budget limitations and approval and reporting requirements with respect to expenses as the Company may establish from time to time.

3. Obligations upon Termination.

A. Termination/Expiration. The provisions of this Section 3 do not in any way affect the Executive's at will status as provided in Section 2. The Executive is entitled to no other payments, compensation, severance or benefits upon termination except as expressly stated in this Section 3. Upon termination or expiration/nonrenewal of this Agreement, the Executive is entitled to receive any unpaid Annual Base Salary due for the period prior to and through the date of termination, and following submission of proper expense reports by the Executive, reimbursement for all expenses properly incurred in accordance with Section 2.B(6) of this Agreement (jointly, the "Accrued Obligations"). Upon termination for any reason (except death) or expiration/nonrenewal of this Agreement, the Executive shall continue to be fully bound by the Continuing Obligations.

B. Notice of Termination. Any termination of the Executive's employment shall be communicated to the other party by a Notice of Termination. For the Executive, a "Notice of Termination" means a written notice provided to the Company at least thirty (30) days prior to the Executive's last day of employment, provided however, the Company may accelerate the Executive's last day of employment to any date within the thirty (30) day notice period without converting the Executive's resignation into anything but a voluntary resignation. For the Company, a "Notice of Termination" means any written notice to the Executive, at any time, which indicates the effective date of termination of the Executive's employment subject to this Section 3.

C. Termination by the Company Due to Death or Disability.

(1) Termination for Death or Disability. The Executive's employment hereunder shall terminate automatically during the Employment Period upon the Executive's death or, at the option of the Company, upon Executive's Disability (defined below). In the case of Disability, the Company shall provide the Executive a Notice of Termination and the Executive's employment with the Company shall terminate effective on the thirtieth (30th) day following Executive's receipt of said notice unless, within said thirty (30) day period, the Executive is able to perform the essential functions of Executive's job duties, with or without reasonable accommodation.

(2) Rights upon Termination for Death or Disability. If the Company terminates the Executive's employment hereunder because of death or Disability, the Executive shall forfeit all rights to any compensation otherwise due to Executive or to which Executive may be entitled under this Agreement, and the Company shall have no further payment obligations to the Executive or Executive's legal representatives, other than: (a) the Accrued Obligations; (b) continued payment of the Annual Base Salary for a period of six (6) months following the date of termination in accordance with the Company's regular payroll practices; (c) accrued but unused vacation through the termination date payable on the next regular payroll date following the termination date; and (d) a pro rata portion of the Annual Bonus that the Executive would have earned for the year in which Executive's death or Disability occurred if Executive had remained employed with the Company through the end of such calendar year, based on the number of months employed by the Company calculated as of the date of termination (the "Prorated Bonus Amount"), and payable when the bonuses are regularly paid as set forth in the annual incentive plan. Except as set forth in this Section 3.C(2), if the Executive is terminated due to death or Disability, the Company shall have no further obligations to the Executive or liability under this Agreement by way of compensation or otherwise.

(3) Definition of Disability. For purposes of this Agreement, at any time the Company sponsors a long-term disability plan for the Company's executives, and subject to applicable law, "Disability" shall mean disability as defined in such long-term disability plan for the purpose of determining a participant's eligibility for benefits, *provided however*, if the long-term disability plan contains multiple definitions of disability, "Disability" shall refer to that definition of disability which, if the Executive qualified for such disability benefits, would provide coverage for the longest period of time. The determination of whether the Executive has a Disability shall be made by the person or persons required to render disability determinations under the long-term disability plan. At any time the Company does not sponsor a long-term disability plan for its executives, "Disability" shall mean the Executive's inability to perform, with or without reasonable accommodation, the essential functions of Executive position hereunder for a period of one hundred twenty (120) days, consecutive or non- consecutive, in any twelve (12)-month period due to Executive's mental or physical incapacity as determined by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative, such agreement as to acceptability not to be unreasonably withheld or delayed. The Executive agrees to cooperate in submitting to a medical examination for the purpose of certifying Disability under this Section 3.C if requested by the Company.

D. Termination by the Company for Cause.

(1) Termination for Cause. The Company may terminate the Executive's employment at any time during the Employment Period for Cause (defined below) upon written notice to the Executive.

(2) Rights upon Termination for Cause. If the Executive's employment hereunder is terminated by the Company for Cause, the Executive shall not be entitled to receive any severance, bonus or other payments, except the Accrued Obligations, payable in a lump sum on the Company's next regular payroll date following the date of termination. Except as set forth in this Section 3.D, the Company shall have no further obligations to the Executive or liability under this Agreement by way of compensation or otherwise. Should the Executive's employment terminate pursuant to this Section 3.D, the Executive shall continue to be fully bound by the Continuing Obligations.

(3) Definition of Cause. For purposes of this Agreement, "Cause" shall include the following: (a) indictment for any crime involving moral turpitude, fraud or misrepresentation or the Executive pleading guilty or nolo contendere to, any felony or crime involving moral turpitude that is damaging to the reputation of the Company; (b) commission of any act which is a felony; (c) gross misconduct or fraud involving the operations of the Company; (d) misappropriation or embezzlement of funds or property of the Company; (e) willful conduct which is materially injurious to the reputation, business or business relationships of the Company; (f) violation of any of the provisions of this Agreement or any material Company policy or work rule (including, for example, the Company's sexual harassment policy, drug policy, etc.); or (g) failure of the Executive to follow the reasonable directions or instructions issued to the Executive by the Board, or the Executive's refusal or failure to substantially perform Executive's duties and responsibilities under this Agreement to the reasonable satisfaction of the Board, *provided however*, that prior to any termination pursuant to subsection 3.D(3)(f) and (g), the Company must give written notice to the Executive stating the reasons triggering subsection 3.D(3)(f) and (g) and the Executive shall thereafter have the right to remedy the condition, if such condition can be remedied in the good faith determination of the Board, within thirty (30) days of the date the Executive received such written notice. If the Executive does not remedy the condition within the thirty (30) day cure period to the reasonable satisfaction of the Board, then the Board may deliver a notice of termination for Cause at any time within thirty (30) days following the expiration of such cure period, in which case termination will be effective upon delivery of such notice.

E. Termination by the Company Without Cause.

(1) Termination Without Cause. The Company may terminate the Executive's employment at any time during the Employment Period without Cause (other than due to death or Disability) upon written notice.

(2) Rights upon Termination Without Cause. If the Executive's employment hereunder is terminated by the Company without Cause, the Executive shall forfeit all rights to any compensation otherwise due to Executive or to which Executive may be entitled under this Agreement, and the Company shall have no further payment obligations to the Executive or Executive's legal representatives, other than: (a) the Accrued Obligations; and (b) *provided* the Executive signs, returns and, if applicable, does not revoke a general waiver and release of all claims against the Company and its Parent, subsidiaries and affiliates in a form satisfactory to the Board and the Company (the "Release") and complies with the Continuing Obligations, (i) continued payment of the Annual Base Salary for a period of twelve (12) months following the date of termination in accordance with the Company's regular payroll practices (the "Salary Continuation Payments"); (ii) accrued but unused vacation through the termination date; and (iii) the Prorated Bonus Amount.

The first Salary Continuation Payment and the accrued vacation shall be paid to the Executive on the Company's first regular payroll date following the sixtieth (60th) day after the termination date (and will include any Salary Continuation Payment installment that would have otherwise been paid during the period following the termination date through the date of the first Salary Continuation Payment); *provided that*, the Release is irrevocable as of such date. The Prorated Bonus Amount shall be payable on the same day as the final Salary Continuation Payment. If during any period in which the Executive is receiving the Salary Continuation Payments, Executive violates any Continuing Obligations to the Company, the Company's obligations pursuant to Section 3.E(2)(b) shall cease and the Company will have no further obligations to the Executive. Except as set forth in this Section 3.E, if the Executive is terminated without Cause, the Company shall have no further obligations to the Executive or liability under this Agreement by way of compensation or otherwise.

F. Resignation by the Executive Without Cause / Expiration. During the Employment Period, the Executive may resign Executive's employment at any time, for any reason. In addition, the Employment Period may expire/not be renewed as set forth in Section 1. If the Executive's employment terminates pursuant to this Section 3.F as a result of the Company providing the Executive notice of its intent not to renew pursuant to Section 1, then the Executive shall receive (a) the Accrued Obligations; and (b) *provided* the Executive signs, returns and, if applicable, does not revoke the Release and complies with the Continuing Obligations, (i) the Salary Continuation Payments; (ii) accrued but unused vacation through the termination date; and (iii) the Prorated Bonus Amount, each of which shall be payable in accordance with the provisions of Section 3.E. If the Executive resigns Executive's employment for any reason (other than for "Good Cause" as defined in Section 3.G(1) below) or the Executive's employment terminates pursuant to this Section 3.F as a result of the Executive providing the Company notice of Executive's intent not to renew pursuant to Section 1, the Executive shall not be entitled to receive any severance, or other payments, except the Accrued Obligations, and the Company shall have no further obligations to the Executive or liability under this Agreement by way of compensation or otherwise. Should the Executive's employment terminate pursuant to this Section 3.F, the Executive shall continue to be fully bound by Executive's Continuing Obligations.

G. Resignation by the Executive for Good Cause.

(1) If any of the following events shall occur without the Executive's consent, the Executive shall be entitled to resign Executive's employment with the Company for Good Cause: (i) the Company materially reduces Executive's Annual Base Salary or Annual Bonus opportunity percentage; (ii) a material diminution in Executive's responsibilities; or (iii) the Company relocates Company's headquarters more than twenty (20) miles from the existing location. Notwithstanding the foregoing, the events described in clauses (i), (ii) or (iii) shall not constitute Good Cause unless (A) Executive has given the Company written notice of Executive's resignation for Good Cause, setting forth the conduct of the Company that is alleged to constitute Good Cause, within thirty (30) days following the occurrence of such event, and (B) Executive 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. Failing such cure, a termination of employment of Executive by Executive for Good Cause shall be effective on the day following the expiration of such cure period.

(2) If the Executive resigns his employment with the Company for Good Cause in accordance with Section 3.G(1) above, Executive shall be entitled and subject to the same rights and obligations as provided herein for a termination without Cause, as specified by Section 3.E(2) herein.

4. Restrictive Covenants.

A. Confidential Information.

(1) Covenant Not to Disclose Confidential Information. The Executive acknowledges that the services to be performed by Executive hereunder are special, unique and extraordinary in that, by reason of Executive's employment hereunder and Executive's past employment with the Company, Executive will acquire and have access to, and has acquired and has had access to, the Company's Confidential Information (defined below), the use or disclosure of which could cause the Company substantial loss and damages which could not be readily calculated and for which no remedy at law would be adequate. The Executive shall not, during the Employment Period or at any time thereafter, disclose in any way the Company's Confidential Information or any part thereof, to any person, firm, corporation, association, or any other operation or entity or use the Confidential Information on Executive's own behalf, for any reason or purpose, except as necessary to perform Executive's job duties, or destroy the Confidential Information. The Executive agrees that Executive will not distribute any Confidential Information to any third person or permit the reproduction of the Confidential Information, except on behalf of the Company in Executive's capacity as an executive of the Company. The Executive hereby assumes responsibility for and shall indemnify and hold the Company harmless from and against any disclosure by the Executive or use by the Executive of the Confidential Information in violation of this Agreement other than pursuant to subpoena, court order, discovery request, or as otherwise required by law, or for whistleblower actions.

(2) Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall include, but is not limited to, the following information, which information is not generally known or readily available to the public or the Company's competitors: (a) confidential and proprietary matters relating to the sales operations of the Company, or its Parent, subsidiaries, or affiliates of the Company, including, but not limited to, sales methods; pricing information; merchandising and marketing plans and strategies; proprietary information relating to recipes, services, products and product specifications, processes, techniques and know-how; and supplier and vendor lists; (b) confidential and proprietary matters relating to the business and financial operations of the Company or its Parent, subsidiaries, or affiliates of the Company, including, but not limited to, financial data and plans; budgets and financial statements; business plans and strategies; research and development plans; product or service plans; training materials; methods of distribution; assets and liabilities; past, present or proposed business operations, mergers or acquisitions or projects; business opportunities for new or developing business; recruiting methodology; and personnel information concerning Company employees (other than the Executive); (c) confidential and proprietary intellectual property of the Company or its Parent, subsidiaries, or affiliates of the Company,

including, but not limited to, concepts, ideas, proposals, Inventions (defined in Section 5), formulas, technology, improvements, discoveries, developments, proposed trademarks, trade and domain names; and (d) any trade secret of the Company or its Parent, subsidiaries or affiliates of the Company as defined by law. The Executive understands and agrees that the rights and obligations set forth in this Section 4.A are perpetual and shall extend beyond the Executive's employment with the Company. Confidential Information shall not include general industry information or information which is or becomes publicly available, information which the Executive has lawfully acquired from a source other than the Company (provided that such source is not bound by a confidentiality agreement with the Company), disclosures required by any registration or filing with any agency or regulatory authority; information which is required to be disclosed pursuant to any law, regulation, or rule of any governmental body , agency or authority or court order, and/or as may be necessary for purposes of disclosure to accountants, financial advisors or other counsel, who shall be made aware of and agree to be bound by the confidentiality provisions hereof.

(3) Disclosure of Confidential Information for Certain Purposes. Executive understands that nothing in this Agreement shall be construed to prohibit Executive from reporting possible violations of law or regulation to any governmental agency or regulatory body or making other disclosures that are protected under any law or regulation, or from filing a charge with or participating in any investigation or proceeding conducted by any governmental agency or regulatory body (including under any governmental agency's whistleblower program). Executive understands that the Defending Trade Secrets Act provides that Executive may not be held criminally or civilly liable under any Federal or state trade secret law for the disclosure of a trade secret that is made in confidence to a Federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In the event that Executive files a lawsuit for retaliation by the Company, Parent or its subsidiaries or affiliates for reporting a suspected violation of law, Executive may disclose the trade secret to Executive's attorney and use the trade secret information in the court proceeding, if Executive files any document containing the trade secret under seal and does not disclose the trade secret, except pursuant to court order.

B. Covenant Not to Compete. During the Employment Period and for the longer of (i) the period of time during which the Executive holds, directly or indirectly, any equity securities of the Company and (ii) a period of one (1) year after the date of termination of the Executive's employment, however caused and for any reason, the Executive shall not:

(1) directly or indirectly induce or attempt to induce any senior managers or executives of the Company or those of any of its Parent, subsidiaries or affiliates to terminate their employment, or refrain from renewing or extending such employment, with the Company or such affiliate or subsidiary;

(2) directly or indirectly own, control or participate in the ownership or control of, or be employed by or on behalf of, or provide services to, any restaurant business which operates a restaurant similar to that operated by the Company within a five (5) mile radius of any restaurant operated or owned by the Company or its Parent, subsidiaries, or affiliates, during the Employment Period; or

(3) directly or indirectly solicit or cause or encourage any person to solicit any business in competition with the Company or its Parent, subsidiaries, or affiliates.

C. Mutual Covenant Not to Disparage. The Executive agrees not to disparage, at any time, the Company, or its Parent, subsidiaries or affiliates of the Company, or any of their business practices, products or services, or any of their directors, officers, agents, representatives, stockholders or affiliates, either orally or in writing. Upon termination of the Executive's employment, the Company agrees that it will instruct its Board of Directors and senior management to not make any oral or written statement that disparages the Executive. Nothing in this Section shall prohibit either the Executive or the Company from responding truthfully to subpoenas or in connection with whistleblower actions and other court ordered inquiries or proceedings.

5. Inventions.

A. Assignment. The Executive agrees to assign and hereby assigns to the Company, without further consideration, all right, title, and interest that the Executive may presently have or acquire (throughout the United States and in all foreign countries), free and clear of all liens and encumbrances, in and to each Invention (as defined in this Section 5), which Invention shall be the sole property of the Company, whether or not patentable. "Invention" as used herein shall mean all ideas, processes, trademarks, service marks, inventions, technology, computer programs, original works of authorship, designs, formulas, discoveries, patents, copyrights, moral rights (including but not limited to rights to attribution or integrity) and all improvements, rights, and claims related to the foregoing that are in all cases conceived, created, developed, or reduced to practice by the Executive alone or with others during the scope and course of Executive employment with the Company (or any affiliate). In addition, to the extent not assigned, the Executive hereby irrevocably waives any moral rights (including rights of attribution and integrity) that Executive may have with respect to the Inventions. The Executive acknowledges that all original works of authorship which are made by the Executive (solely or jointly with others) within the scope of Executive's employment and which are protectable by copyright are "Works Made For Hire" as defined in the United States Copyright Act (17 USCA, § 101) and are included in the definition of Inventions. The Executive shall promptly disclose any such Invention to the Company.

B. Prior Inventions. Unless attached hereto as an exhibit, the Executive represents that Executive does not have or possess any invention made or developed by Executive prior to Executive's employment with the Company which relates to the business, products or research and development of the Company as of or prior to the date hereof ("Prior Invention"), or that Executive has already assigned all such inventions to the Company. If any Prior Invention is incorporated into a Company product, process or machine, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license to make, have made, modify, adapt, use, import, and sell such Prior Invention as part of or in connection with such product, process or machine.

C. Assistance. The Executive agrees to assist the Company, or its designee, at the Company's expense, in securing the Company's rights in and to the Inventions and any other intellectual property rights relating thereto in any and all countries. Such assistance shall include the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive rights, title and interest in and to such Inventions, and other intellectual property rights relating thereto. The Executive agrees to maintain adequate and current written records on the development of all Inventions and to disclose promptly to the Company all Inventions and relevant records, which records will remain the sole property of the Company. The Executive further agrees that all information and records pertaining to any idea, process, trademark, service mark, invention, discovery, improvement, technology, computer program, original work of authorship, design formula, discovery, patent, or copyright that the Executive does not believe to be an Invention, but is conceived, developed, or reduced to practice by the Executive (alone or with others) during Executive's employment with the Company shall be promptly disclosed to the Company (such disclosure to be received in confidence).

6. Company Property. The Executive acknowledges that the Confidential Information and any and all notes, records, sketches, computer diskettes, training materials and other documents relating to the Company obtained by or provided to the Executive, created or developed by the Executive during the course of Executive's employment with the Company, or otherwise made, produced or compiled by the Executive during the Employment Period, regardless of the type of medium in which they were preserved, are the sole and exclusive property of the Company and shall be surrendered to the Company upon the Executive's termination from the Company, however caused and for any reason, or on demand at any time by the Company.

7. Comparative Right to Injunctive Relief. In the event of a breach or threatened breach of any of the Executive's duties and obligations under the terms and provisions of Sections 4, 5 or 6 hereof, the Company shall be entitled, in addition to any other legal or equitable remedies it may have in connection therewith (including any right to damages that it may suffer), to temporary, preliminary and permanent injunctive relief restraining such breach or threatened breach. The Executive hereby expressly acknowledges that the harm which might result to the Company's business as a result of any noncompliance by the Executive with any of the provisions of Sections 4, 5 or 6 would be irreparable. The Executive specifically agrees that if there is a question as to the enforceability of any of the provisions of Sections 4, 5 or 6, the Executive will not engage in any conduct inconsistent with or contrary to such Sections until after the question has been resolved by a final judgment of a court of competent jurisdiction.

8. Arbitration. Subject to Section 7 of this Agreement, and in consideration of the Company employing the Executive and the salary and benefits provided under this Agreement, the Executive and the Company agree that all claims arising out of or relating to Executive employment, including its termination, shall be resolved by binding arbitration. This Agreement expressly does not prohibit either party from seeking provisional injunctive relief, including to prevent irreparable harm, in any court of competent jurisdiction including as set forth in Section 7. The dispute will be arbitrated in accordance with the rules of the American Arbitration Association ("AAA") under its then-existing Employment Arbitration Rules. The parties shall bear equally the arbitration administrative costs and arbitrator's fees, subject to applicable law and the AAA rules. Each party shall bear Executive/its own attorneys' fees and legal costs. The parties agree to file any demand for arbitration within the time limit established by the applicable statute of limitations for the asserted claims. Failure to demand arbitration within the prescribed time period shall result in waiver of said claims. The parties agree that the arbitration shall take place in Tampa, Florida. THE PARTIES HEREBY ACKNOWLEDGE THAT BY THIS AGREEMENT TO ARBITRATE THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

9. Successors. The Company may assign its rights and obligations under this Agreement, and may assign or encumber this Agreement and its rights hereunder as security for indebtedness of the Company and its affiliates. Neither this Agreement nor any rights, interests or obligations hereunder may be assigned by the Executive without the prior written consent of the Company.

10. Confidentiality. Subject to applicable law, the Executive shall keep this Agreement and the terms of Executive employment with the Company confidential, and shall not disclose or discuss the same with anyone other than Executive's attorney, accountant or spouse.

11. Miscellaneous.

A. Construction. This Agreement shall be deemed drafted equally by both the parties. Its language shall be construed as a whole and according to its fair meaning. Any presumption or principle that the language is to be construed against any party shall not apply. The headings in this Agreement are only for convenience and are not intended to affect construction or interpretation. Any references to paragraphs, subparagraphs, sections or subsections are to those parts of this Agreement, unless the context clearly indicates to the contrary. Also, unless the context clearly indicates to the contrary, (1) the plural includes the singular and the singular includes the plural; (2) "and" and "or" are each used both conjunctively and disjunctively; (3) "any," "all," "each," or "every" means "any and all," and "each and every"; (4) "includes" and "including" are each "without limitation"; (5) "herein," "hereof," "hereunder" and other similar compounds of the word "here" refer to the entire Agreement and not to any particular paragraph, subparagraph, section or subsection; and (6) all pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the entities or persons referred to may require.

B. Notices. All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

Laura Sorensen
[***]
[***]
E-mail: [***]

If to the Company:

First Watch Restaurants, Inc.
c/o Advent International Corporation 75 State Street

Boston, Massachusetts 02109
Attention: Tricia Patrick, James Westra
Facsimile: (617) 951-0566
E-mail: tpatrick@adventinternational.com;
jwestra@adventinternational.com

with a copy (which shall not constitute notice) to:

Weil, Gotshal & Manges, LLP
100 Federal Street, Floor 34
Boston, Massachusetts 02110
Attention: Marilyn French Shaw
Facsimile: (617) 772-8333
E-mail: marilynfrench.shaw@weil.com

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

C. Enforcement. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws effective during the Employment Period, such provision shall be reformed to the maximum extent permissible under law to an enforceable provision as similar in terms as possible to such illegal, invalid or unenforceable provision, and the remaining provisions of this Agreement shall remain in full force and effect. If said illegal, invalid or unenforceable provision cannot be reformed, such provision shall be fully severable from this Agreement, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a portion of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

D. Withholding. The Company shall be entitled to withhold from any amounts payable under this Agreement any federal, state, local or foreign withholding or other taxes or charges which it is from time to time required to withhold. The Company shall be entitled to rely on an opinion of counsel if any questions as to the amount or requirement of such withholding shall arise.

E. No Waiver. No waiver by either party at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by the other party shall be deemed a waiver of similar or dissimilar provisions or conditions at any time.

F. Complete Agreement. This Agreement constitutes the entire and complete understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous oral and written agreements, representations and understandings between the Executive and the Company, or its subsidiaries and affiliates, relating to the subject matter herein. Other than expressly set forth herein, the Executive and the Company acknowledge and represent that there are no other promises, terms, conditions or representations (oral or written) regarding any matter relevant hereto. For avoidance of doubt, the Prior Employment Agreement is hereby terminated, cancelled and of no further force or effect. This Agreement may be executed in two or more counterparts.

G. Choice of Law. This Agreement and the rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Florida without reference to principles of conflicts of law of Florida or any other jurisdiction, and, where applicable, the laws of the United States.

H. Amendment. This Agreement may not be amended or modified at any time except by a written instrument executed by both the Executive and an authorized representative of the Company and approved by the Board.

I. Executive Acknowledgement and Representation. The Executive acknowledges that Executive has read and understands this Agreement, is fully aware of its legal effect, has not acted in reliance upon any representations or promises made by the Company other than those contained in writing herein, and has entered into this Agreement freely based on the Executive's own judgment. The Executive further represents and warrants that there is no agreement or other legal impediment or contractual obligation that prohibits or would otherwise prevent the Executive from continuing employment with the Company, executing this Agreement, and performing the duties and services provided for hereunder. The Executive further acknowledges that Executive has had the opportunity to consult with an attorney and/or tax advisor of Executive choice with respect to this Agreement.

12. 409A.

A. Compliance. It is intended that compensation paid or delivered to the Executive pursuant to this Agreement is either paid in compliance with, or is exempt from, Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder (together, "Section 409A"), and this Agreement shall be interpreted and administered accordingly. However, the Company does not warrant to the Executive that all amounts paid or delivered to him will be exempt from, or paid in compliance with, Section 409A. The Executive understands and agrees that he bears the entire risk of any adverse federal, state or local tax consequences and penalty taxes which may result from payment on a basis contrary to the provisions of Section 409A or comparable provisions of any applicable state or local income tax laws. The Executive acknowledges that Executive has been advised to seek the advice of a tax advisor with respect to the tax consequences of all payments pursuant to this Agreement, including any adverse tax consequence under Section 409A and applicable state tax law.

B. Amounts Payable On Account of Termination. If and to the extent necessary to comply with Section 409A, for the purposes of determining when amounts otherwise payable on account of the Executive's termination of employment under this Agreement will be paid, "terminate", "terminated" or "termination" or words of similar import relating to the Executive's employment with the Company, as used in this Agreement, shall be construed as the date that the Executive first incurs a "separation from service," within the meaning of Section 409A, from the Company.

C. Interpretative Rules. In applying Section 409A to amounts paid pursuant to this Agreement, any right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments.

[*Signature Page to Follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date written below effective as of the day and year first above written.

EXECUTIVE

Dated: August 21, 2017

/s/ Laura Sorensen
Laura Sorensen

[SIGNATURE PAGE TO EMPLOYMENT AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date written below effective as of the day and year first above written.

FIRST WATCH RESTAURANTS, INC.

Dated: August 21, 2017

By: /s/ Kenneth L. Pendery, Jr.
Name: Kenneth L. Pendery, Jr.
Title: Chief Executive Officer

[SIGNATURE PAGE TO EMPLOYMENT AGREEMENT]

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("Agreement") is made and entered into as of August 21, 2017 (the "Effective Date") between First Watch Restaurants, Inc., a Delaware corporation (together with its successors and assigns permitted hereunder, the "Company"), and Eric Hartman (the "Executive").

RECITALS

WHEREAS, the Company and the Executive entered into that certain Employment Agreement effective October 14, 2016 (the "Prior Employment Agreement") which employment agreement is hereby terminated, cancelled and of no further force or effect; and

WHEREAS, the Board of Directors of the Company (the "Board") has determined that it is in the best interest of the Company and its stockholders to enter into this Agreement and to continue to employ the Executive on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the respective agreements and covenants set forth herein and other good and valuable consideration, the receipt of which is hereby acknowledged by both parties hereto, the parties hereto, intending to be legally bound, hereby agree as follows:

AGREEMENT

1. Employment Period. The Executive's term of employment hereunder shall commence on the Effective Date of this Agreement and continue until the first anniversary of the Effective Date, unless earlier terminated pursuant to Section 3 (the initial employment period and any extended employment period pursuant to this Section 1 shall be referred to herein as the "Employment Period"). Upon the first anniversary of the Effective Date, and on each anniversary thereafter, this Agreement shall automatically renew on the same terms and conditions set forth herein (as amended in writing from time to time by the parties) for one (1) year periods unless the Company or the Executive gives the other party written notice of its/Executive's election not to renew the Employment Period no later than thirty (30) days prior to the end of the Employment Period. If either party provides a notice not to renew pursuant to this Section 1 and the Executive continues to be employed by the Company after the Employment Period, for any reason, Executive will do so as an at will employee and not pursuant to this Agreement, *provided that*, the Executive's post-termination obligations pursuant to Sections 4, 5, 6, 8 and 10 of this Agreement (the "Continuing Obligations") shall survive any such continued at will employment and termination thereof.

2. Terms of Employment.

A. Position and Duties. During the Employment Period, the Executive shall serve as the Executive Vice President and Chief Development Officer of the Company and, in so doing, shall perform all normal duties and responsibilities associated with such position, subject to the general direction, approval and control of the Chief Executive Officer of the Company and the Board. During the Employment Period, and excluding any periods of vacation or other leaves to which the Executive is entitled, the Executive agrees to devote substantially all

of Executive's business time to the business and affairs of the Company, to use Executive's best efforts to perform faithfully, effectively and efficiently Executive's duties and responsibilities, and to observe and comply with the Company's rules and policies as adopted by the Company from time to time. Provided, however, that the foregoing shall not prevent Executive from (i) maintaining the ownership interests that Executive has in other entities as of the Effective Date, or (ii) maintaining the positions that Executive holds on boards and with trade associations as of the Effective Date. During the Employment Period, the Executive will be employed by the Company on an at will basis, which means that either Executive or the Company can terminate the employment relationship at any time, with or without cause, subject to the terms and conditions set forth in Section 3.

B. Compensation.

(1) Annual Base Salary. During the Employment Period, the Executive shall receive an annual base salary in the amount of $275,000.00 less applicable deductions under federal, state and local laws (the "Annual Base Salary"), paid in accordance with the customary payroll practices of the Company. The Board, in its discretion, may at any time change the amount of the Annual Base Salary to such greater amount as it may deem appropriate, and the term "Annual Base Salary," as used in this Agreement, shall refer to the Annual Base Salary as it may so be changed.

(2) Annual Bonus. During the Employment Period, the Executive shall be eligible to participate in the Company's key employee bonus plan pursuant to the terms and conditions of that plan, as amended from time to time by the Board, but not within the bonus period ending on December 31, 2017. The Executive shall be eligible to receive an annual bonus of up to 70% of the Annual Base Salary, which will be based upon the achievement of certain clearly defined goals (including, without limitation, achieving EBITDA targets) established by the Board or its Compensation Committee (the "Annual Bonus"), and provided to the Executive prior to the commencement of each annual bonus period. The implementation, continuation and termination of any incentive plan referenced hereunder shall be within the sole discretion of the Board provided that the bonus plan shall not be terminated or materially reduced during the bonus period ending on December 31, 2017. The Annual Bonus, if any, shall be paid to the Executive as set forth in the annual incentive plan. The Executive shall only be eligible to receive the Annual Bonus if Executive is actively employed on the Annual Bonus payout date subject to Section 3.

(3) Equity. During the Employment Period, the Executive shall be eligible to participate in the equity incentive plan of AI Fresh Parent, Inc. ("Parent") maintained for senior executives pursuant to the terms and conditions of that plan, as amended from time to time.

(4) Benefits. During the Employment Period, the Executive shall be entitled to participate in each benefit plan sponsored by the Company to the extent such benefit plan is generally available to similarly-situated employees of the Company and the Executive is otherwise eligible under the terms of such benefit plan. The amount, eligibility, and extent of the benefits shall be governed by the applicable benefit plan or program of the Company. The Executive shall be entitled to accrue three (3) weeks of paid vacation per year on a pro-rata basis. Vacation days shall not accumulate from year to year and unused vacation days will not be paid upon termination subject to Section 3. Any vacation shall be taken at the reasonable and mutual convenience of the Company and the Executive.

(5) Supplemental Life Insurance Plan. The Executive shall be entitled to participate in a supplemental life insurance plan that may be provided by the Company from time to time, in accordance with the terms and conditions of such programs as administered by the Company.

(6) Expenses. During the Employment Period, the Company shall reimburse the Executive for all reasonable business expenses of types authorized by the Company and reasonably and necessarily incurred or paid for by the Executive in the performance of Executive's duties, responsibilities, and authorities hereunder. The Executive shall provide the Company with all documentation and receipts requested by the Company and required to establish the amount and nature of such expenses. The Executive shall comply with such budget limitations and approval and reporting requirements with respect to expenses as the Company may establish from time to time.

3. Obligations upon Termination.

A. Termination/Expiration. The provisions of this Section 3 do not in any way affect the Executive's at will status as provided in Section 2. The Executive is entitled to no other payments, compensation, severance or benefits upon termination except as expressly stated in this Section 3. Upon termination or expiration/nonrenewal of this Agreement, the Executive is entitled to receive any unpaid Annual Base Salary due for the period prior to and through the date of termination, and following submission of proper expense reports by the Executive, reimbursement for all expenses properly incurred in accordance with Section 2.B(6) of this Agreement (jointly, the "Accrued Obligations"). Upon termination for any reason (except death) or expiration/nonrenewal of this Agreement, the Executive shall continue to be fully bound by the Continuing Obligations.

B. Notice of Termination. Any termination of the Executive's employment shall be communicated to the other party by a Notice of Termination. For the Executive, a "Notice of Termination" means a written notice provided to the Company at least thirty (30) days prior to the Executive's last day of employment, provided however, the Company may accelerate the Executive's last day of employment to any date within the thirty (30) day notice period without converting the Executive's resignation into anything but a voluntary resignation. For the Company, a "Notice of Termination" means any written notice to the Executive, at any time, which indicates the effective date of termination of the Executive's employment subject to this Section 3.

C. Termination by the Company Due to Death or Disability.

(1) Termination for Death or Disability. The Executive's employment hereunder shall terminate automatically during the Employment Period upon the Executive's death or, at the option of the Company, upon Executive's Disability (defined below).

In the case of Disability, the Company shall provide the Executive a Notice of Termination and the Executive's employment with the Company shall terminate effective on the thirtieth (30th) day following Executive's receipt of said notice unless, within said thirty (30) day period, the Executive is able to perform the essential functions of Executive's job duties, with or without reasonable accommodation.

(2) Rights upon Termination for Death or Disability. If the Company terminates the Executive's employment hereunder because of death or Disability, the Executive shall forfeit all rights to any compensation otherwise due to Executive or to which Executive may be entitled under this Agreement, and the Company shall have no further payment obligations to the Executive or Executive's legal representatives, other than: (a) the Accrued Obligations; (b) continued payment of the Annual Base Salary for a period of six (6) months following the date of termination in accordance with the Company's regular payroll practices; (c) accrued but unused vacation through the termination date payable on the next regular payroll date following the termination date; and (d) a pro rata portion of the Annual Bonus that the Executive would have earned for the year in which Executive's death or Disability occurred if Executive had remained employed with the Company through the end of such calendar year, based on the number of months employed by the Company calculated as of the date of termination (the "Prorated Bonus Amount"), and payable when the bonuses are regularly paid as set forth in the annual incentive plan. Except as set forth in this Section 3.C(2), if the Executive is terminated due to death or Disability, the Company shall have no further obligations to the Executive or liability under this Agreement by way of compensation or otherwise.

(3) Definition of Disability. For purposes of this Agreement, at any time the Company sponsors a long-term disability plan for the Company's executives, and subject to applicable law, "Disability" shall mean disability as defined in such long-term disability plan for the purpose of determining a participant's eligibility for benefits, provided however, if the long-term disability plan contains multiple definitions of disability, "Disability" shall refer to that definition of disability which, if the Executive qualified for such disability benefits, would provide coverage for the longest period of time. The determination of whether the Executive has a Disability shall be made by the person or persons required to render disability determinations under the long-term disability plan. At any time the Company does not sponsor a long-term disability plan for its executives, "Disability" shall mean the Executive's inability to perform, with or without reasonable accommodation, the essential functions of Executive position hereunder for a period of one hundred twenty (120) days, consecutive or non- consecutive, in any twelve (12)-month period due to Executive's mental or physical incapacity as determined by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative, such agreement as to acceptability not to be unreasonably withheld or delayed. The Executive agrees to cooperate in submitting to a medical examination for the purpose of certifying Disability under this Section 3.C if requested by the Company.

D. Termination by the Company for Cause.

(1) Termination for Cause. The Company may terminate the Executive's employment at any time during the Employment Period for Cause (defined below) upon written notice to the Executive.

(2) Rights upon Termination for Cause. If the Executive's employment hereunder is terminated by the Company for Cause, the Executive shall not be entitled to receive any severance, bonus or other payments, except the Accrued Obligations, payable in a lump sum on the Company's next regular payroll date following the date of termination. Except as set forth in this Section 3.D, the Company shall have no further obligations to the Executive or liability under this Agreement by way of compensation or otherwise. Should the Executive's employment terminate pursuant to this Section 3.D, the Executive shall continue to be fully bound by the Continuing Obligations.

(3) Definition of Cause. For purposes of this Agreement, "Cause" shall include the following: (a) indictment for any crime involving moral turpitude, fraud or misrepresentation or the Executive pleading guilty or nolo contendere to, any felony or crime involving moral turpitude that is damaging to the reputation of the Company; (b) commission of any act which is a felony; (c) gross misconduct or fraud involving the operations of the Company; (d) misappropriation or embezzlement of funds or property of the Company; (e) willful conduct which is materially injurious to the reputation, business or business relationships of the Company; (f) violation of any of the provisions of this Agreement or any material Company policy or work rule (including, for example, the Company's sexual harassment policy, drug policy, etc.); or (g) failure of the Executive to follow the reasonable directions or instructions issued to the Executive by the Board, or the Executive's refusal or failure to substantially perform Executive's duties and responsibilities under this Agreement to the reasonable satisfaction of the Board, *provided however*, that prior to any termination pursuant to subsection 3.D(3)(f) and (g), the Company must give written notice to the Executive stating the reasons triggering subsection 3.D(3)(f) and (g) and the Executive shall thereafter have the right to remedy the condition, if such condition can be remedied in the good faith determination of the Board, within thirty (30) days of the date the Executive received such written notice. If the Executive does not remedy the condition within the thirty (30) day cure period to the reasonable satisfaction of the Board, then the Board may deliver a notice of termination for Cause at any time within thirty (30) days following the expiration of such cure period, in which case termination will be effective upon delivery of such notice.

E. Termination by the Company Without Cause.

(1) Termination Without Cause. The Company may terminate the Executive's employment at any time during the Employment Period without Cause (other than due to death or Disability) upon written notice.

(2) Rights upon Termination Without Cause. If the Executive's employment hereunder is terminated by the Company without Cause, the Executive shall forfeit all rights to any compensation otherwise due to Executive or to which Executive may be entitled under this Agreement, and the Company shall have no further payment obligations to the Executive or Executive's legal representatives, other than: (a) the Accrued Obligations; and (b) *provided* the Executive signs, returns and, if applicable, does not revoke a general waiver and release of all claims against the Company and its Parent, subsidiaries and affiliates in a form satisfactory to the Board and the Company (the "Release") and complies with the Continuing Obligations, (i) continued payment of the Annual Base Salary for a period of twelve (12) months following the date of termination in accordance with the Company's regular payroll practices (the "Salary Continuation Payments"); (ii) accrued but unused vacation through the termination date; and (iii) the Prorated Bonus Amount.

The first Salary Continuation Payment and the accrued vacation shall be paid to the Executive on the Company's first regular payroll date following the sixtieth (60th) day after the termination date (and will include any Salary Continuation Payment installment that would have otherwise been paid during the period following the termination date through the date of the first Salary Continuation Payment); *provided that*, the Release is irrevocable as of such date. The Prorated Bonus Amount shall be payable on the same day as the final Salary Continuation Payment. If during any period in which the Executive is receiving the Salary Continuation Payments, Executive violates any Continuing Obligations to the Company, the Company's obligations pursuant to Section 3.E(2)(b) shall cease and the Company will have no further obligations to the Executive. Except as set forth in this Section 3.E, if the Executive is terminated without Cause, the Company shall have no further obligations to the Executive or liability under this Agreement by way of compensation or otherwise.

F. Resignation by the Executive Without Cause / Expiration. During the Employment Period, the Executive may resign Executive's employment at any time, for any reason. In addition, the Employment Period may expire/not be renewed as set forth in Section 1. If the Executive's employment terminates pursuant to this Section 3.F as a result of the Company providing the Executive notice of its intent not to renew pursuant to Section 1, then the Executive shall receive (a) the Accrued Obligations; and (b) *provided* the Executive signs, returns and, if applicable, does not revoke the Release and complies with the Continuing Obligations, (i) the Salary Continuation Payments; (ii) accrued but unused vacation through the termination date; and (iii) the Prorated Bonus Amount, each of which shall be payable in accordance with the provisions of Section 3.E. If the Executive resigns Executive's employment for any reason (other than for "Good Cause" as defined in Section 3.G(1) below) or the Executive's employment terminates pursuant to this Section 3.F as a result of the Executive providing the Company notice of Executive's intent not to renew pursuant to Section 1, the Executive shall not be entitled to receive any severance, or other payments, except the Accrued Obligations, and the Company shall have no further obligations to the Executive or liability under this Agreement by way of compensation or otherwise. Should the Executive's employment terminate pursuant to this Section 3.F, the Executive shall continue to be fully bound by Executive's Continuing Obligations.

G. Resignation by the Executive for Good Cause.

(1) If any of the following events shall occur without the Executive's consent, the Executive shall be entitled to resign Executive's employment with the Company for Good Cause: (i) the Company materially reduces Executive's Annual Base Salary or Annual Bonus opportunity percentage; (ii) a material diminution in Executive's responsibilities; or (iii) the Company relocates Company's headquarters more than twenty (20) miles from the existing location. Notwithstanding the foregoing, the events described in clauses (i), (ii) or (iii) shall not constitute Good Cause unless (A) Executive has given the Company written notice of Executive's resignation for Good Cause, setting forth the conduct of the Company that is alleged to constitute Good Cause, within thirty (30) days following the occurrence of such event, and (B) Executive 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. Failing such cure, a termination of employment of Executive by Executive for Good Cause shall be effective on the day following the expiration of such cure period.

(2) If the Executive resigns his employment with the Company for Good Cause in accordance with Section 3.G(1) above, Executive shall be entitled and subject to the same rights and obligations as provided herein for a termination without Cause, as specified by Section 3.E(2) herein.

4. Restrictive Covenants.

A. Confidential Information.

(1) Covenant Not to Disclose Confidential Information. The Executive acknowledges that the services to be performed by Executive hereunder are special, unique and extraordinary in that, by reason of Executive's employment hereunder and Executive's past employment with the Company, Executive will acquire and have access to, and has acquired and has had access to, the Company's Confidential Information (defined below), the use or disclosure of which could cause the Company substantial loss and damages which could not be readily calculated and for which no remedy at law would be adequate. The Executive shall not, during the Employment Period or at any time thereafter, disclose in any way the Company's Confidential Information or any part thereof, to any person, firm, corporation, association, or any other operation or entity or use the Confidential Information on Executive's own behalf, for any reason or purpose, except as necessary to perform Executive's job duties, or destroy the Confidential Information. The Executive agrees that Executive will not distribute any Confidential Information to any third person or permit the reproduction of the Confidential Information, except on behalf of the Company in Executive's capacity as an executive of the Company. The Executive hereby assumes responsibility for and shall indemnify and hold the Company harmless from and against any disclosure by the Executive or use by the Executive of the Confidential Information in violation of this Agreement other than pursuant to subpoena, court order, discovery request, or as otherwise required by law, or for whistleblower actions.

(2) Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall include, but is not limited to, the following information, which information is not generally known or readily available to the public or the Company's competitors: (a) confidential and proprietary matters relating to the sales operations of the Company, or its Parent, subsidiaries, or affiliates of the Company, including, but not limited to, sales methods; pricing information; merchandising and marketing plans and strategies; proprietary information relating to recipes, services, products and product specifications, processes, techniques and know-how; and supplier and vendor lists; (b) confidential and proprietary matters relating to the business and financial operations of the Company or its Parent, subsidiaries, or affiliates of the Company, including, but not limited to, financial data and plans; budgets and financial statements; business plans and strategies; research and development plans; product or service plans; training materials; methods of distribution; assets and liabilities; past, present or proposed business operations, mergers or acquisitions or projects; business opportunities for new or developing business; recruiting methodology; and personnel information concerning Company employees (other than the Executive); (c) confidential and proprietary intellectual property of the Company or its Parent, subsidiaries, or affiliates of the Company,

including, but not limited to, concepts, ideas, proposals, Inventions (defined in Section 5), formulas, technology, improvements, discoveries, developments, proposed trademarks, trade and domain names; and (d) any trade secret of the Company or its Parent, subsidiaries or affiliates of the Company as defined by law. The Executive understands and agrees that the rights and obligations set forth in this Section 4.A are perpetual and shall extend beyond the Executive's employment with the Company. Confidential Information shall not include general industry information or information which is or becomes publicly available, information which the Executive has lawfully acquired from a source other than the Company (provided that such source is not bound by a confidentiality agreement with the Company), disclosures required by any registration or filing with any agency or regulatory authority; information which is required to be disclosed pursuant to any law, regulation, or rule of any governmental body , agency or authority or court order, and/or as may be necessary for purposes of disclosure to accountants, financial advisors or other counsel, who shall be made aware of and agree to be bound by the confidentiality provisions hereof.

(3) Disclosure of Confidential Information for Certain Purposes. Executive understands that nothing in this Agreement shall be construed to prohibit Executive from reporting possible violations of law or regulation to any governmental agency or regulatory body or making other disclosures that are protected under any law or regulation, or from filing a charge with or participating in any investigation or proceeding conducted by any governmental agency or regulatory body (including under any governmental agency's whistleblower program). Executive understands that the Defending Trade Secrets Act provides that Executive may not be held criminally or civilly liable under any Federal or state trade secret law for the disclosure of a trade secret that is made in confidence to a Federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In the event that Executive files a lawsuit for retaliation by the Company, Parent or its subsidiaries or affiliates for reporting a suspected violation of law, Executive may disclose the trade secret to Executive's attorney and use the trade secret information in the court proceeding, if Executive files any document containing the trade secret under seal and does not disclose the trade secret, except pursuant to court order.

B. Covenant Not to Compete. During the Employment Period and for the longer of (i) the period of time during which the Executive holds, directly or indirectly, any equity securities of the Company and (ii) a period of one (1) year after the date of termination of the Executive's employment, however caused and for any reason, the Executive shall not:

(1) directly or indirectly induce or attempt to induce any senior managers or executives of the Company or those of any of its Parent, subsidiaries or affiliates to terminate their employment, or refrain from renewing or extending such employment, with the Company or such affiliate or subsidiary;

(2) directly or indirectly own, control or participate in the ownership or control of, or be employed by or on behalf of, or provide services to, any restaurant business which operates a restaurant similar to that operated by the Company within a five (5) mile radius of any restaurant operated or owned by the Company or its Parent, subsidiaries, or affiliates, during the Employment Period; or

(3) directly or indirectly solicit or cause or encourage any person to solicit any business in competition with the Company or its Parent, subsidiaries, or affiliates.

C. Mutual Covenant Not to Disparage. The Executive agrees not to disparage, at any time, the Company, or its Parent, subsidiaries or affiliates of the Company, or any of their business practices, products or services, or any of their directors, officers, agents, representatives, stockholders or affiliates, either orally or in writing. Upon termination of the Executive's employment, the Company agrees that it will instruct its Board of Directors and senior management to not make any oral or written statement that disparages the Executive. Nothing in this Section shall prohibit either the Executive or the Company from responding truthfully to subpoenas or in connection with whistleblower actions and other court ordered inquiries or proceedings.

5. Inventions.

A. Assignment. The Executive agrees to assign and hereby assigns to the Company, without further consideration, all right, title, and interest that the Executive may presently have or acquire (throughout the United States and in all foreign countries), free and clear of all liens and encumbrances, in and to each Invention (as defined in this Section 5), which Invention shall be the sole property of the Company, whether or not patentable. "Invention" as used herein shall mean all ideas, processes, trademarks, service marks, inventions, technology, computer programs, original works of authorship, designs, formulas, discoveries, patents, copyrights, moral rights (including but not limited to rights to attribution or integrity) and all improvements, rights, and claims related to the foregoing that are in all cases conceived, created, developed, or reduced to practice by the Executive alone or with others during the scope and course of Executive employment with the Company (or any affiliate). In addition, to the extent not assigned, the Executive hereby irrevocably waives any moral rights (including rights of attribution and integrity) that Executive may have with respect to the Inventions. The Executive acknowledges that all original works of authorship which are made by the Executive (solely or jointly with others) within the scope of Executive's employment and which are protectable by copyright are "Works Made For Hire" as defined in the United States Copyright Act (17 USCA, § 101) and are included in the definition of Inventions. The Executive shall promptly disclose any such Invention to the Company.

B. Prior Inventions. Unless attached hereto as an exhibit, the Executive represents that Executive does not have or possess any invention made or developed by Executive prior to Executive's employment with the Company which relates to the business, products or research and development of the Company as of or prior to the date hereof ("Prior Invention"), or that Executive has already assigned all such inventions to the Company. If any Prior Invention is incorporated into a Company product, process or machine, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license to make, have made, modify, adapt, use, import, and sell such Prior Invention as part of or in connection with such product, process or machine.

C. Assistance. The Executive agrees to assist the Company, or its designee, at the Company's expense, in securing the Company's rights in and to the Inventions and any other intellectual property rights relating thereto in any and all countries. Such assistance shall include the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive rights, title and interest in and to such Inventions, and other intellectual property rights relating thereto. The Executive agrees to maintain adequate and current written records on the development of all Inventions and to disclose promptly to the Company all Inventions and relevant records, which records will remain the sole property of the Company. The Executive further agrees that all information and records pertaining to any idea, process, trademark, service mark, invention, discovery, improvement, technology, computer program, original work of authorship, design formula, discovery, patent, or copyright that the Executive does not believe to be an Invention, but is conceived, developed, or reduced to practice by the Executive (alone or with others) during Executive's employment with the Company shall be promptly disclosed to the Company (such disclosure to be received in confidence).

6. Company Property. The Executive acknowledges that the Confidential Information and any and all notes, records, sketches, computer diskettes, training materials and other documents relating to the Company obtained by or provided to the Executive, created or developed by the Executive during the course of Executive's employment with the Company, or otherwise made, produced or compiled by the Executive during the Employment Period, regardless of the type of medium in which they were preserved, are the sole and exclusive property of the Company and shall be surrendered to the Company upon the Executive's termination from the Company, however caused and for any reason, or on demand at any time by the Company.

7. Comparative Right to Injunctive Relief. In the event of a breach or threatened breach of any of the Executive's duties and obligations under the terms and provisions of Sections 4, 5 or 6 hereof, the Company shall be entitled, in addition to any other legal or equitable remedies it may have in connection therewith (including any right to damages that it may suffer), to temporary, preliminary and permanent injunctive relief restraining such breach or threatened breach. The Executive hereby expressly acknowledges that the harm which might result to the Company's business as a result of any noncompliance by the Executive with any of the provisions of Sections 4, 5 or 6 would be irreparable. The Executive specifically agrees that if there is a question as to the enforceability of any of the provisions of Sections 4, 5 or 6, the Executive will not engage in any conduct inconsistent with or contrary to such Sections until after the question has been resolved by a final judgment of a court of competent jurisdiction.

8. Arbitration. Subject to Section 7 of this Agreement, and in consideration of the Company employing the Executive and the salary and benefits provided under this Agreement, the Executive and the Company agree that all claims arising out of or relating to Executive employment, including its termination, shall be resolved by binding arbitration. This Agreement expressly does not prohibit either party from seeking provisional injunctive relief, including to prevent irreparable harm, in any court of competent jurisdiction including as set forth in Section 7. The dispute will be arbitrated in accordance with the rules of the American Arbitration Association ("AAA") under its then-existing Employment Arbitration Rules. The parties shall bear equally the arbitration administrative costs and arbitrator's fees, subject to applicable law and the AAA rules. Each party shall bear Executive/its own attorneys' fees and legal costs. The parties agree to file any demand for arbitration within the time limit established

by the applicable statute of limitations for the asserted claims. Failure to demand arbitration within the prescribed time period shall result in waiver of said claims. The parties agree that the arbitration shall take place in Tampa, Florida. THE PARTIES HEREBY ACKNOWLEDGE THAT BY THIS AGREEMENT TO ARBITRATE THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

9. Successors. The Company may assign its rights and obligations under this Agreement, and may assign or encumber this Agreement and its rights hereunder as security for indebtedness of the Company and its affiliates. Neither this Agreement nor any rights, interests or obligations hereunder may be assigned by the Executive without the prior written consent of the Company.

10. Confidentiality. Subject to applicable law, the Executive shall keep this Agreement and the terms of Executive employment with the Company confidential, and shall not disclose or discuss the same with anyone other than Executive's attorney, accountant or spouse.

11. Miscellaneous.

A. Construction. This Agreement shall be deemed drafted equally by both the parties. Its language shall be construed as a whole and according to its fair meaning. Any presumption or principle that the language is to be construed against any party shall not apply. The headings in this Agreement are only for convenience and are not intended to affect construction or interpretation. Any references to paragraphs, subparagraphs, sections or subsections are to those parts of this Agreement, unless the context clearly indicates to the contrary. Also, unless the context clearly indicates to the contrary, (1) the plural includes the singular and the singular includes the plural; (2) "and" and "or" are each used both conjunctively and disjunctively; (3) "any," "all," "each," or "every" means "any and all," and "each and every"; (4) "includes" and "including" are each "without limitation"; (5) "herein," "hereof," "hereunder" and other similar compounds of the word "here" refer to the entire Agreement and not to any particular paragraph, subparagraph, section or subsection; and (6) all pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the entities or persons referred to may require.

B. Notices. All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

Eric Hartman
[***]
[***]

If to the Company:

First Watch Restaurants, Inc.
c/o Advent International Corporation
75 State Street

Boston, Massachusetts 02109
Attention: Tricia Patrick, James Westra
Facsimile: (617) 951-0566
E-mail: tpatrick@adventinternational.com;
jwestra@adventinternational.com

with a copy (which shall not constitute notice) to:

Weil, Gotshal & Manges, LLP
100 Federal Street, Floor 34
Boston, Massachusetts 02110
Attention: Marilyn French Shaw
Facsimile: (617) 772-8333
E-mail: marilynfrench.shaw@weil.com

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

C. Enforcement. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws effective during the Employment Period, such provision shall be reformed to the maximum extent permissible under law to an enforceable provision as similar in terms as possible to such illegal, invalid or unenforceable provision, and the remaining provisions of this Agreement shall remain in full force and effect. If said illegal, invalid or unenforceable provision cannot be reformed, such provision shall be fully severable from this Agreement, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a portion of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

D. Withholding. The Company shall be entitled to withhold from any amounts payable under this Agreement any federal, state, local or foreign withholding or other taxes or charges which it is from time to time required to withhold. The Company shall be entitled to rely on an opinion of counsel if any questions as to the amount or requirement of such withholding shall arise.

E. No Waiver. No waiver by either party at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by the other party shall be deemed a waiver of similar or dissimilar provisions or conditions at any time.

F. Complete Agreement. This Agreement constitutes the entire and complete understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous oral and written agreements, representations

and understandings between the Executive and the Company, or its subsidiaries and affiliates, relating to the subject matter herein. Other than expressly set forth herein, the Executive and the Company acknowledge and represent that there are no other promises, terms, conditions or representations (oral or written) regarding any matter relevant hereto. For avoidance of doubt, the Prior Employment Agreement is hereby terminated, cancelled and of no further force or effect. This Agreement may be executed in two or more counterparts.

G. Choice of Law. This Agreement and the rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Florida without reference to principles of conflicts of law of Florida or any other jurisdiction, and, where applicable, the laws of the United States.

H. Amendment. This Agreement may not be amended or modified at any time except by a written instrument executed by both the Executive and an authorized representative of the Company and approved by the Board.

I. Executive Acknowledgement and Representation. The Executive acknowledges that Executive has read and understands this Agreement, is fully aware of its legal effect, has not acted in reliance upon any representations or promises made by the Company other than those contained in writing herein, and has entered into this Agreement freely based on the Executive's own judgment. The Executive further represents and warrants that there is no agreement or other legal impediment or contractual obligation that prohibits or would otherwise prevent the Executive from continuing employment with the Company, executing this Agreement, and performing the duties and services provided for hereunder. The Executive further acknowledges that Executive has had the opportunity to consult with an attorney and/or tax advisor of Executive choice with respect to this Agreement.

12. 409A.

A. Compliance. It is intended that compensation paid or delivered to the Executive pursuant to this Agreement is either paid in compliance with, or is exempt from, Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder (together, "Section 409A"), and this Agreement shall be interpreted and administered accordingly. However, the Company does not warrant to the Executive that all amounts paid or delivered to him will be exempt from, or paid in compliance with, Section 409A. The Executive understands and agrees that he bears the entire risk of any adverse federal, state or local tax consequences and penalty taxes which may result from payment on a basis contrary to the provisions of Section 409A or comparable provisions of any applicable state or local income tax laws. The Executive acknowledges that Executive has been advised to seek the advice of a tax advisor with respect to the tax consequences of all payments pursuant to this Agreement, including any adverse tax consequence under Section 409A and applicable state tax law.

B. Amounts Payable On Account of Termination. If and to the extent necessary to comply with Section 409A, for the purposes of determining when amounts otherwise payable on account of the Executive's termination of employment under this Agreement will be paid, "terminate", "terminated" or "termination" or words of similar import relating to the Executive's employment with the Company, as used in this Agreement, shall be construed as the date that the Executive first incurs a "separation from service," within the meaning of Section 409A, from the Company.

C. Interpretative Rules. In applying Section 409A to amounts paid pursuant to this Agreement, any right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments.

[*Signature Page to Follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date written below effective as of the day and year first above written.

EXECUTIVE

Dated: August 21, 2017

/s/ Eric Hartman
Eric Hartman

[SIGNATURE PAGE TO EMPLOYMENT AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date written below effective as of the day and year first above written.

FIRST WATCH RESTAURANTS, INC.

Dated: August 21, 2017

By: /s/ Kenneth L. Pendery, Jr.
Name: Kenneth L. Pendery, Jr.
Title: Chief Executive Officer

[SIGNATURE PAGE TO EMPLOYMENT AGREEMENT]

Exhibit 21.1

Subsidiaries of First Watch Restaurant Group, Inc.

As of June 9, 2021

Name of Subsidiary	Jurisdiction of Formation
1. AI Fresh Parent, Inc.	Delaware
2. E&I Holdings, Inc.	Colorado
3. First Watch E&I Restaurant Group, LLC	Delaware
4. First Watch Franchise Development Co.	Delaware
5. First Watch Restaurants Texas, Inc.	Delaware
6. First Watch Restaurants, Inc.	Delaware
7. First Watch Texas Holding, Inc.	Delaware
8. FWR Holding Corporation	Delaware
9. Good Egg Restaurants, LLC	Arizona
10. TFW-NC, LLC	North Carolina